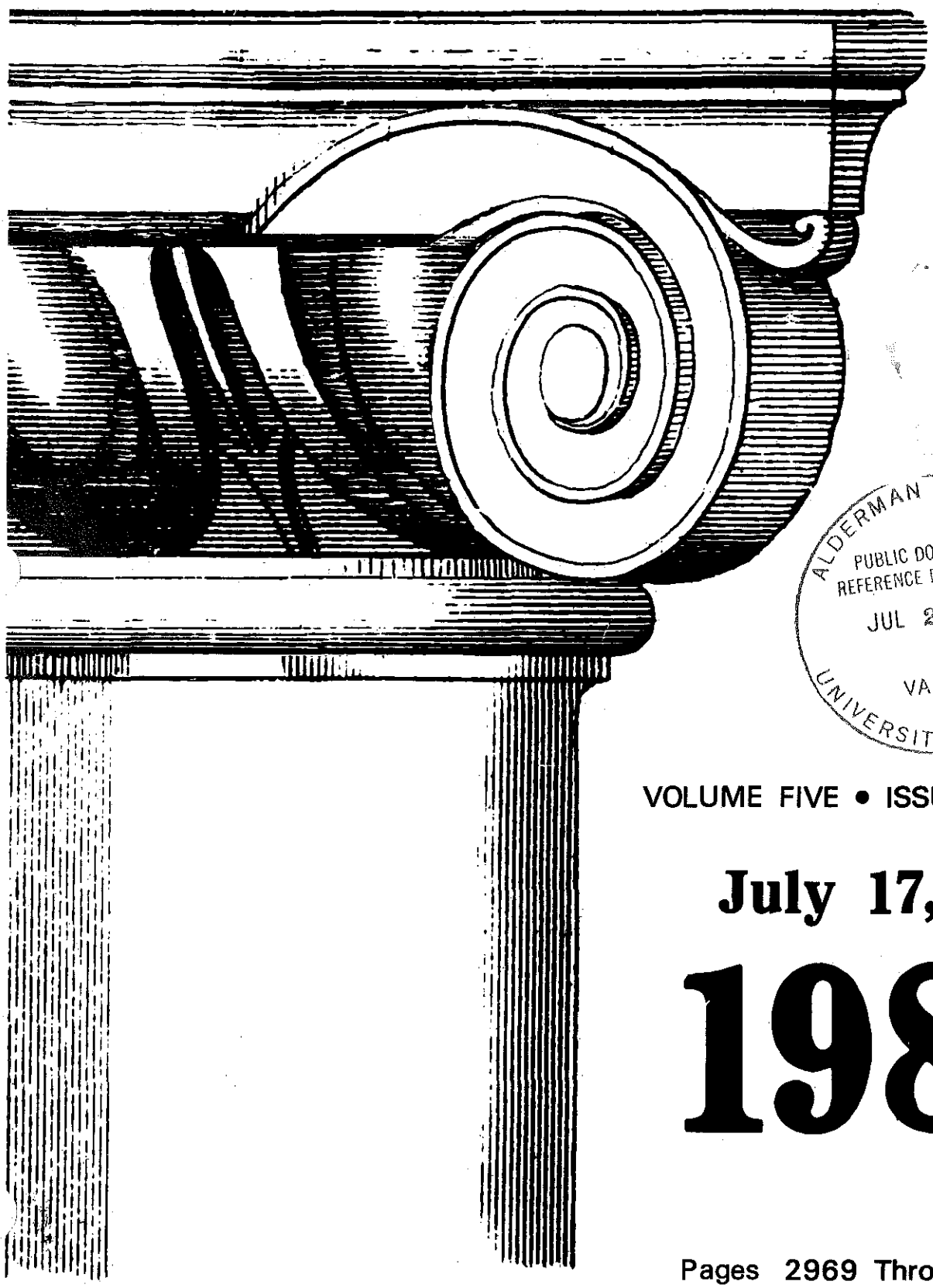
# THE VIRGINIA REGISTER

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 final action is taken.

## 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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**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.

**ALCOHOLIC BEVERAGE CONTROL BOARD**

Title of Regulations:
**VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations.**
**VR 125-01-2. Advertising.**
**VR 125-01-3. Tied-House.**
**VR 125-01-7. Other Provisions.**

Statutory Authority: § 4-11 of the Code of Virginia.

Public Hearing Date: September 20, 1989 - 10 a.m.
(See Calendar of Events section for additional information)

Summary:

*Numerous regulations are being amended some of which relate to (i) corporations not being required to be represented by attorneys at initial or appeal hearings with respect to matters involving legal conclusions, examination of witnesses, preparation of briefs or pleadings, (ii) statutory reference changes to the Wine Franchise Act, (iii) permitting more alcoholic beverage advertising inside retail licensee establishments through the use of printed paper and cardboard materials which are not obtained from manufacturers, bottlers or wholesalers, (iv) regulation subsection and subdivision changes, (v) the sale of ice and the cleaning and servicing of equipment, (vi) changing licensee record keeping requirements for beer and 3.2 beverages to two years, and (vii) permitting the 45% food sales ratio requirement for special mixed beverage licensees located in food courts to be determined by reference to the combined sales of all places primarily engaged in the sale of meals or light lunches in a food court.*

**VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations.**

PART I.
HEARINGS BEFORE HEARING OFFICERS.

§ 1.1. Appearance.

A. Any interested party who would be aggrieved by a decision of the board upon any application or in a disciplinary proceeding may appear and be heard in person, or by duly authorized representative, and produce under oath evidence relevant and material to the matters in issue. Upon due notice a hearing may be conducted by telephone as provided in Part IV.

B. The interested parties will be expected to appear or be represented at the place and on the date of hearing or on the dates to which the hearing may be continued.

C. If an interested party fails to appear at a hearing, the hearing officer may proceed in his absence and render a decision.

§ 1.2. Argument.

Oral or written argument, or both, may be submitted to and limited by the hearing officer. Oral argument is to be included in the stenographic report of the hearing.

§ 1.3. Attorneys */representation* .

~~Any interested party may be represented by counsel. If an interested party is an individual, he may represent himself. With respect to matters involving legal conclusions, examination of witnesses or preparation of briefs or pleadings, a corporation must be represented by an attorney.~~ *Any individual, partnership, association or corporation who is a licensee of the board or applicant for any license issued by the board or any interested party shall have the right to be represented by counsel at any board hearing for which he has received notice. The licensee, applicant or interested party shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine and question witnesses, present evidence on behalf of the corporation, draw conclusions and make arguments before the hearing officers.*

§ 1.4. Communications.

Communications regarding hearings before hearing officers upon licenses and applications for licenses should be addressed to the Director, Division of Hearings.

§ 1.5. Complaints.

The board in its discretion and for good cause shown may arrange a hearing upon the complaint of any aggrieved party(s) against the continuation of a license. The complaint shall be in writing directed to the Director of Regulatory Division, setting forth the name and post office address of the person(s) against whom the complaint is filed, together with a concise statement of all the facts necessary to an understanding of the grievance and a statement of the relief desired.

§ 1.6. Continuances.

Motions to continue a hearing will be granted as in actions at law. Requests for continuances should be addressed to the Director, Division of Hearings, or the hearing officer who will preside over the hearing.

§ 1.7. Decisions.

A. Initial decisions.

The decision of the hearing officer shall be deemed the initial decision, shall be a part of the record and shall include:

1. A statement of the hearing officer's findings of fact and conclusions, as well as the reasons or bases therefor, upon all the material issues of fact, law or discretion presented on the record, and

2. The appropriate rule, order, sanction, relief or denial thereof as to each such issue.

B. Summary decisions.

At the conclusion of a hearing, the hearing officer, in his discretion, may announce the initial decision to the interested parties.

C. Notice.

At the conclusion of any hearing, the hearing officer shall advise interested parties that the initial decision will be reduced to writing and the notice of such decision, along with notice of the right to appeal to the board, will be mailed to them or their representative and filed with the board in due course. (See Part II § 2.1 for Appeals).

D. Prompt filing.

The initial decision shall be reduced to writing, mailed to interest parties, and filed with the board as promptly as possible after the conclusion of the hearing or the expiration of the time allowed for the receipt of additional evidence.

E. Request for early or immediate decision.

Where the initial decision is deemed to be acceptable, an interested party may file, either orally before the hearing officer or in writing, a waiver of his right of appeal to the board and request early or immediate implementation of the initial decision. The board or hearing officer may grant the request for early or immediate implementation of the decision by causing issuance or surrender of the license and prompt entry of the appropriate order.

F. Timely review.

The board shall review the initial decision and may render a proposed decision, which may adopt, modify or reject the initial decision unless immediate implementation is ordered. In any event, the board shall issue notice of any proposed decision, along with notice of right to appeal, within the time provided for appeals as stated in Part II § 2.1.

§ 1.8. Docket.

Cases will be placed upon the docket in the order in which they mature except that, for good cause shown or for reasons appearing to the board or to the Director, Division of Hearings, the order may be varied.

§ 1.9. Evidence.

A. Generally.

All relevant and material evidence shall be received, except that:

1. The rules relating to privileged communications and privileged topics shall be observed, and

2. Secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a document is readily available the hearing officer shall balance the importance of the evidence against the difficulty of obtaining it, and the more important the evidence the more effort should be made to have the orginal document produced.

B. Cross-examination.

Subject to the provisions of subsection A of this section, any interested party shall have the right to cross-examine adverse witnesses and any agent or subordinate of the board whose report is in evidence and to submit rebuttal evidence except that:

1. Where the interested party is represented by counsel, only counsel shall exercise the right of cross-examination.

2. Where there is more than one interested party, only counsel or other representatives of such parties shall exercise the right of cross-examination.

3. Where there is more than one group of interested parties present for the same purpose, only counsel or other representative of such groups shall exercise the right of cross-examination. If the hearing officer deems it necessary, in order to expedite the proceedings, a merger of such groups shall be arranged.

C. Cumulative testimony.

The introduction of evidence which is cumulative, corroborative or collateral shall be avoided. The hearing officer may limit the testimony of any witness which is judged to be cumulative, corroborative or collateral;

provided, however, the interested party offering such testimony may make a short avowal of the testimony which would be given and, if the witness asserts that such avowal is true, this avowal shall be made a part of the stenographic report.

D. Subpoenas, depositions and request for admissions.

Subpoenas, depositions de bene esse and requests for admissions may be taken, directed and issued in accordance with § 4.7(j) and § 9.6.14:13 of the Code of Virginia.

E. Stenographic report.

All evidence, stipulations and argument in the stenographic report which are relevant to the matters in issue shall be deemed to have been introduced for the consideration of the board.

F. Stipulations.

Insofar as possible, interested parties will be expected to stipulate as to any facts involved. Such stipulations shall be made a part of the stenographic report.

§ 1.10. Hearings.

A. Hearings before the hearing officer shall be held, insofar as practicable, at the county seat of the county in which the establishment of the applicant or licensee is located, or, if the establishment be located within the corporate limits of any city then in such city. However, if it be located in a county or city within a metropolitan area in which the board maintains a hearing room in a district office, such hearings may be held in such hearing room. Notwithstanding the above, hearing officers may conduct hearings at locations convenient to the greatest numbers of persons in order to expedite the hearing process.

B. Any person hindering the orderly conduct or decorum of a hearing shall be subject to penalty provided by law.

§ 1.11. Hearing officers.

A. Hearing officers are charged with the duty of conducting fair and impartial hearings and of maintaining order in a form and manner consistent with the dignity of the board.

B. Each hearing officer shall have authority, subject to the published rules of the board and within its powers, to:

1. Administer oaths and affirmations.

2. Issue subpoenas as authorized by law.

3. Rule upon offers of proof and receive relevant and material evidence.

4. Take or cause depositions and interrogatories to be taken, directed and issued.

5. Examine witnesses and otherwise regulate the course of the hearing.

6. Hold conferences for the settlement or simplification of issues by consent of interested parties.

7. Dispose of procedural requests and similar matters.

8. Amend the issues or add new issues provided the applicant or licensee expressly waives notice thereof. Such waiver shall be made a part of the stenographic report of the hearing.

9. Submit initial decisions to the board and to other interested parties or their representatives.

10. Take any other action authorized by the rules of the board.

§ 1.12. Interested parties.

As used in this regulation, interested parties shall mean the following persons:

1. The applicant.

2. The licensee.

Where in this regulation reference is made to "licensee," the term likewise shall be applicable to a permittee or a designated manager to the extent this regulation is not inconsistent with the statutes and regulations relating to such persons.

3. Persons who would be aggrieved by a decision of the board.

4. For purposes of appeal pursuant to Part II § 2.1, interested parties shall be only those persons who appeared at and asserted an interest in the hearing before a hearing officer.

§ 1.13. Motions or requests.

Motions or requests for ruling made prior to the hearing before a hearing officer shall be in writing, addressed to the Director, Division of Hearings, and shall state with reasonable certainty the ground therfor. Argument upon such motions or requests will not be heard without special leave granted by the hearing officer who will preside over the hearing.

§ 1.14. Notice of hearings.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, place and issues involved.

§ 1.15. Consent settlement.

A. Generally.

Disciplinary cases may be resolved by consent settlement if the nature of the proceeding and public interest permit. In appropriate cases, the chief hearing officer will extend an offer of consent settlement, conditioned upon approval by the board, to the licensee. The chief hearing officer is precluded from presiding over any case in which an offer of consent settlement has been extended.

B. Who may accept.

The licensee or his attorney may accept an offer of consent settlement. If the licensee is a corporation, only an attorney or an officer, director or majority stockholder of the corporation may accept an offer of consent settlement. Settlement shall be conditioned upon approval by the board.

C. How to accept.

The licensee must return the properly executed consent order along with the payment in full of any monetary penalty within 15 calendar days from the date of mailing by the board. Failure to respond within the time period will result in a withdrawal of the offer by the agency and a formal hearing will be held on the date specified in the Notice of Hearing.

D. Effect of acceptance.

Upon approval by the board, acceptance of the consent settlement offer shall constitute an admission of the alleged violation of the A.B.C. laws or regulations, and will result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The offer of consent settlement is not negotiable; however, the licensee is not precluded from submitting an offer in compromise under § 1.16 of this part.

E. Approval by the board.

The board shall review all proposed settlements. Only after approval by the board shall a settlement be deemed final. The board may reject any proposed settlement which is contrary to law or policy or which, in its sole discretion, is not appropriate.

F. Record.

Unaccepted offers of consent settlement will become a part of the record only after completion of the hearing process.

§ 1.16. Offers in compromise.

Following notice of a disciplinary proceeding a licensee may be afforded opportunity for the submission of an offer in compromise in lieu of suspension or in addition thereto, or in lieu of revocation of his license, where in the discretion of the board, the nature of the proceeding and the public interest permit. Such offer should be addressed to the Secretary to the Board. Upon approval by the board, acceptance of the offer in compromise shall constitute an admission of the alleged violation of the A.B.C. laws or regulations, and shall result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The reason for the acceptance of such an offer shall be made a part of the record of the proceeding. Unless good cause be shown, continuances for purposes of considering an offer in compromise will not be granted, nor will a decision be rendered prior to a hearing if received within three days of the scheduled hearing date, nor will more than two offers be entertained during the proceeding. Further, no offers shall be considered by the board if received more than 15-calendar-days after the date of mailing of the initial decision or the proposed decision, whichever is later. An offer may be made at the appeal hearing, but none shall be considered after the conclusion of such hearing. The board may waive any provision of this section for good cause shown.

§ 1.17. Record.

A. The certified transcript of testimony, argument and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record of the initial decision.

B. Upon due application made to the Director, Division of Hearings, copies of the record of a hearing shall be made available to parties entitled thereto at a fee established by the board.

§ 1.18. Rehearings.

A rehearing before a hearing officer shall not be held in any matter unless it be affirmatively shown that relevant and material evidence, which ought to produce an opposite result on rehearing, is available, is not merely cumulative, corroborative or collateral, and could not have been discovered before the original hearing by the use of ordinary diligence; provided, however, that the board, in its discretion, may cause a rehearing to be held before a hearing officer in the absence of the foregoing conditions, as provided in Part II § 2.6.

§ 1.19. Self-incrimination.

If any witness subpoenaed at the instance of the board shall testify in a hearing before a hearing officer on complaints against a licensee of the board as to any violation in which the witness, as a licensee or an applicant, has participated, such testimony shall in no case be used against him nor shall the board take any administrative action against him as to the offense to which he testifies.

§ 1.20. Subpoenas.

Upon request of any interested party, the Director, Division of Hearings, or a hearing officer is authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents at a hearing before a hearing officer.

§ 1.21. Witnesses.

A. Interested parties shall arrange to have their witnesses present at the time and place designated for the hearing.

B. Upon request of any party entitled to cross-examine witnesses, as set forth in § 1.9 B of this regulation, the hearing officer may separate the witnesses, including agents of the board.

C. A person attending as a witness, under a summons issued at the instance of the board to testify in a hearing, shall be entitled to the same allowance for expenses and compensation as witnesses for the Commonwealth in criminal cases.

PART II.
HEARINGS BEFORE THE BOARD.

§ 2.1. Appeals.

A. An interested party may appeal to the board an adverse initial decision, including the findings of fact and the conclusions, of a hearing officer or a proposed decision, or any portion thereof, of the board provided a request therefor in writing is received within 10 days after the date of mailing of the initial decision or the proposed decision, whichever is later.

B. At his option, an interested party may submit written exceptions to the initial or proposed decision within the 10-day period and waive further hearing proceedings.

C. If an interested party fails to appear at a hearing, the board may proceed in his absence and render a decision.

§ 2.2. Attorneys */representation* .

~~Any interested party may be represented by counsel. If an interested party is an individual, he may represent himself. With respect to matters involving legal conclusions, examination of witnesses or preparation of briefs or pleadings, a corporation must be represented by an attorney.~~ *Any individual, partnership, association or corporation who is a licensee of the board or applicant for any license issued by the board or any interested party shall have the right to be represented by counsel at any board hearing for which he has received notice. The licensee, applicant or interested party shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine and question witnesses, present evidence on behalf of the corporation, draw conclusions and make arguments before the board.*

§ 2.3. Communications.

Communications regarding appeal hearings upon licenses and applications for licenses should be addressed to the Secretary to the Board.

§ 2.4. Continuances.

Continuances will be granted as in actions at law. Requests for continuances of appeal hearings should be addressed to the Secretary to the Board.

§ 2.5. Decision of the board.

The final decision of the board, together with any written opinion, should be transmitted to each interested party or to his representative.

§ 2.6. Evidence.

A. Generally.

Subject to the exceptions permitted in this section, and to any stipulations agreed to by all interested parties, all evidence should be introduced at hearings before hearing officers.

B. Additional evidence.

Should the board determine at an appeal hearing, either upon motion or otherwise, that it is necessary or desirable that additional evidence be taken, the board may:

1. Direct that a hearing officer fix a time and place for the taking of such evidence within the limits prescribed by the board and in accordance with Part I § 1.18.

2. Upon unanimous agreement of the board members permit the introduction of after-discovered or new evidence at the appeal hearing.

If the initial decision indicates that the qualifications of the establishment of an applicant or licensee are such as to cast substantial doubt upon the eligibility of the place for a license, evidence may be received at the appeal hearing limited to the issue involved and to the period of time subsequent to the date of the hearing before the hearing officer.

C. Board examination.

Any board member may examine a witness upon any question relevant to the matters in issue.

D. Cross-examination.

The right to cross-examine and the submission of rebuttal evidence as provided in Part I § 1.9 shall be allowed in any appeal hearing where the introduction of additional evidence is permitted.

§ 2.7. Hearings.

Hearings before the board in the absence of notice to the contrary will be held in the office of the board, Virginia A.B.C. Building, 2901 Hermitage Road, Richmond, Virginia.

§ 2.8. Motions or requests.

Motions or requests for rulings, made after a hearing before a hearing officer and prior to an appeal hearing before the board, shall be in writing, addressed to the Secretary to the Board, and shall state with reasonable certainty the grounds therefor. Argument upon such motions or requests will not be heard without special leave granted by the board.

§ 2.9. Notice of hearing.

Reasonable notice of the time and place of an appeal hearing shall be given to each interested party who appeared at the initial hearing or his representative.

§ 2.10. Record.

A. The record of the hearing before the hearing officer, including the initial decision, and the transcript of testimony, argument and exhibits together with all papers and requests filed in the proceeding before the board, shall constitute the exclusive record for the final decision of the board.

B. Upon due application made to the Secretary to the Board, copies of the record, including the decision of the board and any opinion setting forth the reasons for the decision shall be made available to parties entitled thereto at a rate established by the board.

§ 2.11. Rehearings and reconsideration.

The board may, in its discretion for good cause shown, grant a rehearing or reconsideration on written petition of an interested party addressed to the Secretary to the Board and received within 30 days after the date of the final decision of the board. The petition shall contain a full and clear statement of the facts pertaining to the grievance, the grounds in support thereof, and a statement of the relief desired. The board may grant such at any time on its own initiative for good cause shown.

§ 2.12. Scope of hearing.

A. Except as provided in Part II § 2.6, the appeal hearing shall be limited to the record made before the hearing officer.

B. The provisions of Part I of this regulation shall be applicable to proceedings held under this Part II except to the extent such provisions are inconsistent herewith.

PART III.
WINE AND BEER FRANCHISE ACT.

§ 3.1. Complaint.

Complaints shall be referred in writing to the Secretary to the Board. The Secretary's Office, in consultation with the Deputy for Regulation, will determine if reasonable cause exists to believe a violation of the Wine or Beer Franchise Acts, Chapters 2.1 and ~~2.2~~ *2.3* of Title 4, of the Code of Virginia, has occurred, and, if so, a hearing on the complaint will be scheduled in due course. If no reasonable cause is found to exist, the complainant will be informed of the reason for that decision and given the opportunity to request a hearing as provided by statute.

§ 3.2. Hearings.

Hearings will be conducted in accordance with the provisions of Part I of this regulation. Further, the board and the hearing officers designated by it may require an accounting to be submitted by each party in determining an award of costs and attorneys' fees.

§ 3.3. Appeals.

The decision of the hearing officer may be appealed to the board as provided in Part II § 2.1 of this regulation. Appeals shall be conducted in accordance with the provisions of Part II of this regulation.

§ 3.4. Hearings on notification of price increases.

Upon receipt from a winery, brewery or wine or beer importer of a request for notice of a price increase less than 30 days in advance, a hearing will be scheduled before the board, not a hearing officer, as soon as practicable with five days' notice to all parties which include at a minimum all the wholesalers selling the winery or brewery's product. There will be no continuances granted and the board must rule within 24-hours of the hearing.

§ 3.5. Discovery, prehearing procedures and production at hearings.

A. Introduction.

The rules in this section shall apply in all proceedings under the Beer and Wine Franchise Acts, Chapters 2.1 and ~~2.2~~ *2.3* of Title 4 of the Code of Virginia, including arbitration proceedings when necessary pursuant to the Code of Virginia §§ 4-118.10 and ~~4-118.30~~ *4-118.50* .

No provision of any of the rules in this section shall affect the practice of taking evidence at a hearing, but such practice, including that of generally taking evidence

ore tenus only at hearings before hearing officers, shall continue unaffected hereby.

B. Definitions.

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

*"Board"* means the Virginia Alcoholic Beverage Control Board and the officers, agents and employees of the board, including the secretary and the hearing officer(s), unless otherwise specified or unless the context requires otherwise.

*"Commencement"* of proceedings under this Part III of VR 125-01-1 means the date of the board's notice to the complainant(s) and the respondent(s), pursuant to § 3.1, that reasonable cause exists to believe that there has been a violation of either the Wine or Beer Franchise Acts.

*"Manufacturer"* means a winery or brewery, as those terms are defined in §§ ~~4-118.23~~ *4-118.43* and 4-118.4, respectively, of the Code of Virginia.

*"Person"* means a winery, brewery, importer or wholesaler, as well as those entities designated as "persons," within the meaning of §§ ~~4-118.23~~ *4-118.43* and 4-118.4 of the Code of Virginia.

*"Secretary"* means the Secretary of the Virginia Alcoholic Beverage Control Board.

C. General provisions governing discovery.

1. Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and requests for admission. Unless the board orders otherwise under paragraph 3 of this subsection or paragraph 1 of subsection P, the frequency of use of these methods is not limited.

2. Scope of discovery. Unless otherwise limited by order of the board in accordance with this § 3.5, the scope of discovery is as follows:

a. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

b. Applicability. Discovery as provided under this § 3.5 shall apply to all proceedings or hearings of Wine or Beer Franchise Act cases while pending before hearing officers or arbitrators. Discovery under this section shall not be authorized during the course of appeals to the board, unless the board has first granted leave to proceed with additional discovery.

c. Hearing preparation: materials. Subject to the provisions of subdivision 2 d of this subsection C, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision 2 a of this subsection C and prepared in anticipation of litigation or for the hearing by or for another party or by or for that other party's representative (including his attorney, consultant, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the board shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the proceeding or its subject matter previously made by that party. For purposes of this paragraph, a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

d. Hearing preparation: experts; costs. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision 2 a of this subsection C and acquired or developed in anticipation of litigation or for the hearing, may be obtained only as follows:

(1) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; (ii) upon motion, the board may order further discovery by other means,

subject to such restrictions as to scope and such provisions, pursuant to subdivision 2 d (3) of this subsection C, concerning fees and expenses as the board may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for the hearing and who is not expected to be called as a witness at the hearing, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, (i) the board shall require that the party seeking discovery pay the expert a reasonable fee for time spent and his expenses incurred in responding to discovery under subdivisions d(1)(ii) and d(2) of this subsection C; and (ii) with respect to discovery obtained under subdivision d(1)(ii) of this subsection C the board may require, and with respect to discovery obtained under subdivision d(2) of this subsection C the board shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

3. Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (i) that the discovery not be had; (ii) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (iii) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (iv) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (v) that discovery be conducted with no one present except persons designated by the board; (vi) that a deposition after being sealed be opened only by order of the board; (vii) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (viii) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the board.

If the motion for a protective order is denied in whole or in part, the board may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of subdivision 1 d of subsection O apply to the award of expenses incurred in relation to the motion.

4. Sequence and timing of discovery. Unless the board upon motion, or pursuant to subsection N of this section, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

5. Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired except as follows:

a. A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

b. A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

c. A duty to supplement responses may be imposed by order of the board, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

6. Service under this part. Except for the service of the notice required under subdivision D 1 b of this § 3.5, any notice or document required or permitted to be served under this § 3.5 by one party upon another shall be served as provided in Rule 1:12 of the Rules of the Supreme Court of Virginia. Any notice or document required or permitted to be served under this § 3.5 by the board upon one or more parties shall be served as provided in §§ 1.7, 1.14, 2.5 or 2.9 of Parts I and II of VR 125-01-1.

7. Filing. Any request for discovery under this § 3.5 and the responses thereto, if any, shall be filed with the secretary of the board except as otherwise herein provided.
(Ref: Rule 4:1, Rules of Virginia Supreme Court.)

D. Depositions before proceeding or pending appeal.

1. Before proceeding.

a. Petition. A person who desires to perpetuate his own testimony or that of another person regarding

any matter that may be cognizable before the board under this section may file a verified petition before the board. The petition shall be entitled in the name of the petitioner and shall show: (i) that the petitioner expects to be a party to a proceeding under Part III of these regulations but is presently unable to bring it or cause it to be brought; (ii) the subject matter of the expected action and his interest therein; (iii) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; (iv) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and (v) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

b. Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the board, at a time and place named therein, for the order described in the petition. At least 21 days before the date of hearing the notice shall be served in the manner provided in §§ 1.14 or 2.9 of Parts I and II of VR 125-01-1; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the board may make such order as is just for service by publication or otherwise.

c. Order and examination. If the board is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with § 3.5. The attendance of witnesses may be compelled by subpoena, and the board may make orders of the characters provided for by subsection M of this § 3.5.

d. Cost. The cost of such depositions shall be paid by the petitioner, except that the other parties in interest who produce witnesses on their behalf or who make use of witnesses produced by others shall pay their proportionate part of the cost of the transcribed testimony and evidence taken or given on behalf of each of such parties.

e. Filing. The depositions shall be certified as prescribed in subsection G of this § 3.5 and then returned to and filed by the secretary.

f. Use of deposition. If a deposition to perpetuate testimony is taken under these provisions or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any proceeding involving the same subject matter subsequently brought before the board pursuant to Part III of these regulations in accordance with the provisions of subsection C of § 3.5.

2. Pending appeal. If an appeal has been taken from a ruling of the board or before the taking of an appeal if any time therefor has not expired and for good cause shown, the board may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings. In such case the party who desires to perpetuate the testimony may make a motion before the board for leave to take the depositions, upon the same notice and service thereof as if the proceeding was pending therein. The motion shall show (i) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; and (ii) the reasons for perpetuating their testimony. If the board finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make orders of the character provided for by subsection M of § 3.5 and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in this § 3.5 for depositions taken in pending actions.

3. Perpetuation of testimony. This subsection D provides the exclusive procedure to perpetuate testimony before the board.
(Ref: Rule 4:2, Rules of Virginia Supreme Court.)

E. Persons before whom depositions may be taken.

1. Within this Commonwealth. Within this Commonwealth depositions under this § 3.5 may be taken before any person authorized by law to administer oaths, and if certified by his hand may be received without proof of the signature to such certificate.

2. Within the United States. In any other state of the United States or within any territory or insular possession subject to the dominion of the United States, depositions under this § 3.5 may be taken before any officer authorized to take depositions in the jurisdiction wherein the witness may be, or before any commissioner appointed by the Governor of this Commonwealth.

3. No commission necessary. No commission by the Governor of this Commonwealth shall be necessary to take a deposition under this § 3.5 whether within or without this Commonwealth.

4. In foreign countries. In a foreign state or country

depositions under this § 3.5 shall be taken (i) before any American minister plenipotentiary, charge d'affaires, secretary of embassy or legation, consul general, consul, vice-consul, or commercial agent of the United States in a foreign country, or any other representative of the United States therein, including commissioned officers of the armed services of the United States, or (ii) before the mayor, or other magistrate of any city, town or corporation in such country, or any notary therein.

5. Certificate when deposition taken outside Commonwealth. Any person before whom a deposition under this § 3.5 is taken outside this Commonwealth shall certify the same with his official seal annexed; and, if he has none, the genuineness of his signature shall be authenticated by some officer of the same state or country, under his official seal, except that no seal shall be required of a commissioned officer of the armed services of the United States, but his signature shall be authenticated by the commanding officer of the military installation or ship to which he is assigned.
(Ref: Rule 4:3, Rules of Virginia Supreme Court.)

F. Stipulations regarding discovery.

Unless the board orders otherwise, the parties may by written stipulation (i) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions and (ii) modify the procedures provided by these rules for other methods of discovery. Such stipulations shall be filed with the deposition.
(Ref: Rule 4:4, Rules of Virginia Supreme Court.)

G. Depositions upon oral examination.

1. When depositions may be taken. Twenty-one days after commencement of the proceeding, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of the board upon such terms as the board prescribes, subject to any authorization and limitations that may be imposed by any court within the Commonwealth.

2. Notice of examination. General requirements; special notice; nonstenographic recording; production of documents and things; deposition of organization.

a. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the proceeding. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

b. (Reserved)

c. The board may for cause shown enlarge or shorten the time for taking the deposition.

d. (Reserved)

e. The notice to a party deponent may be accompanied by a request made in compliance with subsection M of this § 3.5 for the production of documents and tangible things at the taking of the deposition. The procedure of subsection M of this § 3.5 shall apply to the request.

f. A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision 2 f does not preclude taking a deposition by any other procedure authorized in this § 3.5.

g. The parties may stipulate in writing or the board may on motion order that a deposition be taken by telephone. A deposition taken by telephone shall be taken before an appropriate officer in the locality where the deponent is present to answer questions propounded to him.

3. Examination and cross-examination; record of examination; oath; objections. Examination and cross-examination of witnesses may proceed as permitted at the hearing. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means authorized by this § 3.5. If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall

be taken subject to the objections. In lieu of participating in the oral examinations, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

4. Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the board may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection C 3 of § 3.5. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the board. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of subsection O 1 d apply to the award of expenses incurred in relation to the motion.

5. Submission to witness; changes; signing. When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in forms or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under subsection J 4 d of this § 3.5 the board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

6. Certification and filing by officer; exhibits; copies; notice of filing.

a. The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then lodge it with the attorney for the party who initiated the taking of the deposition, notifying the secretary of the board and all parties of such action. Depositions taken pursuant to this subsection G or subsection H shall not be filed with the secretary until the board so directs, either on its own initiative or upon the request of any party prior to or during the hearing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the board, pending final disposition of the case.

b. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

c. The party taking the deposition shall give prompt notice of its filing to all other parties.

7. Failure to attend or to serve subpoena; expenses.

a. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the board may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

b. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the board may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.
(Ref: Rule 4:5, Rules of Virginia Supreme Court.)

H. Deposition upon written questions.

1. Serving questions; notice. Twenty-one days after commencement of the proceeding, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena. The deposition of a person confined in prison may be taken only by leave of the board upon such terms as

the board prescribes subject to any authorization and limitations that may be required or imposed by any court within the Commonwealth.

A party desiring to take the deposition upon written questions shall serve them upon every other party with a notice stating that (i) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (ii) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of subsection G 2 f of § 3.5.

Within 21 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The board may for cause shown enlarge or shorten the time.

2. Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by subdivisions 3, 4 and 5 of subsection G of § 3.5, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

3. Notice of filing. When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.
(Ref: Rule 4:6, Rules of Virginia Supreme Court.)

I. Limitation on depositions.

No party shall take the deposition of more than five witnesses for any purpose without leave of the board for good cause shown.
(Ref: Rule 4:6A, Rules of Virginia Supreme Court.)

J. Use of depositions in proceedings under the Beer and Wine Franchise Acts:

1. Use of depositions. At the hearing or upon the hearing of a motion, or during an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

a. (Reserved)

b. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

c. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under ~~paragraph~~ *subdivision* 2 f of subsection G or ~~paragraph~~ *subdivision* 1 of subsection H of this § 3.5 to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

d. The deposition of a witness, whether or not a party, may be used by any party for any purpose if the board finds: (i) that the witness is dead; or (ii) that the witness is at a greater distance than 100 miles from the place of hearing, or is out of this Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) that the witness is a judge, or is in any public office or service the duties of which prevent his attending hearings before the board provided, however, that if the deponent is subject to the jurisdiction of the board, the board may, upon a showing of good cause or sua sponte, order him to attend and to testify ore tenus; or (vi) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally, to allow the deposition to be used.

e. If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

f. No deposition shall be read in any proceeding against a person under a disability unless it be taken in the presence of the guardian ad litem appointed or attorney serving pursuant to § 8.01-9, or upon questions agreed on by the guardian or attorney before the taking.

g. In any proceeding, the fact that a deposition has not been offered in evidence prior to an interlocutory decree or order shall not prevent its thereafter being so offered except as to matters ruled upon in such interlocutory decree or order,

provided, however, that such deposition may be read as to matters ruled upon in such interlocutory decree or order if the principles applicable to after-discovered evidence would permit its introduction.

Substitution of parties does not affect the right to use depositions previously taken; and when there are pending before the board several proceedings between the same parties, depending upon the same facts, or involving the same matter of controversy, in whole or in part, a deposition taken in one of such proceedings, upon notice to the same party or parties, may be read in all, so far as it is applicable and relevant to the issue; and, when an action in any court of the United States or of this or any other state has been dismissed and a proceeding before the board involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the one action may be used in a proceeding before the board as if originally taken therefor.

2. Objections to admissibility. Subject to the provisions of subdivision 4 c of subsection J of § 3.5, objection may be made at the hearing to receive in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

3. Effect of taking or using depositions. A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision 1 c of this subsection J. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

4. Effect of errors and irregularities in depositions.

a. As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

b. As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

c. As to taking of deposition.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions and answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written questions submitted under subsection H of § 3.5 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

d. As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer under subsections G and H of § 3.5 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

5. (Reserved)

6. Record. Depositions shall become a part of the record only to the extent that they are offered in evidence.
(Ref: Rule 4:7, Rules of Virginia Supreme Court.)

K. Audio-visual depositions.

1. When depositions may be taken by audio-visual means. Any depositions permitted under these rules may be taken by audio-visual means as authorized by and when taken in compliance with law.

2. Use of clock. Every audio-visual deposition shall be timed by means of a timing device, which shall record hours, minutes and seconds which shall appear in the picture at all times during the taking of the deposition.

3. Editing. No audio-visual deposition shall be edited except pursuant to a stipulation of the parties or pursuant to order of the board and only as and to the extent directed in such order.

4. Written transcript. If an appeal is taken in the case, the appellant shall cause to be prepared and filed

with the secretary a written transcript of that portion of an audio-visual deposition made a part of the record at the hearing to the extent germane to an issue on appeal. The appellee may designate additional portions to be so prepared by the appellant and filed.

5. Use. An audio-visual deposition may be used only as provided in subsection J of § 3.5.

6. Submission, etc. The provisions of subsection G 5 shall not apply to an audio-visual deposition. The other provisions of subsection G of § 3.5 shall be applicable to the extent practicable.
(Ref: Rule 4:7A, Rules of Virginia Supreme Court.)

L. Interrogatories to parties.

1. Availability; procedures for use. Upon the commencement of any proceedings under this Part III, any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party.

2. Form. The party serving the interrogatories shall leave sufficient space between each interrogatory so as to permit the party answering the interrogatories to make a photocopy of the interrogatories and to insert the answers between each interrogatory. The party answering the interrogatories shall use a photocopy to insert answers and shall precede the answer with the word "Answer." In the event the space which is left to fully answer any interrogatory is insufficient, the party answering shall insert the words, "see supplemental sheet" and shall proceed to answer the interrogatory fully on a separate sheet or sheets of paper containing the heading "Supplemental Sheet" and identify the answers by reference to the number of the interrogatory. The party answering the interrogatories shall prepare a separate sheet containing the necessary oath to the answers, which shall be attached to the answers filed with the court to the copies sent to all parties and shall contain a certificate of service.

3. Filing. The interrogatories and answers and objections thereto shall not be filed in the office of the secretary unless the board directs their filing on its own initiative or upon the request of any party prior to or during the hearing. For the purpose of any consideration of the sufficiency of any answer or any other question concerning the interrogatories, answers or objections, copies of those documents shall be made available to the board by counsel.

4. Answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 21 days after the service of the interrogatories. The board may allow a shorter or longer time. The party submitting the interrogatories may move for an order under subdivision 1 of subsection O with respect to any objection to or other failure to answer an interrogatory.

5. Scope; use. Interrogatories may relate to any matters which can be inquired into under subdivision 2 of subsection C, and the answers may be used to the extent permitted by the rules of evidence. Only such interrogatories and the answers thereto as are offered in evidence shall become a part of the record.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

6. Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

7. Limitation on interrogatories. No party shall serve upon any other party, at any one time or cumulatively, more than 30 written interrogatories, including all parts and subparts without leave of the board for good cause shown.
(Ref: Rule 4:8, Rules of Virginia Supreme Court.)

M. Production of documents and things and entry on land for inspection and other purposes; production at the hearing.

1. Scope. Any party may serve on any other party a request (i) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary,

by the respondent through detection devices into reasonably usable form), or to inspect and copy, any tangible things which constitute or contain matters within the scope of ~~paragraph~~ *subdivision* 2 of subsection C and which are in the possession, custody, or control of the party upon whom the request is served; or (ii) to produce any such documents to the board at the time of the hearing; or (iii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, surveying, and photographing the property or any designated object or operation thereon, within the scope of subdivision 2 of subsection C of § 3.5.

When the physical condition or value of a party's plant, equipment, inventory or other tangible asset is in controversy, the board, upon motion of an adverse party, may order a party to submit same to physical inventory or examination by one or more representatives of the moving party named in the order and employed by the moving party. The order may be made only by agreement or on motion for relevance shown and upon notice to all parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

2. Procedure. The request may, without leave of the board, except as provided in subdivision 4 of this subsection M, be served after commencement of the proceeding. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, period and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 21 days after the service of the request. The board may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under subdivision 1 of subsection O with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

3. Production by a person not a party. Upon written request therefor filed with the secretary by counsel of record for any party or by a party having no counsel in any pending case, with a certificate that a copy thereof has been mailed or delivered to counsel of record and to parties having no counsel, the secretary shall, subject to subdivision 4 of this subsection M, issue a person not a party therein a subpoena which shall command the person to whom it is directed, or someone acting on his behalf, to produce the documents and tangible things (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect and copy any tangible things which constitute or contain matters within the scope of subdivision 2 of subsection C which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena; but, the board, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the documents and tangible things so designated and described.

Documents subpoenaed pursuant to this subdivision 3 of subsection M shall be returnable only to the office of the secretary unless counsel of record agree in writing filed with the secretary as to a reasonable alternative place for such return. Upon request of any party in interest, or his attorney, the secretary shall permit the withdrawal of such documents by such party or his attorney for such reasonable period of time as will permit his inspection, photocopying, or copying thereof.

4. Certain officials. No request to produce made pursuant to subdivision 2 of this subsection M, above, shall be served, and no subpoena provided for in subdivision 3 of this subsection M, above, shall issue, until prior order of the board is obtained when the party upon whom the request is to be served or the person to whom the subpoena is to be directed is the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any ambassador or consul; or any military officer on active duty holding the rank of admiral or general.

5. Proceedings on failure or refusal to comply. If a party fails or refuses to obey an order made under subdivision 2 of this subsection M, the board may proceed as provided by subsection O.

6. Filing. Requests to a party pursuant to subdivisions 1 and 2 of subsection M shall not be filed in the office of the secretary unless requested in a particular case by the board or by any party prior to or during the hearing.
(Ref: Rule 4:9, Rules of Virginia Supreme Court.)

N. Requests for admission.

1. Request for admission. Upon commencement of any proceedings under this Part III, a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of subdivision 2 of subsection C set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 21 days after service of the request, or within such shorter or longer time as the board may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; he may, subject to the provisions of ~~paragraph~~ *subdivision* 3 of subsection O, deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the board determines that an objection is justified, it shall order that an answer be served. If the board determines that an answer does not comply with the requirements of this subsection N, it may order either that the matter is admitted or that an amended answer be served. The board may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to the hearing. The provisions of subdivision 1 d of subsection O apply to the award of expenses incurred in relation to the motion.

2. Effect of admission. Any matter admitted under this rule is conclusively established unless the board on motion permits withdrawal or amendment of the admission. Subject to the provisions of subsection P governing amendment of a prehearing order, the board may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the board that withdrawal of amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

3. Filing. Requests for admissions and answers or objections shall be served and filed as provided in subsection L.

4. Part of record. Only such requests for admissions and the answers thereto as are offered in evidence shall become a part of the record.
(Ref: Rule 4:11, Rules of Virginia Supreme Court.)

O. Failure to make discovery: sanctions.

1. Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply to the board for an order compelling discovery as follows:

a. (Reserved)

b. Motion. If a deponent fails to answer a question propounded or submitted under subsections G and H, or a corporation or other entity fails to make a designation under subdivision 2 f of subsection G and subdivision 1 of subsection H, or a party fails to answer an interrogatory submitted under subsection L, or if a party, in response to a request for inspection submitted under subsection M, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition or oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the board denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subdivision 3 of subsection C.

c. Evasive or incomplete answer. For purposes of this subsection an evasive or incomplete answer is to be treated as a failure to answer.

d. Award of expenses of motion. If the motion is granted and the board finds that the party whose

conduct necessitated the motion acted in bad faith, the board shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees.

If the motion is denied and the board finds that the moving party acted in bad faith in making the motion, the board shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees.

If the motion is granted in part and denied in part, the board may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

2. Failure to comply with order.

a. Suspension or revocation of licenses, monetary penalties. Failure to comply with any order of the board under this § 3.5 (Discovery) shall constitute grounds for action by the board under § 4-37 A(1)(b) of the Code of Virginia.

b. Sanctions by the board. If a party or an officer, director, or managing agent of a party or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision 1 of this subsection, the board may make such orders in regard to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part thereof, or rendering a judgment or decision by default against the disobedient party.

In lieu of any of the foregoing orders or in addition thereto, if the board finds that a party acted in bad faith in failing to obey an order to provide or permit discovery, the board shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure.

3. Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under subsection N, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the board for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The board shall make the order if it finds that the party failing to admit acted in bad faith. A party will not be found to have acted in bad faith if the board finds that (i) the request was held objectionable pursuant to subdivision 1 of subsection N, or (ii) the admission sought was of no substantial importance, or (iii) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (iv) there was other good reason for the failure to admit.

4. Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director or managing agent of a party or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H to testify on behalf of a party fails (i) to appear before the officer who is to take his deposition, after being served with a proper notice, or (ii) to serve answers or objections to interrogatories submitted under subsection L, after proper service of the interrogatories, or (iii) to serve a written response to the request for inspection submitted under subsection M, after proper service of the request, the board on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions 2 b(1), 2 b(2) and 2 b(3) of this subsection O. In lieu of any order or in addition thereto, if the board finds that a party in bad faith failed to act, the board shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subsection may not be excused merely on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subdivision 3 of subsection C.
(Ref: Rule 4:12, Rules of Virginia Supreme Court.)

P. Prehearing procedure; formulating issues.

1. The hearing officer(s) or the board, may in his or its discretion direct the attorneys for the parties to appear before such hearing officer(s) or the board for

a conference to consider;

a. A determination or clarification of the issues;

b. A plan and schedule of discovery;

c. Any limitations on the scope and methods of discovery, including deadlines for the completions of discovery;

d. The necessity or desirability of amendments to the pleadings;

e. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, as well as obtaining stipulations as to the evidence;

f. The limitation of the number of expert witnesses;

g. The possibility of filing bills of particulars and grounds of defense by the respective parties;

h. Such other matters as may aid in the disposition of the action.

2. The hearing officer(s) or the board, shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice. (Ref: Rule 4:13, Rules of Virginia Supreme Court.)

Q. Disposition of discovery material.

Any discovery material not admitted in evidence filed in the secretary's office may be destroyed by the secretary after one year after entry of the final order or decision. But if the proceeding is the subject of an appeal, such material shall not be destroyed until the lapse of one year after receipt of the decision or mandate on appeal or the entry of any final judgment or decree thereafter.

R. Interlocutory appeals to the board.

If any party to a proceeding under Part III of VR 125-01-1 is aggrieved by a decision or order of the hearing officer(s) relating to discovery or other matters contained in this section, such aggrieved party may appeal such interlocutory decision or order to the board pursuant to VR 125-01-1, Part III, § 2.1.
(Ref: Rule 4:14, Rules of Virginia Supreme Court.)

PART IV.
TELEPHONE HEARINGS.

§ 4.1. Applicability.

The board and its hearing officers may conduct hearings by telephone only when the applicant/licensee expressly waives the in-person hearing. The board will determine whether or not certain hearings might practically be conducted by telephone. The provisions of Part I shall apply only to Part IV where applicable.

§ 4.2. Appearance.

The interested parties will be expected to be available by telephone at the time set for the hearing and may produce, under oath, evidence relevant and material to the matters in issue. The board will arrange for telephone conference calls at its expense.

§ 4.3. Argument.

Oral or written argument may be submitted to and limited by the hearing officer. Oral argument is to be included in the stenographic report of the hearing. Written argument, if any, must be submitted to the hearing officer and other interested parties in advance of the hearing.

§ 4.4. Documentary evidence.

Documentary evidence, which an interested party desires to be considered by the hearing officer, must be submitted to the hearing officer and other interested parties in advance of the hearing.

§ 4.5. Hearings.

A. Telephone hearings will usually originate from the central office of the board in Richmond, Virginia, but may originate from other locations. Interested parties may participate from the location of their choice where a telephone is available. If an interested party is not available by telephone at the time set for the hearing, the hearing may be conducted in his absence.

B. If at any time during a telephone hearing the hearing officer determines that the issues are so complex that a fair and impartial hearing cannot be accomplished, the hearing officer shall adjourn the telephone hearing and reconvene an in-person hearing as soon as practicable.

§ 4.6. Notice of hearing.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, issues involved, and the telephone number where the applicant/licensee can be reached.

§ 4.7. Witnesses.

Interested parties shall arrange to have their witnesses present at the time designated for the telephone hearing, or should supply a telephone number where the witnesses can be reached, if different from that of the interested party.

PART V.
PUBLIC PARTICIPATION GUIDELINES FOR ADOPTION OR AMENDMENT OF REGULATIONS.

§ 5.1. Public participation guidelines in regulation development; applicability; initiation of rulemaking; rulemaking procedures.

A. Applicability.

These guidelines shall apply to all regulations subject to the Administrative Process Act which are administered by the Department of Alcoholic Beverage Control. They shall not apply to regulations adopted on an emergency basis.

B. Initiation of rulemaking.

Rule-making procedures may be initiated at any time by the Alcoholic Beverage Control Board but shall be initiated at least once each year. A petition for adoption, amendment or repeal of any regulation may be filed with the Alcoholic Beverage Control Board at any time by any group or individual. It shall be at the board's discretion to initiate the procedures as a result of such petition or petitions. The petition shall contain the following information, if available:

1. Name of petitioner.

2. Petitioner's mailing address and telephone number.

3. Recommended adoption, amendment or repeal of specific regulation(s).

4. Why is change needed? What problem is it meant to address?

5. What is the anticipated effect of not making the change?

6. Estimated costs or savings, or both, to regulated entities, the public, or others incurred by this change as compared to current regulations.

7. Who is affected by recommended change? How affected?

8. Supporting documents.

The board may also consider any other request for regulatory change at its discretion.

C. Rule-making procedures.

1. The Secretary to the Board in conjunction with the Deputy for Regulation shall prepare a general mailing list of those persons and organizations who have demonstrated an interest in specific regulations in the past through written comments or attendance at public hearings. The mailing list will be updated at least every two years and a current copy will be on file in the office of the Secretary to the Board. Periodically, but not less than every two years, the board shall publish in the Virginia Register, in a newspaper published at Richmond and in other newspapers in Virginia a request that any individual or organization interested in participating in the development of specific rules and regulations so notify the board. Any persons or organizations identified in this process will be placed on the general mailing list.

2. When developing a regulation proposed by citizens or on its initiative, the board shall prepare a Notice of *Intended Regulatory* Action, which shall include:

a. Subject of the proposed action.

b. Identification of the entities that will be affected.

c. Discussion of the purpose of the proposed action and the issues involved.

d. Listing of applicable laws or regulations.

e. Request for comments from interested parties, either at the public meeting or in writing.

f. Notification of time and place of the public meeting on the proposal.

g. Name, address and telephone number of staff person to be contacted for further information.

3. The board shall disseminate Notice of Intended Regulatory Action to the public via:

a. Distribution by mail to persons on General Mailing List.

b. Publication in the Virginia Register of Regulations.

c. Press release to media throughout the Commonwealth.

4. The board shall form an ad hoc advisory panel consisting of persons selected from the general mailing list to make recommendations on the proposed regulation and formulate draft language.

5. The board shall conduct a regulation development public meeting to receive views and comments and answer questions of the public. The meeting will be held at least 30 days following publication of the notice. It normally will be held in Richmond, but if the proposed regulation will apply only to a particular area of the Commonwealth, the meeting will be held in the area affected.

6. After consideration of the public input and the report of the advisory panel, the board shall prepare a final proposed draft regulation and initiate the

proceedings required by the Administrative Process Act.

**VR 125-01-2. Advertising.**

§ 1. Advertising generally; cooperative advertising; federal laws; beverages and cider; exceptions; restrictions.

A. Generally.

All alcoholic beverage and beverage advertising is permitted in this Commonwealth except that which is prohibited or otherwise limited or restricted by this regulation and those following, and such advertising shall not be blatant or obtrusive. Any editorial or other reading matter in any periodical or publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee does not constitute advertising.

B. Cooperative advertising.

There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer or wholesaler and a retailer of alcoholic beverages. The term "cooperative advertising" shall mean the payment or credit directly or indirectly by any manufacturer, bottler, importer or wholesaler whether licensed in this Commonwealth or not to a retailer for all or any portion of advertising done by the retailer.

C. Federal laws.

Advertising regulations adopted by the appropriate federal agency pertaining to alcoholic beverages shall be complied with except where they conflict with regulations of the board.

D. Beverages and cider.

Advertising of beverages, and cider as defined in § 4-27 of the Code of Virginia, shall conform with the requirements for advertising beer.

E. Exceptions.

The board may issue a permit authorizing a variance from these advertising regulations for good cause shown.

F. Restrictions.

No advertising shall contain any statement, symbol, depiction or reference that:

1. Would intend to induce minors to drink, or would tend to induce persons to consume to excess;

2. Is lewd, obscene or indecent, or depicts any person or group of persons which is immodest, undignified or in bad taste, or is suggestive of any illegal activity;

3. Incorporates the use of any present or former athlete or athletic team or implies that the product enhances athletic prowess;

4. Is false or misleading in any material respect, or implies that the product has a curative or therapeutic effect, or is disparaging of a competitor's product;

5. Implies or indicates, directly or indirectly, that the product is government endorsed by the use of flags, seals or other insignia or otherwise;

6. Makes any reference to the intoxicating effect of any alcoholic beverages;

7. Makes any appeal to order alcoholic beverages by mail;

8. Offers a special price on alcoholic beverages for sale in the print media, on the radio or on television unless such advertisement appears in conjunction with the advertisement of nonalcoholic merchandise. The alcoholic beverage sale advertising must significantly conform in size, prominence and content to the advertising of nonalcoholic merchandise advertising, except for coupons offered by manufacturers as provided in § 9 of this regulation. This provision shall apply only to advertising by retail licenses;

9. Is a contest or other offer to pay anything of value to a consumer where a purchase is required for participation.

§ 2. Advertising; interior; retail licensees; show windows.

~~A. Interior advertising generally.~~

~~The advertising of alcoholic beverages inside retail establishments is within the discretion of the licensee, with the following exceptions:~~

~~1. No references may be made to any brand or manufacturer of alcoholic beverages offered for sale in this Commonwealth on decorations, materials or furnishings on or supported by any wall, ceiling, floor or counter, unless such references are:~~

~~a. Contained in works of art;~~

~~b. Displayed in connection with the sale over the counter of novelty and specialty items as provided in § 6 of these regulations;~~

~~c. Used in connection with the sponsorship of conservation and environmental programs, profesional, semi-professional or amateur athletic and sporting events and events of a charitable or cultural nature in accordance with § 10 of VR 125-01-2;~~

~~d. Displayed on service items such as placemats,~~

~~coasters, glasses and table tents. Further, alcoholic beverage brands or manufacturer references may be contained in wine "neckers," recipe booklets and brochures relating to the wine manufacturing process, vineyard geography and history of a wine manufacturing area, which shall be shipped in the case.~~

*A. Definition. As used in this § 2, the term "advertising materials" means any tangible property of any kind which utilizes words or symbols making reference to any brand or manufacturer of alcoholic beverages offered for sale in this Commonwealth.*

*B. The use of advertising materials inside licensed retail establishments is permitted subject to the following requirements:*

*1. The use of advertising materials consisting of anything other than printed matter appearing on paper or cardboard stock is prohibited except for items listed in subdivision B 3 of this section.*

*2. The use of advertising materials consisting of printed matter appearing on paper or cardboard stock is permitted provided that such materials are listed in, and conform to any restrictions set forth in, subdivision B 3 of this section. Any such materials may be obtained by a retail licensee from any source other than manufacturers, bottles or wholesalers of alcoholic beverages; however, manufacturers, bottlers and wholesalers may supply only those items they are expressly authorized to supply to retail licensees by the provisions of subdivision B 3.*

*3. The following categories of advertising materials may be displayed inside a retail establishment by a retail licensee provided that any conditions or limitations stated in regard to a given category of advertising materials are observed:*

*a. Works of art so long as they are not supplied by manufacturers, bottlers, or wholesalers of alcoholic beverages.*

*b. Materials displayed in connection with the sale of over- the-counter novelty and specialty items in accordance with § 6 of VR 125-01-2.*

*c. Materials used in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting events and events of a charitable or cultural nature by distilleries, wineries and breweries.*

*d. Service items such as placemats, coasters and glassess so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages.*

*e. Draft beer and wine knobs, bottle or can openers, beer and wine cut case cards, beer and wine clip-ons and beer and wine table tents, provided that each of the foregoing items must comply with the provisions of § 8 of VR 125-01-3.*

*f. Wine "neckers," recipe booklets and brochures relating to the wine manufacturing process, vineyard geography and history of a wine manufacturing area, which shall be shipped in the case.*

*g. Point-of-sale entry blanks, relating to contest and sweepstakes, may be affixed to cut the case cards as defined in § 8 F of VR 125-01-3. Beer and wine wholesalers may attach such entry blanks to cut case cards at the retail premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put entry blanks on the package at the wholesale premises and entry blanks may not be shipped in the case to retailers.*

*h. Refund coupons, if they are supplied, displayed and used in accordance with § 9 of VR 125-01-2.*

*i. Advertising materials making reference to brands or manufacturers of alcoholic beverages not offered for sale in Virginia so long as the materials are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages.*

~~2.~~ *C.* Advertising materials regarding responsible drinking or moderation In drinking may not be used inside licensed retail establishments except under the following conditions:

~~a.~~ *1.* Such materials shall contain no depictions of an alcoholic beverage product and no reference to any brands of alcoholic beverages;

~~b.~~ *2.* Such materials shall contain no more than two minor references to the name of the alcoholic beverage manufacturer or its corporate logo;

~~c.~~ *3.* Such materials are limited to posters of reasonable size and table tents;

~~d.~~ *4.* Such materials shall be approved in advance by the board.

~~3. Each draft beer knob shall indicate the brand of beer offered for sale.~~

~~4. Point-of-sale entry blanks, relating to contest and sweepstakes, may be affixed to cut case cards as defined in § 9 F of VR 125-01-3. Beer and wine wholesalers may attach such entry blanks to cut case cards at the retail premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia~~

~~may not put entry blanks on the package at the wholesale premises and entry blanks may not be shipped in the case to retailers.~~

~~B.~~ *D.* Manufacturers, wholesalers, etc.

No manufacturer, bottler, wholesaler or importer of alcoholic beverages, whether licensed in this Commonwealth or not, may directly or indirectly sell, rent, lend, buy for or give to any retailer any advertising materials, decorations or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising. However, furnishing materials relating to moderation in drinking or responsible drinking programs is permitted subject to the provisions of ~~paragraph~~ *subdivision* ~~A~~ 2 *B 3* of this section.

~~C.~~ *E.* Show windows. No advertising of alcoholic beverages, may be displayed in show windows facing outside the licensed establishment except that contained on table menus, or on newspaper tear sheets, provided such alcoholic beverage advertising is subordinate in size to the main advertising matter.

§ 3. Advertising; exterior; signs; trucks; uniforms.

Outdoor alcoholic beverage advertising shall be limited to signs and is otherwise discretionary except as follows:

A. Manufacturers and wholesalers, including wineries and farm wineries:

1. No more than one sign upon the licensed premises, no portion of which may be higher than 30 feet above ground level on a wholesaler's premises.

2. No more than two signs, which must be directional in nature, not farther than 1/2 mile from the licensed establishment limited in dimension to 64 square feet with advertising limited to brand names.

3. If the establishment is a winery also holding a winery off-premises license or is a farm winery, additional directional signs limited in dimension to 64 square feet with advertising limited to brand names, and tour information, may be erected in accordance with state and local rules, regulations and ordinances.

4. Only on vehicles and uniforms of persons employed exclusively in the business of a manufacturer or wholesaler.

B. Retailers, including mixed beverage licensees, other than carriers and clubs:

1. No more than two signs at the establishment and, in the case of establishments at intersections three signs, the advertising on which, including symbols approved by the United States Department of Transportation relating to alcoholic beverages, shall be limited to 12 inches in height or width and not animated and, in the case of signs remote from the premises, subordinate to the main theme and substantially in conformance with the size and content of advertisements of other services offered at the establishment.

2. Limited only to words and terms appearing on the face of the license describing the privileges of the license and, where applicable: "Mixed Drinks," "Mixed Beverages," "Cocktails," "Exotic Drinks," "Polynesian Drinks," "Cocktail Lounge," "Liquor," "Spirits," and not including any reference to or depiction of "Bar Room," "Saloon," "Speakeasy," "Happy Hour," or references or depictions of similar import, nor to prices of alcoholic beverages, including references to "special" or "reduced" prices or similar terms when used as inducements to purchase or consume alcoholic beverages.

§ 4. Advertising; newspaper, magazines, radio, television, trade publications, etc.

A. Generally.

Beer, wine and mixed beverage advertising in the print or electronic media is permitted with the following exceptions:

1. All references to mixed beverages are prohibited except the following: "Mixed Drinks," "Mixed Beverages," "Exotic Drinks," "Polynesian Drinks," "Cocktails," "Cocktail Lounges," "Liquor" and "Spirits."

2. The following terms or depictions thereof are prohibited: "Bar Room," "Saloon," "Speakeasy," or references or depictions of similar import.

3. Any references to "Happy Hour" or similar terms are prohibited.

B. Further requirements and conditions:

1. All alcoholic beverage advertising shall include the name and address (street address optional) of the responsible advertiser.

2. No manufacturer, bottler or wholesaler shall be deemed to have any financial interest in the business of a retail licensee nor to have sold or given to the retail licensee any property nor to have engaged in cooperative advertising solely by virtue of any advertisement appearing in college publications or trade publications of associations of retail licensees which conform to the conditions and limitations herein.

3. Advertisements of beer wine and mixed beverages are not allowed in student publications unless in reference to a dining establishment.

4. Advertisements of beer, wine and mixed beverages in publications not of general circulation which are distributed primarily to a high school or younger age level readership are prohibited.

§ 5. Advertising; newspapers and magazines; programs; distilled spirits.

Distilled spirits advertising by distillers, bottlers, importers or wholesalers via the media shall be limited to newspapers and magazines of general circulation, or similar publications of general circulation, and to printed rograms relating to professional, semi-professional and amateur athletic and sporting events, conservation and environmental programs and for events of a charitable or cultural nature, subject to the following conditions:

A. Required statements.

1. Name. Name and address (street address optional) of the responsible advertiser.

2. Contents. Contents of the product advertised in accordance with all labeling requirements. If only the class of distilled spirits, such as "whiskey," is referred to, statements as to contents may be omitted.

3. Type size. Required information on contrasting background in no smaller than eight-point size type.

B. Prohibited statements.

1. "Bonded." Any reference to "bond," "bonded," "bottled in bond," "aged in bond," or the like, unless the words or phrases appear upon the label of the distilled spirits advertised.

2. Age. Any statement or depiction of age not appearing on the label, except that if none appears on the label and the distilled spirits advertised are four years or over in age such representions as "aged in wood," "mellowed in fine oak casks," and the like, if factually correct, may be used.

3. Religious references. Any statement or depiction referring to Easter, Holy Week, similar or synonymous words or phrases, except with reference to the Christmas holiday season if otherwise remote from any religious theme.

4. Price. Any reference to a price that is not the prevailing price at government stores, excepting references approved in advance by the board relating to temporarily discounted prices.

C. Further limitation.

Distilled spirits may not be advertised in college publications, including but not limited to, newspapers and programs relating to intercollegiate athletic events.

§ 6. Advertising; novelties and specialties.

~~A.~~ Distribution of novelty and specialty items, including wearing apparel, bearing alcoholic beverage advertising, shall be subject to the following limitations and conditions:

1. Items not in excess of $2.00 in wholesale value may be given away;

2. Items in excess of $2.00 in wholesale value may be donated by distilleries, wineries and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, events of a charitable nature, cultural events or athletic or sporting events ; ~~but otherwise shall be sold at the reasonable open market price:~~ .

~~a. By mail upon request; and~~

~~b. Over the counter at retail establishments customarily engaged in the sale of novelties and specialties.~~

*3. Items may be sold by mail upon request or over-the-counter at retail establishments customarily engaged in the sale of novelties and specialities, provided they are sold at the reasonable open market price in the localities where sold.*

~~3.~~ *4.* Wearing apparel ~~distributed~~ shall be in adult sizes;

~~4.~~ *5.* Point-of-sale order blanks, relating to novelty and specialty items, may be affixed to cut case cards as defined in § ~~9 F~~ *8 F* of VR 125-01-3. Beer and wine wholesalers may attach such order blanks to cut case cards at the retail premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put order blanks on the package at the wholesale premises and order blanks may not be shipped in the case to retailers. Wholesalers may not be involved in the redemption process.

§ 7. Advertising; fairs and trade shows; wine and beer displays.

Alcoholic beverage advertising at fairs and trade shows shall be limited to booths assigned to manufacturers, bottlers and wholesalers and to the following:

1. Display of wine and beer in closed containers and informational signs provided such merchandise is not sold or given away except as permitted in VR 125-01-7 § 10.

2. Distribution of informational brochures, pamphlets, and the like, relating to wine and beer.

3. Distribution of novelty and specialty items bearing

wine and beer advertising not in excess of $2.00 in wholesale value.

§ 8. Advertising; film presentations.

Advertising of alcoholic beverages by means of film presentations is restricted to the following:

1. Presentations made only to bona fide private groups, associations or organizations upon request; and

2. Presentations essentially educational in nature.

§ 9. Advertising; coupons.

A. Definitions.

*"Normal retail price"* shall mean the average retail price of the brand and size of the product in a given market, and not a reduced or discounted price.

B. Coupons may be advertised in accordance with the following conditions and restrictions:

1. Manufacturers of spirits, wine and beer may use only refund, not discount, coupons. The coupons may not exceed 50% of the normal retail price and may not be honored at a retail outlet but shall be mailed directly to the manufacturer or its designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Coupons are permitted in the print media, by direct mail to consumers or as part of, or attached to, the package. Coupons may be part of, or attached to, the package only if the winery or brewery put them on at the point of manufacture (however, beer and wine wholesalers may attach coupon pads on holders to case cards or place coupon pads on rebate bulletin boards designated by the retailer for coupons at the retail premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative). Wholesale licensees in Virginia may not put them on the package at the wholesale premises and coupons may not be shipped in the case to retailers.

2. Manufacturers offering coupons on distilled spirits and wine sold in state government stores shall notify the board at least 45 days in advance of the issuance of the coupons of its amount, its expiration date and the area of the Commonwealth in which it will be primarily used, if not used statewide.

3. Wholesale licensees of the board are not permitted to offer coupons.

4. Retail licensees of the board may offer coupons on wine and beer sold for off premises consumption only. Retail licensees may offer coupons in the print media, at the point-of-sale or by direct mail to consumers. Coupons offered by retail licensees shall appear in an advertisement with nonalcoholic merchandise and conform in size and content to the advertising of such merchandise.

5. No retailer may be paid a fee by manufacturers or wholesalers of alcoholic beverages for display or use of coupons; the name of the retail establishment may not appear on any coupons offered by manufacturers and no manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers.

6. Retail licensees or employees thereof may not receive refunds on coupons obtained from the packages before sale at retail.

7. No coupons may be honored for any individual below the legal age for purchase.

§ 10. Advertising; sponsorship of public events; restrictions and conditions.

A. Generally.

Alcoholic beverage advertising in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional, or amateur athletic and sporting events and events of a charitable or cultural nature by distilleries, wineries, and breweries.

B. Restrictions and conditions:

1. Programs and events on a college, high school or younger age level are prohibited;

2. Cooperative advertising as defined in § 1 of these regulations is prohibited;

3. Awards or contributions of alcoholic beverages are prohibited;

4. Advertising of alcoholic beverages shall conform in size and content to the other advertising concerning the event and advertising regarding charitable events shall place primary emphasis on the charitable and fund raising nature of the event;

5. A charitable event is one held for the specific purpose of raising funds for a charitable organization which is exempt from federal and state taxes;

6. Advertising in connection with the sponsorship of an event may be only in the media, including programs, tickets and schedules for the event, on the inside of licensed or unlicensed retail establishments and at the site of the event;

7. Point-of-sale advertising materials may not be furnished to retailers by manufacturers, bottlers, or wholesalers. However, at the request of the charity involved, employees of a wholesale licensee may

deliver and place such material relating to charitable events which have been furnished to them by the charity involved. Wholesale licensees of the board may deliver to retailers point-of-sale advertising materials relating to charitable events which have been furnished to them by a third party provided that the charity involved so requests;

8. Point-of-sale advertising shall be limited to counter cards, cannisters and table tents of reasonable size, subject to the exceptions of subdivision 7 above;

9. Public events permissible for sponsorship shall be of limited duration such as tournaments or limited fund raising events. An entire season of activities such as a football season may not be sponsored;

10. Prior written notice of the event shall be submitted to the board describing the nature of the sponsorship and giving the date, time and place of it; and

11. Manufacturers may sponsor public events and wholesalers may only cosponsor charitable events.

**VR 125-01-3. Tied House.**

§ 1. Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts.

A. Permitted acts.

For the purpose of maintaining the freshness of the stock and the integrity of the products sold by him, a wholesaler may perform, except on Sundays, the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack and rearrange wine or beer in a display (shelves, coolers, cold boxes, and the like, and floor displays in a sales area).

2. Restock beer and wine.

3. Rotate, repack, rearrange and add to his own stocks of wine or beer in a storeroom space assigned to him by the retailer.

4. Transfer beer and wine between storerooms, between displays, and between storerooms and displays.

5. Create or build original displays using wine or malt beverage products only.

6. Exchange beer or wine, for quality control purposes, on an identical quantity, brand and package basis. Any such exchange shall be documented by the word "exchange" on the proper invoice.

B. Prohibited acts.

A wholesaler may not:

1. Alter or disturb in any way the merchandise sold by another wholesaler, whether in a display, sales area or storeroom except in the following cases:

a. When the products of one wholesaler have been erroneously placed in the area previously assigned by the retailer to another wholesaler.

b. When a floor display area previously assigned by a retailer to one wholesaler has been reassigned by the retailer to another wholesaler.

2. Mark or affix retail prices to products.

3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:

a. Products defective at the time of delivery may be replaced.

b. Products erroneously delivered may be replaced or money refunded.

c. Resaleable draft beer or beverages may be returned and money refunded.

d. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board.

e. Products which have been condemned and are not permitted to be sold in this state may be replaced or money refunded upon permit issued by the board.

f. Beer or wine may be exchanged on an identical quantity, brand or package basis for quality control purposes.

§ 2. Manner of compensation of employees of retail licensees.

Employees of a retail licensee shall not receive compensation based directly, in whole or in part, upon the volume of alcoholic beverages or beverages sales only; provided, however, that in the case of retail wine and beer or beer only licensees, nothing in this section shall be construed to prohibit a bona fide compensation plan based upon the total volume of sales of the business, including receipts from the sale of alcoholic beverages or beverages.

§ 3. Interests in the businesses of licensees.

Persons to whom licenses have been issued by the board shall not allow any other person to receive a percentage

of the income of the licensed business or have any beneficial interest in such business; provided, however, that nothing in this section be construed to prohibit:

1. The payment by the licensee of a franchise fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted upon the licensed premises, where such is reasonable as compared to prevailing franchise fees of similar businesses, or

2. Where the licensed business is conducted upon leased premises, and the lease when construed as a whole does not constitute a shift or device to evade the requirements of this section,

a. The payment of rent based in whole or in part upon a percentage of the entire gross receipts of the business, where such rent is reasonable as compared to prevailing rentals of similar businesses and/or

b. The landlord from imposing standards relating to the conduct of the business upon the leased premises, where such standards are reasonable as compared to prevailing standards in leases of similar businesses, and do not unreasonably restrict the control of the licensee over the sale and consumption of mixed beverages, other alcoholic beverages, or beverages.

§ 4. Restrictions upon employment; exceptions.

No retail licensee of the board shall employ in any capacity in his licensed business any person engaged or employed in the manufacturing, bottling or wholesaling of alcoholic beverages or beverages; nor shall any manufacturer, bottler or wholesaler licensed by the board employ in any capacity in his licensed business any person engaged or employed in the retailing of alcoholic beverages or beverages.

This section shall not apply to banquet licensees or to off-premises winery licensees.

§ 5. Certain transactions to be for cash; "cash" defined; reports by sellers; payments to the board.

A. Generally.

Sales of wine, beer or beverages between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, and each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery.

B. "Cash," defined.

"Cash," as used in this section, shall include legal tender of the United States, a money order issued by a duly licensed firm authorized to engage in such business in Virginia or a valid check drawn upon a bank account in the name of the licensee or in the trade name of the licensee making the purchase.

C. Checks and money orders.

If a check or money order is used, the following provisions apply:

1. If only alcoholic beverage merchandise is being sold, the amount of the check or money order shall be no larger than the purchase price of the alcoholic beverage or beverages.

2. If nonalcoholic merchandise is also sold to the retailer, the check or money order may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. A separate invoice shall be used for the nonalcoholic merchandise and a copy of it shall be attached to the copies of the alcoholic beverage invoices which are retained in the records of the wholesaler and the retailer.

D. Reports by seller.

Wholesalers shall report to the board on or before the 15th day of each month any invalid checks received during the preceding month in payment of wine, beer or beverages. Such reports shall be upon a form provided by the board and in accordance with the instructions set forth in such form and if no invalid checks have been received, no report shall be required.

E. Payments to the board.

Payments to the board for the following items shall be for cash as herein defined:

1. State license fees.

2. Purchases of alcoholic beverages from the board by mixed beverage licensees.

3. Wine taxes collected pursuant to § 4-22.1, of the Code of Virginia.

4. Registration and certification fees collected pursuant to these regulations.

5. Monetary penalties and costs imposed on licensees by the board.

6. Forms provided to licensees at cost by the board.

§ 6. Deposits on containers required; records; redemption of deposits; exceptions.

A. Minimum deposit.

Wholesalers shall collect in cash, at or prior to the time

of delivery of any beer or beverages sold to a retail licensee, the following minimum deposit charges on the containers:

Bottles having a capacity of not more than 12 oz. ... $.02

Bottles having a capacity of more than 12 oz. but not more than 32 oz. ..... $.04

Cardboard, fibre or composition cases other than for 1-1/8 or 2-1/4 gallon kegs ..... $.02

Cardboard, fibre or composition cases for 1-1/8 or 2-1/4 gallon kegs ..... $.50

Kegs, 1-1/8 gallon ..... $1.75

Kegs, 2-1/4 gallon ..... $3.50

Kegs, 1/4 barrel ..... $4.00

Kegs, 1/2 barrel ..... $6.00

Keg covers, 1/4 barrel ..... $4.00

Keg covers, 1/2 barrel ..... $6.00

Tapping equipment for use by consumers ..... $10.00

Cooling tubs for use by consumers ..... $5.00

Cold plates for use by consumers ..... $15.00

B. Records.

The sales ticket or invoice shall reflect the deposit charge and shall be preserved as a part of the licensee's records.

C. Redemption of deposits.

Deposits shall be refunded upon the return of the containers in good condition.

D. Exceptions.

Deposits shall not be required on containers sold as nonreturnable items.

§ 7. Solicitation of licensees by wine, beer and beverage solicitor salesmen or representatives.

A. Generally.

A permit is not required to solicit or promote wine, beer or beverages to wholesale or retail licensees of the board, including mixed beverage licensees, by a wine, beer or beverage solicitor salesman who represents any winery, brewery, wholesaler or importer licensed in this Commonwealth engaged in the sale of wine, beer and beverages. Further, a permit is not required to sell (which shall include the solicitation or receipt of orders) wine, beer or beverages to wholesale or retail licensees of the board, including mixed beverage licensees, by a wine, beer or beverage solicitor salesman who represents any winery, brewery or wholesaler licensed in this Commonwealth engaged in the sale of wine, beer and beverages.

B. Permit required.

A permit is required to solicit or promote wine, beer or beverages to wholesale or retail licensees of the board, including mixed beverage licensees, by a wine, beer or beverage solicitor salesman or representative of any wholesaler engaged in the sale of wine, beer or beverages, but not holding a license therefor in this Commonwealth, or of any manufacturers, wholesalers or any other person outside this Commonwealth holding a wine or beer importer's license issued by the board. A permit under this section shall not authorize the sale of wine and wine coolers, by the permittee, the direct solicitation or receipt of orders for wine and wine coolers, or the negotiation of any contract or contract terms for the sale of wine and wine coolers unless such sale, receipt or negotiations are conducted in the presence of a licensed Virginia wholesaler or importer or such Virginia wholesaler's or importer's solicitor salesman or representative. In order to obtain a permit a person shall:

1. Register with the board by filing an application on such forms as prescribed by the board;

2. Pay a fee of $125, which is subject to proration on a quarterly basis, pursuant to the provisions of § 4-26(b) of the Code of Virginia.

3. Be 18 years old or older to solicit or promote the sale of wine, beer or beverages, and may not be employed at the same time by a nonresident person engaged in the sale of wine, beer or beverages at wholesale and by a licensee of the board to solicit the sale of or sell wine, beer or beverages, and shall not be in violation of the provisions of VR 125-01-3 § 5.

C. Each permit shall expire yearly on June 30 unless sooner suspended or revoked by the board.

D. Solicitation and promotion under the regulation may include educational programs regarding wine, beer or beverages to mixed beverage licensees, but shall not include the promotion of, or educational programs related to, distilled spirits or the use thereof in mixed drinks.

E. For the purposes of this regulation, the soliciting or promoting of wine, beer or beverages shall be distinguished from the sale of such products, the direct solicitation or receipt of orders for alcoholic beverages or the negotiation of any contract or contract terms for the sale of alcoholic beverages. This regulation shall not be deemed to regulate the representative of a manufacturer, importer or wholesaler from merely calling on retail licensees to check on market conditions, the freshness of

products on the shelf or in stock, the percentage or nature of display space, or the collection of similar information where solicitation or product promotion is not involved.

§ 8. Inducements to retailers; tapping equipment; bottle or can openers; banquet licensees; cut case cards; clip-ons and table tents.

A. Beer tapping equipment.

Any manufacturer, bottler or wholesaler may sell, rent, lend, buy for or give to any retailer, without regard to the value thereof, the following:

1. Draft beer knobs, containing advertising matter which shall include the brand name and may further include only trademarks, housemarks and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer.

2. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet excluding the following:

a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;

b. Gas pressure gauges (may be sold at cost);

c. Draft arms or standards;

d. Draft boxes;

e. Refrigeration equipment or components thereof.

Further, a manufacturer, bottler or wholesaler may sell, rent or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container.

B. Wine tapping equipment.

Any manufacturer, bottler or wholesaler may sell to any retailer and install in the retailer's establishment tapping accessories such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves, if the tapping accessories are sold at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

Wine tapping equipment shall not include the following:

1. Draft wine knobs, which may be given to a retailer;

2. Carbonic acid gas, nitrogen gas, or compressed air in containers, except that such gases may be sold in accordance with the reasonable open market prices in the locality where sold and if the price is collected within 30 days of the date of the sales;

3. Mechanical refrigeration equipment.

C. Any beer tapping equipment may be converted for wine tapping by the beer wholesaler who originally placed the equipment on the premises of the retail licensee provided that such beer wholesaler is also a wine wholesaler licensee. Moreover, at the time such equipment is converted for wine tapping, it shall be sold, or have previously been sold, to the retail licensee at a price not less than the initial purchase price paid by such wholesaler.

D. Bottle or can openers.

Any manufacturer, bottler or wholesaler of wine or beer may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the wholesale value of any such openers given to a retailer by any individual manufacturer, bottler or wholesaler does not exceed $2.00. Openers in excess of $2.00 in wholesale value may be sold, provided the reasonable open market price is charged therefor.

E. Banquet licensees.

Manufacturers or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees paper or plastic cups upon which advertising matter regarding wine or beer may appear.

F. Cut case cards.

Any manufacturer, bottler or wholesaler of wine or beer may sell, lend, buy for or give to any retailer of wine or beer cut case cards, which are defined as promotional, nonmechanical, two-dimensional or three-dimensional printed paper or cardboard matter no larger than double the largest single dimension of the case product to which they refer for use in displaying and advertising in the interior of his establishment, other than in exterior windows, the sale of beer or wines having an alcoholic content of 21% or less by volume, provided such manufacturer, bottler or wholesaler in furnishing such cards conforms with the regulations of the appropriate federal agency, relating to inside signs. Such printed matter may be supported by a devise other than the case itself. With the consent of the retail licensee, which may be a continuing consent, a wholesaler may mark or affix retail prices on such cut case cards.

G. Wine and beer clip-ons and table tents. Any manufacturer, bottler or wholesaler of wine or beer may sell, lend, buy for or give to any retailer of wine or beer, clip-ons and table tents containing the listing of not more than four wines and four beers.

~~H. A retail licensee who consents to any violation of this section shall also be in violation.~~

*H. Cleaning and servicing equipment.*

*Any manufacturer, bottler or wholesaler of alcoholic beverages may clean and service, either free or for compensation, coils and other like equipment used in dispensing wine and beer, and may sell solutions or compounds for cleaning wine and beer glasses, provided the reasonable open market price is charged.*

*I. Sale of ice.*

*Any manufacturer, bottler or wholesaler of alcoholic beverages licensed in this Commonwealth may sell ice to retail licensees provided the reasonable open market price is charged.*

*J. Sanctions and penalties.*

*Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4-79.1.A, wholesaler or retailer who violates, solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalities as provided in § 4-79.1 D of the Code of Virginia.*

§ 9. Routine business entertainment; definition; permitted activities; conditions.

A. Generally.

Nothing in these regulations shall prohibit a wholesaler or manufacturer of alcoholic beverages licensed in Virginia from providing a retail licensee of the board "routine business entertainment" which is defined as those activities enumerated in subsection B below.

B. Permitted activities.

1. Meals and beverages.

2. Concerts, theatre and arts entertainment.

3. Sports participation and entertainment.

4. Entertainment at charitable events; and

5. Private parties.

C. Conditions.

The following conditions apply:

1. Such routine business entertainment shall be provided without a corresponding obligation on the part of the retail licensee to purchase alcoholic beverages or to provide any other benefit to such wholesaler or manufacturer or to exclude from sale the products of any other wholesaler or manufacturer.

2. Wholesaler or manufacturer personnel shall accompany the personnel of the retail licensee during such business entertainment.

3. Except as is inherent in the definition of routine business entertainment as contained herein, nothing in this regulation shall be construed to authorize the providing of property or any other thing of value to retail licensees.

4. Routine business entertainment that requires overnight stay is prohibited.

5. No more than $200 may be spent per 24-hour period on any employee of any retail licensee, including a self-employed sole proprietor, or, if the licensee is a partnership, on any partner or employee thereof, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership or stockholder, and the like, shall not be included within the foregoing restrictions.

6. No person enumerated in subsection C 5 above may be entertained more than six times by a wholesaler and six times by a manufacturer per calendar year.

7. Wholesale licensees and manufacturers shall keep complete and accurate records for a period of three years of all expenses incurred in the entertainment of retail licensees. These records shall indicate the date and amount of each expenditure, the type of entertainment activity and retail licensee entertained.

8. This regulation shall not apply to personal friends of wholesalers as provided for in VR 125-01-7 § 10.

**VR 125-01-7. Other Provisions.**

§ 1. Transportation of alcoholic beverages and beverages; noncommercial permits; commercial carrier permits; refusal, suspension or revocation of permits; exceptions; out-of-state limitation not affected.

A. Permits generally.

The transportation within or through this ~~State~~ *Commonwealth* of alcoholic beverages or beverages lawfully purchased within this ~~State~~ *Commonwealth* is prohibited, except upon a permit issued by the board, when in excess of the following limits:

1. Wine and beer. No limitation.

2. Alcoholic beverages other than those described in subdivision 1 above. Three gallons; provided, however, that not more than one gallon thereof shall be in packages containing less than 1/5 of a gallon.

3. Beverages. No limitation.

If any part of the alcoholic beverages being transported is contained in a metric sized package, the three gallon limitation shall be construed to be 12 liters and not more than four liters shall be in packages smaller than 750 milliliters.

The transportation within, into or through this ~~State~~ *Commonwealth* of alcoholic beverages or beverages lawfully purchased outside of this ~~State~~ *Commonwealth* is prohibited, except upon a permit issued by the board, when in excess of the following limits:

1. Alcoholic beverages, including wine and beer. One gallon (four liters if any part is in a metric sized package).

2. Beverages. One case of not more than 384 ounces (12 liters if in metric sized packages).

If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit, which shall accompany the alcoholic beverages or beverages at all times to the final destination.

B. Commercial carrier permits.

Commercial carriers desiring to engage regularly in the transportation of alcoholic beverages or beverages within, into or through this Commonwealth shall, except as hereinafter noted, file application in writing for a transportation permit upon forms furnished by the board. If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit. Such permit shall not be transferable and shall authorize the carrier to engage in the regular transportation of alcoholic beverages or beverages upon condition that there shall accompany each such transporting vehicle:

1. A bill of lading or other memorandum describing the alcoholic beverages or beverages being transported, and showing the names and addresses of the consignor and consignee, who shall be lawfully entitled to make and to receive the shipment; and

2. Except for express companies and carriers by rail or air, a certified photocopy of the carrier's transportation permit.

C. Refusal, suspension or revocation of permits.

The board may refuse, suspend or revoke a carrier's transportation permit if it shall have reasonable cause to believe that alcoholic beverages or beverages have been illegally transported by such carrier or that such carrier has violated any condition of a permit. Before refusing, suspending or revoking such permit, the board shall accord the carrier involved the same notice, opportunity to be heard, and follow the same administrative procedures accorded an applicant or licensee under the Alcoholic Beverage Control Act.

D. Exceptions.

There shall be exempt from the requirements of this section:

1. Common carriers by water engaged in transporting lawfully acquired alcoholic beverages for a lawful consignor to a lawful consignee.

2. Persons transporting wine, beer, cider or beverages purchased from the board or a licensee of the board.

3. Persons transporting alcoholic beverages or beverages which may be manufactured and sold without a license from the board.

4. A licensee of the board transporting lawfully acquired alcoholic beverages or beverages he is authorized to sell in a vehicle owned or leased by the licensee.

5. Persons transporting alcoholic beverages or beverages to the board, or to licensees of the board, provided that a bill of lading or a complete and accurate memorandum accompanies the shipment, and provided further, in the case of the licensee, that the merchandise is such as his license entitles him to sell.

6. Persons transporting alcoholic beverages or beverages as a part of their official duties as federal, state or municipal officers or employees.

7. Persons transporting lawfully acquired alcoholic beverages or beverages in a passenger vehicle, other than those alcoholic beverages or beverages referred to in ~~item~~ *subdivision* D 2 and D 3, provided the same are in the possession of the bona fide owners thereof, and that no occupant of the vehicle possesses any alcoholic beverages in excess of the maximum limitations set forth in subsection A.

E. One gallon (four liters if any part in a metric sized package) limitation.

This regulation shall not be construed to alter the one gallon (four liters if any part is in a metric sized package) limitation upon alcoholic beverages which may be brought into the Commonwealth pursuant to § 4-84(d) of the Code of Virginia.

§ 2. Procedures for handling cider; authorized licensees; containers; labels; markup; age limits.

A. Procedures for handling cider.

The procedures established by regulations of the board for the handling of wine having an alcoholic content of not more than 14% by volume shall, with the necessary change of detail, be applicable to the handling of cider, subject to the following exceptions and modifications.

B. Authorized licensees.

Licensees authorized to sell beer and wine, or either, at retail are hereby approved by the board for the sale of cider and such sales shall be made only in accordance with the age limits set forth below.

C. Containers.

Containers of cider shall have a capacity of not less than 12 ounces (375 ml. if in a metric sized package) nor more than one gallon (three liters if in a metric sized package).

D. Labels.

If the label of the product is subject to approval by the federal government, a copy of the federal label approval shall be provided to the board.

E. Markup.

The markup or profit charged by the board shall be eight cents per liter or fractional part thereof.

F. Age limits.

Persons must be 21 years of age or older to purchase or possess cider.

§ 3. Sacramental wine; purchase orders; permits; applications for permits; use of sacramental wine.

A. Purchase orders.

Purchase orders for sacramental wine shall be on separate order forms prescribed by the board and provided at cost if supplied by the board.

B. Permits.

Sales for sacramental purposes shall be only upon permits issued by the board without cost and on which the name of the wholesaler authorized to make the sale is designated.

C. Applications for permits.

Requests for permits by a religious congregation shall be in writing, executed by an officer of the congregation, and shall designate the quantity of wine and the name of the wholesaler from whom the wine shall be purchased.

D. Use of sacramental wine.

Wine purchased for sacramental purposes by a religious congregation shall not be used for any other purpose.

§ 4. Alcoholic beverages for culinary purposes; permits; purchases; restrictions.

A. Permits.

The board may issue a culinary permit to a person operating a dining room where meals are habitually served. The board may refuse to issue or may suspend or revoke such a permit for any reason that it may refuse to issue, suspend or revoke a license.

B. Purchases.

Purchases shall be made from the board at government stores or at warehouses operated by the board, and all purchase receipts issued by the board shall be retained at the permittee's place of business for a period of one year and be available at all times during business hours for inspection by any member of the board or its agents. Purchases shall be made by certified or cashier's check, money order or cash, except that if the permittee is also a licensee of the board remittance may be by check drawn upon a bank account in the name of the licensee or in the trade name of the licensee making the purchase, provided that the money order or check is in an amount no larger than the purchase price.

C. Restrictions.

Alcoholic beverages purchased for culinary purposes shall not be sold or used for any other purpose, nor shall the permit authorize the possession of any other alcoholic beverages. They shall be stored in a place designated for the purpose upon the premises of the permittee, separate and apart from all other commodites, and custody thereof shall be limited to persons designated in writing by the permittee.

§ 5. Procedures for druggists and wholesale druggists; purchase orders and records.

A. Purchase orders.

Purchases of alcohol by druggists or wholesale druggists shall be executed only on orders on forms supplied by the board. In each case the instructions on the forms relative to purchase and transportation shall be complied with.

B. Records.

Complete and accurate records shall be kept at the place of business of each druggist and wholesale druggist for a period of two years, which records shall be available at all times during business hours for inspection by any member of the board or its agents. Such records shall show:

1. The amount of alcohol purchased,

2. The date of receipt, and

3. The name of the vendor.

In addition, records of wholesale druggists shall show:

1. The date of each sale,

2. The name and address of the purchaser, and

3. The amount of alcohol sold.

§ 6. Alcoholic beverages for hospitals, industrial and manufacturing users.

A. Permits.

The board may issue a yearly permit authorizing the shipment and transportation direct to the permittee of orders placed by the board for alcohol or other alcoholic beverages for any of the following purposes:

1. For industrial purposes;

2. For scientific research or analysis;

3. For manufacturing articles allowed to be manufactured under the provisions of § 4-48 of the Code of Virginia;

4. For use in a hospital or home for the aged (alcohol only).

Upon receipt of alcohol or other alcoholic beverages, one copy of the bill of lading or shipping invoice, accurately reflecting the date received and complete and accurate records of the transaction, shall be forwarded to the board by the permittee.

The application for such permits shall be on forms provided by the board.

B. Permit fees.

Applications for alcohol shall be accompanied by a fee of $10, where the order is in excess of 110 gallons during a calendar year, or a fee of $5.00 for lesser amounts. Applications for other alcoholic beverages shall be accompanied by a fee of 5.0% of the delivered cost to the place designated by the permittee. No fee shall be charged agencies of the United States or of the Commonwealth of Virginia or eleemosynary institutions.

C. Storage.

A person obtaining a permit under this section shall:

1. Store such alcohol or alcoholic beverages in a secure place upon the premises designated in the application separate and apart from any other articles kept on such premises;

2. Maintain accurate records of receipts and withdrawals of alcohol and alcoholic beverages;

3. Furnish to the board within 10 days after the end of the calendar year for which he was designated a permittee a statement setting forth the amount of alcohol or alcoholic beverages on hand at the beginning of the previous calendar year, the amount purchased during the year, the amount withdrawn during the year, and the amount on hand at the end of the year.

D. Refusal of permit.

The board may refuse to designate a person as a permittee if it shall have reasonable cause to believe either that the alcohol or alcoholic beverages would be used for an unlawful purpose, or that any cause exists under § 4-31 of the Code of Virginia for which the board might refuse to grant the applicant any license.

E. Suspension or revocation of permit.

The board may suspend or revoke the designation as a permittee if it shall have reasonable cause to believe that the permittee has used or allowed to be used any alcohol or alcoholic beverages obtained under the provisions of this section for any purpose other than those permitted under the Code of Virginia, or has done any other act for which the board might suspend or revoke a license under § 4-37 of the Code of Virginia.

F. Access to storage and records.

The board and its agents shall have free access during business hours to all places of storage and records required to be kept pursuant to this section for the purpose of inspection and examining such place and such records.

§ 7. Procedures for owners having alcoholic beverages distilled from grain, fruit, fruit products or other substances lawfully grown or produced by such person; permits and limitations thereon.

A. Permits.

An owner having a distiller or fruit distiller manufacture distilled spirits out of grain, fruit, fruit products or other substances lawfully grown or produced by such person may remove the finished product only upon permit issued by the board, which shall accompany the shipment at all times. The application for the permit shall include the following:

1. The name, address and license number (if any) of the consignee;

2. The kind and quantity in gallons of alcoholic beverages;

3. The name of the company employed to transport the shipment.

B. Limitations on permits.

Permits shall be issued only for shipments to the board, for sale to a lawful consignee outside of Virginia under a bona fide written contract therefor, and for the withdrawal of samples for the owner's use. Samples shall be packaged in containers of one pint or 500 ml and the words, "Sample-Not for Sale," shall be printed in letters of reasonable size on the label.

§ 8. Manufacture, sale, etc., of "sterno," and similar substances for fuel purposes.

No license from the board is required for the manufacture, sale, delivery and shipment of "Sterno," canned heat and similar substances intended for fuel purposes only.

§ 9. Records to be kept by licensees generally; additional requirements for certain retailers; "sale" and "sell" defined; gross receipts; reports.

A. Generally.

All licensees of the board shall keep complete and accurate records at the licensee's place of business for a period of two years ; ~~except with respect to records regarding beer and 3.2 beverages which shall be kept three years as required by § 58.1-709, of the Code of Virginia, which records shall at all times during business hours~~ . *The records shall* be available for inspection *and copying* by any member of the board or its agents *at any time during business hours* . Licensees of the board may ~~commit these records to~~ *use* microfilm , *microfiche, disks* or other available technologies *for the storage of* ~~at any time during the period specified herein~~ *their records* .

B. Retail licensees ~~generally~~ .

Retail licensees shall keep *complete and accurate* records , *including invoices,* of the purchases and sales of alcoholic beverages , and beverages, ~~and also records of the purchases and sales of foods~~ *food* and other merchandise ~~including, but not limited to, purchase invoices of such alcoholic beverages, beverages, foods and other merchandise~~ . The records of ~~the purchases and sales of~~ alcoholic beverages and beverages shall be kept separate ~~and apart~~ from other ~~items~~ *records* .

C. Mixed beverage restaurant licensees.

In addition to the requirements of ~~paragraphs~~ *subsections* A and B ~~hereof, and separate and apart therefrom,~~ *above,* mixed beverage restaurant licensees shall keep records of all alcoholic beverages purchased for sale as mixed beverages and records of all mixed beverage sales ; ~~and the~~ . *The* following ~~additional records~~ *actions shall also be taken* :

1. ~~Upon~~ *On* delivery of a mixed beverage restaurant license by the board, the licensee shall furnish to the board or its agents a complete and accurate inventory of all alcoholic beverages and beverages ~~then~~ *currently* held in inventory on the premises by the licensee.

2. *Once a year,* each licensee ~~at least annually on forms prescribed by the board~~ shall submit *on prescribed forms* to the board ; ~~within 30 days following the first day of the month next following the month in which the mixed beverage restaurant license was originally issued~~ *an annual review report . The report is due within 30 days after the end of the mixed beverage license year and shall include* :

a. A complete and accurate inventory of all alcoholic beverages and beverages purchased for sale as mixed beverages ; *and* held in inventory at the close of business at the end of the annual review period ; ~~and~~ .

b. An accounting of the annual purchases of food, nonalcoholic beverages, alcoholic beverages, and beverages, including alcoholic beverages purchased for sale as mixed beverages, and miscellaneous items ; ~~and~~ .

c. An accounting of the monthly and annual sales of all merchandise specified in ~~subsection~~ *subdivision* C ; 2 . b .

D. "Sale" and "sell."

The terms "sale" and "sell" shall include exchange, barter and traffic, and delivery made otherwise than gratuitously, by any means whatsoever, of mixed beverages, other alcoholic beverages and beverages, and of meals or food.

E. Gross receipts; food, *hors d'oeuvres,* alcoholic beverages, etc.

In determining "gross receipts from the sale of food" for the purposes of Chapter 1.1 (§ 4-98.1 et seq.) of Title 4 of the Code of Virginia, ~~no~~ *a* licensee shall *not* include any receipts for food for which there was no sale, as defined in this section. Food which is ~~made~~ available at an unwritten, non-separate charge to patrons or employees during ~~so-called~~ " Happy Hours, " private social gatherings, promotional events, or at any other time, shall not be included in ~~such~~ *the* gross receipts.

If in conducting its review pursuant to § 4-98.7 of the Code of Virginia, the board determines that the licensee has failed or refused to keep complete and accurate records of the amounts of mixed beverages, other alcoholic beverages or beverages sold at regular prices, as well as at all various reduced and increased prices offered by the licensee, the board may calculate the number of mixed drinks, alcoholic beverage and beverage drinks sold, as determined from purchase records, and presume that such sales were made at the highest posted menu prices for such merchandise.

F. Reports.

Any changes in the officers, directors or shareholders owning 10% or more of the outstanding capital stock of a corporation shall be reported to the board within 30 days; provided, however, that corporations or their wholly owned subsidiaries whose corporate common stock is publicly traded and owned shall not be required to report changes in shareholders owning 10% or more of the outstanding capital stock.

§ 10. Gifts of alcoholic beverages or beverages generally; exceptions; taxes and records.

A. Generally.

Gifts of alcoholic beverages or beverages by a licensee to any other person are prohibited except as otherwise provided in this section.

B. Exceptions.

Gifts of alcoholic beverages or beverages may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no wise a shift or device to evade the provisions of this section.

2. Samples. A wholesaler may give a retail licensee a sample serving or a package not then sold by such licensee of wine, beer or beverages, which such wholesaler otherwise may sell to such retail licensee, provided in a case of packages the package does not exceed 52 fluid ounces in size (1.5 liter if in a metric sized package) and the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample package.

3. Hospitality rooms; conventions. A person licensed by the board to manufacture wine, beer or beverages may:

a. Give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, provided the donees are persons to whom such products may be lawfully sold; and

b. Host an event at conventions of national, regional or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or national purposes upon the premises occupied by such licensee, or upon property of the licensee contiguous to such premises, or in a development contiguous to such premises, owned and operated by the licensee or a wholly owned subsidiary.

4. Conventions; educational programs, *including wine tastings;* research; licensee associations. Licensed manufacturers, bottlers and wholesalers may donate beer, beverages or wines to:

a. A convention, trade association or similar gathering, composed of licensees of the board, and their guests, when the alcoholic beverages or beverages donated are intended for consumption during the convention.

b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages or beverages being given away.

c. Research departments of educational institutions, or alcoholic research centers, for the purpose of scientific research on alcoholism.

*d.* Licensed manufacturers and wholesalers may donate wine to official associations of wholesale wine licensees of the board when conducting a bona fide educational program concerning wine, with no promotion of a particular brand, for members and guests of particular groups, associations or organizations.

5. Conditions. Exceptions authorized by *subdivision* B.3.b and B 4 above are conditioned upon the following:

a. That prior written notice of the activity be submitted to the board describing it and giving the date, time and place of such, and

b. That the activity be conducted in a room or rooms set aside for that purpose and be adequately supervised.

C. Wine tastings.

Wine wholesalers may participate in a wine tasting sponsored by a wine specialty shop licensee for its customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine.

D. Taxes and records.

Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4 of the Code of Virginia and complete and accurate records shall be maintained.

§ 11. Release of alcoholic beverages from customs and internal revenue bonded warehouses; receipts; violations; limitation upon sales.

A. Release generally.

Alcoholic beverages held in a United States customs

bonded warehouse may be released therefrom for delivery to:

1. The board;

2. A person holding a license authorizing the sale of the alcoholic beverages at wholesale;

3. Ships actually engaged in foreign trade or trade between the Altantic and Pacific ports of the United States or trade between the United States and any of its possessions outside of the several states and the District of Columbia;

4. Persons for shipment outside this Commonwealth to someone legally entitled to receive the same under the laws of the state of destination.

Releases to any other person shall be under a permit issued by the board and in accordance with the instructions therein set forth.

B. Receipts.

A copy of the permit, if required, shall accompany the alcoholic beverages until delivery to the consignee. The consignee, or his duly authorized representative, shall acknowledge receipt of delivery upon a copy of the permit, which receipted copy shall be returned to the board by the permittee within 10 days after delivery.

C. Violations.

The board may refuse to issue additional permits to a permittee who has previously violated any provision of this section.

D. Limitation upon sales.

A maximum of six imperial gallons of alcoholic beverages may be sold, released and delivered in any 30-day period to any member of foreign armed forces personnel.

§ 12. Approval of warehouses for storage of alcoholic beverages not under customs or internal revenue bond; segregation of merchandise; release from storage; records; exception.

A. Certificate of approval.

Upon the application of a person qualified under the provisions of § 4-84.1 of the Code of Virginia, the board may issue a certificate of approval for the operation of a warehouse for the storage of lawfully acquired alcoholic beverages not under customs bond or internal revenue bond, if satisfied that the warehouse is physically secure.

B. Segregation.

The alcoholic beverages of each owner shall be kept separate and apart from merchandise of any other person.

C. Release from storage.

Alcoholic beverages shall be released for delivery to persons lawfully entitled to receive the same only upon permit issued by the board, and in accordance with the instructions therein set forth. The owner of the alcoholic beverages, or the owner or operator of the approved warehouse as agent of such owner, may apply for release permits, for which a charge may be made by the board.

D. Records.

Complete and accurate records shall be kept at the warehouse for a period of two years, which records shall be available at all times during business hours for inspection by a member of the board or its agents. Such records shall include the following information as to both receipts and withdrawals:

1. Name and address of owner or consignee.

2. Date of receipt or withdrawal, as the case may be.

3. Type and quantity of alcoholic beverage.

E. Exceptions.

Alcoholic beverages stored by licensees pursuant to VR 125-01-5 § 9, are excepted from the operation of this regulation.

§ 13. Special mixed beverage licenses; locations; special privileges; taxes on licenses.

A. Location.

Special mixed beverage licenses may be granted to persons by the board at places primarily engaged in the sale of meals where the place to be occupied is *located on lands ceded by the Commonwealth to the United States or* owned by the government of the United States, or any agency thereof, ~~is located on land~~ *provided such lands are* used as a port of entry or egress to and from the United States, and otherwise complies with the requirements of § 7.1-21.1 of the Code of Virginia, which licenses shall convey all of the privileges and be subject to all of the requirements and regulations pertaining to mixed beverage restaurant licensees, except as otherwise altered or modified herein.

B. Special privileges.

"Meals" need not be "full meals," but shall at least constitute "light lunches," and the gross receipts from the ~~sales thereof~~ *sale of food cooked or prepared on the premises for consumption thereon* shall be not less than 45% of the gross receipts from the sale of alcoholic beverages, mixed beverages, beverages as defined in § 4-99, and ~~meals~~ *food* .

*If the special mixed beverage licensed place is located in a food court composed of other places engaged in the sale of meals or light lunches, the gross receipts from the combined sales of food cooked or prepared on the premises for consumption within the food court at all places engaged in the sale of meals or light lunches shall be not less than 45% of the gross receipts from the combined sales of alcoholic beverages, mixed beverages, beverages as defined in § 4-99 and food. Alcoholic beverages, mixed beverages and beverages as defined in § 4-99 may be sold and consumed only in those areas and places within the food court as designated by the board.*

C. Taxes on licenses.

The annual tax on a special mixed beverage license shall be $500 and shall not be prorated; provided, however, that if application is made for a license of shorter duration, the tax thereon shall be $25 per day.

§ 14. Definitions and requirements for beverage licenses.

A. Definition.

Wherever the term beverages appears in these regulations it shall mean beverages as defined in § 4-99, of the Code of Virginia. § 4-99 defines beverages as beer, wine, similar fermented malt, and fruit juice, containing ~~1/2 of one percent~~ *0.5%* or more of alcohol by volume, and not more than ~~three and 2/10ths percent~~ *3.2%* of alcohol by weight.

B. Beverage licenses may be issued to carriers, and to applicants for retailers' licenses pursuant to § 4-102 of the Code of Virginia for either on-premises, off-premises, or on-and-off premises consumption, as the case may be, to persons meeting the qualifications of a licensee having like privileges with respect to the sale of beer. The license of a person meeting only the qualifications for an off-premises beer license shall contain a restriction prohibiting the consumption of beverages on premises.

§ 15. Wholesale alcoholic beverage and beverage sales; discounts, price-fixing; price increases; price discrimination; retailers.

A. Discounts, price-fixing.

No winery as defined in ~~§ 4-118.23~~ *§ 4-118.43* or brewery as defined in § 4-118.4 of the Code of Virginia shall require a person holding a wholesale license to discount the price at which the wholesaler shall sell any alcoholic beverage or beverage to persons holding licenses authorizing sale of such merchandise at retail. No winery, brewery, bottler or wine or beer importer shall in any other way fix or maintain the price at which a wholesaler shall sell any alcoholic beverage or beverage.

B. Notice of price increases.

No winery as defined in ~~§ 4-118.23~~ *§ 4-118.43* or brewery as defined in § 4-118.4 of the Code of Virginia shall increase the price charged any person holding a wholesale license for alcoholic beverages or beverages except by written notice to the wholesaler signed by an authorized officer or agent of the winery, brewery, bottler or importer which shall contain the amount and effective date of the increase. A copy of such notice shall also be sent to the board and shall be treated as confidential financial information, except in relation to enforcement proceedings for violation of this section.

No increase shall take effect prior to 30 calendar days following the date on which the notice is postmarked; provided that the board may authorize such price increases to take effect with less than the aforesaid 30 calendar days notice if a winery, brewery, bottler or importer so requests and demonstrates good cause therefor.

C. No price discrimination by breweries and wholesalers.

No winery as defined in ~~§ 4-118.23~~ *§ 4-118.43* or brewery as defined in § 4-118.4 of the Code of Virginia shall discriminate in price of alcoholic beverages between different wholesale purchasers and no wholesale wine or beer licensee shall discriminate in price of alcoholic beverages or beverages between different retail purchasers except where the difference in price charged by such winery, brewery or wholesale licensee is due to a bona fide difference in the cost of sale or delivery, or where a lower price was charged in good faith to meet an equally low price charged by a competing winery, brewery or wholesaler on a brand and package of like grade and quality. Where such difference in price charged to any such wholesaler or retail purchaser does occur, the board may ask and the winery, brewery or wholesaler shall furnish written substantiation for the price difference.

D. Inducements.

No person holding a license authorizing sale of alcoholic beverages or beverages at wholesale or retail shall knowingly induce or receive a discrimination in price prohibited by subsection C of this section.

§ 16. Alcoholic Beverage Control Board.

Whenever in these rules and regulations the word "Board," "board" or "Commission" shall appear, and the clear context of the meaning of the provision in which it is contained is intended to refer to the Alcoholic Beverage Control Board, it shall be taken to mean the board.

§ 17. Farm wineries; percentage of Virginia products; other agricultural products; remote outlets.

A. No more than 25% of the fruits, fruit juices or other agricultural products used by the farm winery licensee shall be grown or produced outside this state, except upon permission of the board as provided in § 4-25.1 B of the Code of Virginia. This 25% limitation applies to the total

production of the farm winery, not individual brands or labels.

B. The term "other agricultural products" used in subsection A of this section includes wine.

C. The additional retail establishment authorized by statute to be located at a reasonable distance from the winery is not required to be a permanent one. It may be moved as necessary as long as only one such remote outlet is operating at any given time. The location, equipment and facilities of each remote outlet shall be approved in advance by the board.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **State Plan for Medical Assistance Relating to Amount, Duration and Scope of Services. VR 460-03-3.1100; VR 460-05-2000.0000; VR 460-05-2000.1000. New Drug Review Program.**

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

Public Hearing Date: N/A - Written comment may be submitted until September 15, 1989
(See Calendar of Events section
for additional information)

Summary:

*These proposed regulations provide for the establishment and operation of the Medicaid New Drug Review Committee. The 1989 General Assembly required the Department to develop a plan to review new drugs which can result in their not being covered by Medicaid. Once the Committee determines a new drug is not to be covered, a physician wishing to prescribe the drug must request prior authorization before Medicaid reimbursement will be available.*

VR 460-03-3.1100; VR 460-05-2000.0000; VR 460-05-2000.1000. State Plan for Medical Assistance Relating to Amount, Duration and Scope of Services: New Drug Review Program.

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 ealth 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 admission will be denied.

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

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services

shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Reimbursement will not be provided for inpatient hospitalization 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 hospital invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in the retroactive eligibility period.

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.

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

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

a. Are furnished to outpatients;

b. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

c. Are furnished by an institution that:

(1) Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

(2) Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

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

3. 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.

No limitations on this service.

§ 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.

1. 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, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office

are covered for foster children of the local social services departments on specific referral from those departments.

3. Eyeglasses are provided only as a result of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) and require prior authorization by the Program.

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

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

§ 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.

E. Any procedure considered experimental is not covered.

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

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

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

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

I. Reimbursement will not be provided for physician services for those selected elective surgical procedures requiring a second surgical opinion unless a properly executed second surgical opinion form has been submitted with the invoice for payment, or is a justified emergency or exemption. The requirements for second surgical opinion do not apply to recipients in a retroactive eligibility period.

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. Optometric services.

1. Diagnostic examination and optometric treatment procedures and services (except for orthoptics) by ophthamologists, 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. 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 are covered.

§ 7. Home Health services.

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

B. 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.

C. Home health aide services provided by a home health agency.

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

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

1. All medical supplies, equipment, and appliances are available to patients of the home health agency.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, and respiratory equipment and oxygen, and ostomy supplies, as preauthorized by the local health department.

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

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

§ 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 CFR § 440.165, are furnished by or under the direction of a physician or dentist.

§ 10. Dental services.

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

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings;

therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. *The following services are also covered through preauthorization: medically necessary full banded orthodontics, tooth guidance appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges.* The following services are not covered: full banded orthodontics; permanent crowns and all bridges; removable complete and partial dentures; routine bases under restorations; and inhalation analgesia.

D. The state agency may place appropriate limits on a service based on ~~dental~~ *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)* and extractions, *orthodontics, tooth guidance appliances,* permanent crowns, and bridges, endodontics, patient education (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.

11a. Physical therapy.

Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11b. Occupational therapy.

Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see General section and subsections 11a and 11b of this section.)

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, skilled nursing home service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

§ 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.

1. Nonlegend drugs, except insulin, syringes, needles, diabetic test strips for clients under 21 years of age, and family planning supplies are not covered by Medicaid. This limitation does not apply to Medicaid recipients who are in skilled and intermediate care facilities.

2. Legend drugs, with the exception of anorexiant drugs prescribed for weight loss and transdermal drug delivery systems, are covered. Coverage of anorexiants for other than weight loss requires preauthorization.

3. The Program will not provide reimbursement for drugs determined by the Food and Drug Administration (FDA) to lack substantial evidence of effectiveness.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, prescriptions for Medicaid recipients for specific multiple source drugs shall be filled with generic drug products listed in the Virginia Voluntary Formulary 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.

12b. Dentures.

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

12c. Prosthetic devices.

Not provided.

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.

Not provided.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

1. Medicaid covers intensive inpatient rehabilitation services as defined in § 2.1 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 rehabilitation services as defined in § 2.1 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs), or when the outpatient program is administered by a rehabilitation hospital or an exempted rehabilitation unit of an acute care hospital certified and participating in Medicaid.

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.

§ 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).

Not provided.

§ 19. Extended services to pregnant women.

19a. 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.

19b. 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.

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

20a. Transportation.

Nonemergency transportation is administered by local health department jurisdictions in accordance with reimbursement procedures established by the Program.

20b. Services of Christian Science nurses.

Not provided.

20c. Care and services provided in Christian Science sanitoria.

Provided, no limitations.

20d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

20e. Emergency hospital services.

Provided, no limitations.

20f. 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.

*PART I.*
*GENERAL.*

*Article 1.*

*§ 1.1. Definitions.*

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

*"Board" means the Board of Medical Assistance Services.*

*"Department of DMAS" means the Department of Medical Assistance Services.*

*"Director" means the Director of Medical Assistance Services.*

*"Drug information service" means that professional information service which operates in accordance with the standards of the American Society of Hospital Pharmacists, and which, under specific contract with DMAS, provides unbiased, authoritative, objective, comprehensive, and evaluative packages of information on specific new drug products.*

*"Food and Drug Administration or FDA" means the United States Food and Drug Administration.*

*"Investigational New Drug Application or IND" means that application which is the sponsor's submission to the FDA indicating that clinical investigation will take place.*

*"Medicaid New Drug Review Committee or MNDRC" means that committee responsible for evaluating new drug products for the Department of Medical Assistance Services.*

*"New drug" Means FDA approved NDAs or ANDAs or selected treatment INDs for new chemical entities; new dosage forms of existing covered entities; and selected new strengths of existing products.*

*"New Drug Application or NDA and Abbreviated New Drug Application or ANDA" means application submitted to FDA.*

*"New strengths" means those strengths of an already approved and reimbursable drug product which are to be prescribed at a different dosing regimen than the strength already reimbursable by DMAS.*

*"Treatment Investigational New Drug or Treatment IND" means a drug still in the investigation process but made available for use by patients who are not in the clinical trails but have serious or life-threatening diseases for which satisfactory alternative drugs are not available.*

*1.2. Purpose of Medicaid New Drug Review Program.*

*The purpose of the Medicaid New Drug Review Program is to limit coverage of new drug products which have less expensive therapeutic alternatives unless, as mandated by the Generaly Assembly, a physician obtains prior approval for their use.*

*Article 2.*
*Committee Establishment.*

*§ 1.3. Establishment of committee to review new drugs.*

*The Director of DMAS shall establish a committee herein called the Medicaid New Drug Review Committee (MNDRC) for the purpose of reviewing new drug products to recommend coverage decisions to the Board.*

*Article 3.*
*Members and Duties.*

*§ 1.4. Committee Appointments.*

*A. The MNDRC shall have 12 voting members, 10 of whom are physicians and 2 of whom are pharmacists. The Director of DMAS shall appoint the physician members from candidates submitted by the Medical Society of Virginia, the Old Dominion Medical Society, and each of the medical schools in the Commonwealth. The physician candidates shall be physicians licensed in Virginia and broadly representative of various medical specialties. The Director shall appoint the pharmacist members from candidates submitted by the Department of Pharmacy at the Medical College of Virginia Hospitals, the Medical College of Virginia/Virginia Commonwealth University School of Pharmacy, the Virginia Pharmaceutical Association (VPhA), and the Virginia Society of Hospital Pharmacists (VSHP). The Director of DMAS shall invite submission of candidates from each of these groups.*

*B. The Director shall appoint a Technical Advisory*

Panel to advise the Board on any matters relating to the administration of the New Drug Review Program as may be appropriate from time to time. The panel shall consist of four members, one each from the following organizations: one member representing the Pharmaceutical Manufacturers Association, one member representing the Virginia Pharmaceutical Association, one member representing the Virginia Association of Chain Drug Stores, and one DMAS representative.

C. The MNDRC and Technical Advisory Panel members shall serve at the pleasure of the Director for terms established by him. Vacancies shall be filled in the same manner as the original appointment.

D. DMAS shall provide staff assistance to the MNDRC and its officers in the routine conduct of its business.

§ 1.5. Duties of the Committee.

A. The committee shall meet no less than quarterly and, in addition, upon call by the Board, the DMAS Director, or any two voting members. A quorum for action by the MNDEC shall be seven voting members.

B. The MNDRC shall elect from among its members a chairman, a vice-chairman, and a secretary. Officers may be elected to successive terms.

C. The secretary of the MNDRC shall keep a full record of the proceedings of the committee. The record shall be open to public inspection at all reasonable times.

D. The MNDRC shall establish such rules as are necessary to conduct its business.

E. The MNDRC shall evaluate a new drug based on, but not limited to, the following factors:

1. The medical/therapeutic benefit of the new drug product under consideration compared to currently available drug products.

2. The comparison of the cost of the new drug product to therapeutically equivalent drug products already reimbursable under Medicaid.

PART II.
NEW DRUG REVIEW PROCESS.

Article 1.
Applications for Consideration.

§ 2.1. Applications for Drug Review.

A. Any licensed physician or MNDRC member, or manufacturer or other supplier of a new drug, may petition the MNDRC through the application process to consider a new drug product. The form of application and information required shall be as specified by the Department. The MNDRC may require that all such information be verified by affidavit or oath.

B. DMAS, upon receipt of MNDRC applications, shall acknowledge the receipt and state whether the application and accompanying information are complete.

C. Applications for MNDRC's consideration shall be submitted to:

New Drug Review Committee
Attention: DMAS Pharmacist
Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, Virginia 23219

D. Persons submitting applications for review of new drugs shall supply the required number of copies of documents indicated on the application form.

E. New drug applications and supplementary documents received less than 30 days prior to the next committee meeting shall become agenda items for the subsequent meeting.

Article 2.
Review Process.

§ 2.2. Review Procedure.

A. The MNDRC shall consider information submitted by a contracting drug information service or any other appropriate source in reaching its decision.

B. The MNDRC shall request the Director or his designee to contract with a drug information service to perform a thorough review and analysis of a new drug for which DMAS has received an application. DMAS shall, upon receipt of the contractor's evaluation, transmit it along with the application for coverage and any other supporting attachments to the committee members.

C. The MNDRC shall review an application which is complete within six months of date of receipt.

D. The Board shall determine coverage of a new drug based on the recommendation rendered by the MNDRC.

E. DMAS shall notify applicants and providers within 60 days of the Board's decision regarding coverage of new drugs.

F. DMAS shall notify an applicant within 10 working days of the Board's decision on coverage. If the coverage is denied, the applicant will be advised of its right to apply for reconsideration after six months.

§ 2.3. Exception Process.

A. Medicaid reimbursement shall not be available for new drugs which have not been approved for coverage by the Board except through a prior approval process

*developed by DMAS.*

*B. Physicians who prescribe non-covered new drugs must obtain prior approval for the new drug before reimbursement can be allowed.*

*§ 2.4. Reconsideration of Denied Coverage.*

*A. Applicants may not request reconsideration of a coverage denial prior to six months from the date of the denial.*

*B. Reconsideration of a denial decision shall only be based upon new or previously unavailable relevant and objective information not already considered by the committee.*

*C. Within six months of the date of receipt, the MNDRC shall review an application for re-consideration which is complete.*

## VIRGINIA STATE BOARD OF MEDICINE

Title of Regulation: **VR 465-02-01. Practice of Medicine, Osteopathy Medicine, Chiropractic, Podiatry, Clinical Psychology, and Acupuncture.**

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia

Public Hearing Date: N/A
(See Calendar of Events section for additional information)

VR 465-02-01. Practice of Medicine, Osteopathic Medicine, Chiropractic, Podiatry, Clinical Psychology, and Acupuncture.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

A. The following words and terms, when used in these regulations, shall have the meaning ascribed to them in 54.1-2900 of the Code of Virginia:

Acupuncture

Board

Clinical psychologist

Practice of clinical psychology

Practice of medicine or osteopathy

Practice of chiropractic

Practice of podiatry

The healing arts.

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

*"American institution"* means any accredited licensed medical school, college of osteopathic medicine, school of podiatry, chiropractic college, or institution of higher education offering a doctoral program in clinical psychology, located in the United States, its territories, or Canada.

*"Approved foreign institution"* means any foreign institution that is approved by the board under the provisions of VR 465-02-2, Regulations for Granting Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts.

*"Foreign institution"* means any medical school, college of osteopathic medicine, school of podiatry, chiropractic college, or institution of higher education offering a doctoral program in clinical psychology, located elsewhere than in the United States, its territories, or Canada.

*"Home country"* means the country in which a foreign institution's principal teaching and clinical facilities are located.

*"Principal site"* means the location in the home country where a foreign institution's principal teaching and clinical facilities are located.

§ 1.2. A separate Virginia State Board of Medicine regulation, VR 465-02-2, Requirements for Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts, is incorporated by reference in these regulations. Prospective applicants for licensure in Virginia who studied at a foreign institution should refer to that regulation in addition to the regulations contained here.

§ 1.3. A separate board regulation, VR 465-01-1, entitled Public Participation Guidelines, which provides for involvement of the public in the development of all regulations of the Virginia State Board of Medicine, is incorporated by reference in these regulations.

§ 1.4. Advertising ethics.

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

*Advertising free services, examinations, or treatment and charging for any type of service, examination, or treatment which is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bonafide emergency.*

§ 1.5. Vitamins, minerals and food supplements.

A. The use or recommendations of vitamins, minerals or food supplements and the rationale for that use or recommendation shall be documented by the practitioner. The rationale for said use must be therapeutically proven and not experimental.

B. Vitamins, minerals, or food supplements, or a combination of the three, shall not be sold, dispensed, recommended, prescribed, or suggested in toxic doses.

C. The practitioner shall conform to the standards of his particular branch of the healing arts in the therapeutic application of vitamins, minerals or food supplement therapy.

PART II.
LICENSURE: GENERAL REQUIREMENTS AND LICENSURE BY EXAMINATION.

§ 2.1. Licensure, general.

A. No person shall practice medicine, osteopathy, chiropractic, podiatry, acupuncture, or clinical psychology in the Commonwealth of Virginia without a license from this board, except as provided in § 4.3, Exemption for temporary consultant, of these regulations.

B. For all applicants for licensure by this board except those in clinical psychology, licensure shall be by examination by this board or by endorsement, whichever is appropriate.

C. Applicants for licensure in clinical psychology shall take the examination of the Virginia State Board of Psychology, which will recommend those qualifying to the Board of Medicine for licensure.

§ 2.2. Licensure by examination.

A. Prerequisites to examination.

1. Every applicant for examination by the Board of Medicine for initial licensure shall:

a. Meet the educational requirements specified in subdivision 2 or 3 of this subsection;

b. File the complete application and credentials required in subdivision 4 of this subsection with the executive director of the board not less than 75 days prior to the date of examination; and

c. Pay the appropriate fee, specified in § 7.1, of these regulations, at the time of filing the application.

2. Education requirements: Graduates of American institutions.

Such an applicant shall be a graduate of an American institution that meets the criteria of subdivision a, b, c, or d of § 2.2 A.2, whichever is appropriate to the profession in which he seeks to be licensed:

a. For licensure in medicine. The institution shall be a medical school that is approved or accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association, or by the Committee for the Accreditation of Canadian Medical Schools or its appropriate subsidiary agencies or any other organization approved by the board.

b. For licensure in osteopathy. The institution shall be a college of osteopathic medicine that is approved or accredited by the Committee on Colleges and Bureau of Professional Education of the American Osteopathic Association or any other organization approved by the board.

c. For licensure in podiatry. The institution shall be a school of podiatry approved and recommended by the Council on Podiatry Education of the American Podiatry Medical Association or any other organization approved by the board.

d. For licensure in chiropractic.

(1) If the applicant matriculated in a chiropractic college on or after July 1, 1975, he shall be a graduate of a chiropractic college approved by the Commission on Accreditation of the Council of Chiropractic Education or any other organization approved by the board.

(2) If the applicant matriculated in a chiropractic college prior to July 1, 1975, he shall be a graduate of a chiropractic college approved by the American Chiropractic Association or the International Chiropractic Association or any other organization approved by the board.

3. Educational requirements: Graduates and former students of foreign institutions.

a. No person who studied at or graduated from a foreign institution shall be eligible for board examination unless that institution has been granted approval by the board according to the provisions of VR 465-02-2, Regulations for Granting Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts.

b. A graduate of an approved foreign institution applying for board examination for licensure shall also present documentary evidence that he:

(1) Was enrolled and physically in attendance at the institution's principal site for a minimum of two consecutive years and fulfilled at least half of the degree requirements while enrolled two consecutive academic years at the institution's principal site.

(2) Received a degree from the institution; and

(3) Has fulfilled the applicable requirements of §§ 54.1-2930 and 54.1-2935 of the Code of Virginia.

c. A graduate of an approved foreign institution applying for examination for licensure in medicine or osteopathy shall also possess a standard Educational Council of Foreign Medical Graduates certificate (ECFMG), or its equivalent. Proof of licensure by the board of another state or territory of the United States or a Province of Canada may be accepted in lieu of ECFMG certification.

d. An applicant for examination for licensure in medicine who completed all degree requirements except social services and postgraduate internship at an approved foreign institution shall be admitted to examination provided that he:

(1) Was enrolled at the institution's principal site for a minimum of two consecutive years and fulfilled at least half of the degree requirements while enrolled at the institution's principal site;

(2) Has qualified for and completed an appropriate supervised clinical training program as established by the American Medical Association;

(3) Has completed the postgraduate hospital training required of all applicants for licensure as defined in §§ 54.1-2930 and 54.1-2935 of the Code of Virginia; and

(4) Presents a document issued by the approved foreign institution certifying that he has met all the formal requirements of the institution for a degree except social services and postgraduate internship.

These regulations are promulgated pursuant to § 54.1-2958 of the Code of Virginia and shall not be deemed to apply to graduates of foreign medical schools who matriculated before July 1, 1985. By resolution adopted at a public meeting on November 20, 1982, the board voted to promulgate the following regulations to be effective July 1, 1985, thereby placing potential foreign medical students on notice that such regulations would become effective on said date. Foreign medical students matriculating on and after July 1, 1985, should take care to determine whether their school satisfies these regulations before applying for licensure in Virginia. Inquiries may be directed to the board office at 1601 Rolling Hills Drive, Richmond, Virginia 23229-5005, (804) 662-9908.

4. Credentials to be filed prior to examination.

Applicants shall file with the executive director of the board, along with their applications for board examination (and at least 75 days prior to the date of examination) the credentials specified in subdivisions a, b, or c of § 2.2 A.4, whichever are appropriate:

a. Every applicant who is a graduate of an American institution shall file:

(1) Documentary evidence that he received a degree from the institution; and

(2) A complete chronological record of all professional activities since graduation, giving location, dates, and types of services performed.

b. Every applicant who attended a foreign institution shall file:

(1) The documentary evidence of education required by subdivisions 3.b, c, or d of this subsection, whichever is or are appropriate;

(2) For all such documents not in the English language, a translation made and endorsed by the consul of the home country of the applicant or by a professional translating service; and

(3) A complete chronological record of all professional activities since the applicant attended the foreign institution, giving location, dates, and types of services performed.

c. Every applicant discharged from the United States military service within the last 10 years shall in addition file with his application a notarized photostatic copy of his discharge papers.

B. Applicants for licensure by board examination shall take the appropriate examination prescribed by the board as provided in § 3.1 Examinations, of these regulations.

§ 2.3. Supervision of unlicensed persons practicing as psychologists in exempt settings.

A. Supervision.

Pursuant to subdivision 4 of § 54.1-3601 of the Code of Virginia, supervision by a licensed psychologists, shall mean that the supervisor shall:

1. Provide supervision of unlicensed personnel who are providing psychological services as defined in § 54.1-3600 and who are functioning in practice and title as a professional psychologist, including the review of

assessment protocols, intervention plans and psychological reports, with review denoted by countersignature on all client records and reports as specified in the required protocols within 30 days of origination;

2. Determine and carry out instructional and evaluative consultation with supervisees appropriate to their levels of training and skill, and adjust their service delivery according to current standards of professional practice; and

3. Supervise only those psychological services that fall within the supervisor's area of competence as demonstrated by his own professional practice and experience.

B. Reporting.

A clinical psychologist who is providing supervision, as provided for in subdivision 4 of § 54.1-3601, shall:

1. Submit to the board, within 120 days of the effective date of this regulation, a copy of the supervisory protocol established for each unlicensed supervisee and signed by the supervisor, supervisee, and authorized representative of the institution or agency.

2. Notify the board of any changes in supervisory relationships, including terminations or additions, prior to or within 10 days of such change, with copies of supervisory protocol for all new supervisory relationships to follow within 30 days of such notice.

PART III.
EXAMINATIONS.

§ 3.1. Examinations, general.

The following general provisions shall apply for applicants taking Board of Medicine examinations:

A. Applicants may take Parts I and II of the Federation Licensing Examination (FLEX) separately or as a unit. However, in no case shall an applicant who has not passed Part I be eligible to sit for Part II as a separate examination.

B. A minimum score of 75 is required for passing each part of the examination for licensure administered or recognized by the board.

§ 3.2. Reexamination.

An applicant for licensure by examination who fails three consecutive attempts to pass the examination(s) administered by the board shall be eligible to sit for another series of three consecutive attempts upon presenting proof to the Credentials Committee of the board that he has fulfilled the requirements of subsection A, B, or C of this section, whichever is appropriate.

A. An applicant for licensure in medicine or osteopathy who fails three consecutive attempts to pass Part I and Part II of the FLEX examination in Virginia or any other state or territory of the United States, the District of Columbia, or Province of Canada, shall engage in one year of additional postgraduate training to be obtained in a hospital in the United States or Canada approved by the American Medical Association or the American Osteopathic Association.

B. An applicant for licensure in podiatry who fails three consecutive attempts to pass the Virginia examination administered by the board shall appear before the Credentials Committee of the board and shall engage in such additional postgraduate training as may be deemed appropriate by the Credentials Committee.

C. An unsuccessful candidate for chiropractic licensure after each series of three unsuccessful attempts for licensure by examination, shall engage in one year of additional professional training approved by the board before he will be eligible to retake another series of examinations.

§ 3.3. Administration of examination.

A. The board may employ monitors for the examination.

B. For examinations given by the board other than those for which answer sheets are furnished, plain paper shall be used, preferably white, and no reference shall be made indicating either school or date of graduation. One side of paper only may be written upon and as soon as each sheet is finished, it shall be reversed to prevent its being read by others.

C. Questions will be given out and papers collected punctually at the appointed time and all papers shall be handed in at once when expiration time is announced by the chief proctor.

D. Sections of the examination shall be in such sequence as may be determined by the Federation Licensure Examination (FLEX) Committee or appropriate testing agency.

E. The order of examination shall be posted or announced at the discretion of the board. If the board has no objections, the examiners may exchange hours or days of monitoring the examination.

F. For the guidance of examiners and examinees, the following rules shall govern the examination.

1. Only members of the board, office staff, proctors, and applicants shall be permitted in the examination room, except by consent of the chief proctor.

2. Applicants shall be seated as far apart as possible

at desks or desk chairs and each shall have in plain view an admission card bearing his number and photograph.

3. No examinee shall have any compendium, notes or textbooks in the examination room.

4. Any conversation between applicants will be considered prima facie evidence of an attempt to give or receive assistance.

5. Applicants are not permitted to leave the room except by permission of and when accompanied by an examiner or monitor.

6. The use of unfair methods will be grounds to disqualify an applicant from further examination at that meeting.

7. No examiner shall tell an applicant his grade until the executive director has notified the applicant that he has passed or failed.

8. No examination will be given in absentia or at any time other than the regularly scheduled examination.

9. The chief proctor shall follow the rules and regulations recommended by the FLEX Test Committee or other testing agencies.

§ 3.4. Scoring of examination.

Scores forwarded to the executive director shall be provided to the candidate within 30 days or receipt of the scores provided by the testing service.

PART IV.
LICENSURE BY ENDORSEMENT.

§ 4.1. Licensure by endorsement.

A. An applicant for licensure by endorsement will be considered on his merits and in no case shall be licensed unless the Credentials Committee is satisfied that he has passed an examination equivalent to the Virginia Board of Medicine examination at the time he was examined and meets all other requirements of the Virginia Board of Medicine.

B. A Doctor of Medicine who meets the requirements of the Virginia Board of Medicine and has passed the examination of the National Board of Medical Examiners, FLEX, or the examination of the Licensing Medical Council of Canada may be accepted for licensure by endorsement without further examination.

C. A Doctor of Osteopathy who meets the requirements of the Virginia Board of Medicine and has passed the examination of the National Board of Osteopathic Examiners may be accepted for licensure by endorsement without further examination.

D. A Doctor of Podiatry who meets the requirements of the Virginia Board of Medicine and has passed the National Board of Podiatry Examiners examination and has passed a clinical competence examination equivalent to the Virginia Board of Medicine examination may be accepted for licensure by endorsement without further examination.

E. A Doctor of Chiropractic who meets the requirements of the Virginia Board of Medicine, who has passed the National Board of Chiropractic Examiners examination, and has passed an examination equivalent to the Virginia Board of Medicine Part III examination, may be accepted for licensure without further examination.

§ 4.2. Licensure to practice acupuncture.

Acupuncture is an experimental therapeutic procedure, used primarily for the relief of pain, which involves the insertion of needles at various points in the human body. There are many acupuncture points, and these points are located on most portions of the human body. Insufficient information is available regarding the general usefulness of acupuncture and the risks attendant. Among the risks that attend upon it are the possibilities of prolonged and inappropriate therapy. It is clear that the administration of acupuncture is accompanied by the possibility of serious side effects and injuries, and there are reported cases of such injuries. Possible complications and injuries include peritonitis, damage from broken needles, infections, serum hepatitis, acquired immunity deficiency syndrome, pneumothorax, cerebral vascular accident (stroke), damage to the eye or the external or middle ear, and the inducement of cardiac arrhythmia.

In the judgment of the board, acupuncture shall be performed only by those practitioners of the healing arts who are trained and experienced in medicine, as only such a practitioner has (i) skill and equipment to determine the underlying cause of the pain; (ii) the capability of administering acupuncture in the context of a complete patient medical program in which other methods of therapeutics and relief of pain, including the use of drugs and other medicines, are considered and coordinated with the acupuncture treatment; and (iii) skill and training which will minimize the risks attendant with its use.

Based on the foregoing considerations, the board will license as acupuncturists only doctors of medicine, osteopathy, and podiatry, as only these practitioners have demonstrated a competence in medicine by passing the medicine/osteopathy licensure examination or podiatry licensure examination.

A. No person shall practice acupuncture in the Commonwealth of Virginia without being licensed by the board to do so.

B. The board shall license as acupuncturists only licensed doctors of medicine, osteopathy, and podiatry. Such licensure shall be subject to the following conditions:

The applicant shall first have obtained:

1. At least 100 hours of instruction in general and basic aspects, specific uses and techniques of acupuncture and indications and contraindications for acupuncture administration; and

2. At least 100 hours of supervised clinical experience approved by the Board of Medicine and under the supervision of a currently licensed physician in acupuncture.

C. A podiatrist may use acupuncture only for treatment of pain syndromes originating in the human foot.

D. The licensee shall maintain records of the diagnosis, treatment and patient response to acupuncture and shall submit records to the board upon request.

§ 4.3. Exemption for temporary consultant.

A. A practitioner may be exempted from licensure in Virginia if:

1. He is authorized by another state or foreign country to practice the healing arts;

2. Authorization for such exemption is granted by the executive director of the board; and

3. The practitioner is called in for consultation by a licensee of the Virginia State Board of Medicine.

B. Such practitioner shall not open an office or designate a place to meet patients or receive calls from his patient within this Commonwealth, nor shall he be exempted from licensure for more than two weeks unless such continued exemption is expressly approved by the board upon a showing of good cause.

PART V.
RENEWAL OF LICENSE; REINSTATEMENT.

§ 5.1. Renewal of license.

Every licensee who intends to continue his practice shall renew his license biennially during his birth month and pay to the board the renewal fee prescribed in § 7.1, Fees ..., of these regulations.

A. A practitioner who has not renewed his license by the first day of the month following the month in which renewal is required shall be dropped from the registration roll.

B. An additional fee to cover administrative costs for processing a late application shall be imposed by the board. The additional fee for late renewal of licensure shall be $25 for each renewal cycle.

§ 5.2. Reinstatement of lapsed license.

A practitioner who has not renewed his certificate in accordance with § 54.1-2904 of the Code of Virginia for two successive years or more and who requests reinstatement of licensure shall:

A. Submit to the board a chronological account of his professional activities since the last renewal of his license; and

B. Pay the reinstatement fee prescribed in § 7.1 of these regulations.

PART VI.
ADVISORY COMMITTEES AND PROFESSIONAL BOARDS.

§ 6.1. Advisory committees to the board.

A. Advisory Committee on Acupuncture.

The board may appoint an Advisory Committee on Acupuncture from licensed practitioners in this Commonwealth to advise and assist the board on all matters relating to acupuncture. The committee shall consist of three members from the state-at-large and two members from the board. Nothing herein is to be construed to make any recommendation by the Advisory Committee on Acupuncture binding upon the board. The term of office of each member of the committee shall be for one year or until his successor is appointed.

B. Psychiatric Advisory Committee.

1. The board may appoint a Psychiatric Advisory Committee from licensed practitioners in this Commonwealth to examine persons licensed under these regulations and advise the board concerning the mental or emotional condition of such person when his mental or emotional condition is an issue before the board. Nothing herein is to be construed to make any recommendations by the Psychiatric Advisory Committee binding upon the Board of Medicine.

2. The term of office for each member of the Psychiatric Advisory Committee shall be one year or until his successor is appointed.

PART VII.
FEES REQUIRED BY THE BOARD.

§ 7.1. Fees required by the board are:

A. Examination fee for medicine or osteopathy: The fee for the Federation Licensing Examination (FLEX) for Component I shall be $275 and Component II shall be $275.

B. Examination fee for podiatry: The fee for the Virginia Podiatry Examination shall be $250.

C. Examination fee for chiropractic: The fee for the

Virginia Chiropractic Examination shall be $250.

D. The fees for taking the FLEX, podiatry, and chiropractic examination are nonrefundable. An applicant may, upon request 21 days prior to the scheduled exam, and payment of a $100 fee, reschedule for the next time such examination is given.

E. The fee for rescoring the Virginia Chiropractic Examination or the Virginia Podiatry Examination shall be $75.

F. Certification of licensure: The fee for certification of licensure/grades to another state or the District of Columbia by the board shall be $25. The fee shall be due and payable upon submitting the form to the board.

G. The fee for a limited license issued pursuant to § 54.1-2936 of the Code of Virginia shall be $125. The annual renewal is $25.

H. The fee for a duplicate certificate shall be $25.

I. Biennial renewal of license: The fee for renewal shall be $125, due in the licensee's birth month. An additional fee to cover administrative costs for processing a late application may be imposed by the board. The additional fee for late renewal of licensure shall be $25 for each renewal cycle.

J. The fee for requesting reinstatement of licensure pursuant to § 54.1-2921 of the Code of Virginia shall be $750.

K. The fee for a temporary permit to practice medicine pursuant to § 54.1-2927 B of the Code of Virginia shall be $25.

L. The fee for licensure by endorsement for medicine, osteopathy, chiropractic, and podiatry shall be $300. *A fee of $150 shall be retained by the board for a processing fee upon written request from the applicant to withdraw his application for licensure.*

M. The fee for licensure to practice acupuncture shall be $100. The biennial renewal fee shall be $80, due and payable by June 30 of each even-numbered year.

N. Lapsed license: The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904, which has expired for a period of two years or more, shall be $250 and shall be submitted with an application for licensure reinstatement.

O. The fee for a limited license issued pursuant to § 54.1-2937 shall be $10 a year. An additional fee for late renewal of licensure shall be $10.

P. The fee for a letter of good standing/verification to another state for a license shall be $10.

*Q. The fee for taking the Special Purpose Examination (SPEX) shall be $350. The fee shall be nonrefundable.*

*R. Any applicant having passed one component of the FLEX examination in another state shall pay $325 to take the other component in the Commonwealth of Virginia.*

## STATE WATER CONTROL BOARD

Title of Regulations: **VR 680-13-04. Eastern Virginia Groundwater Management Area.**

Statutory Authority: § 62.1-44.96 of the Code of Virginia.

Public Hearing Date: August 29, 1989 - 7 p.m.
See Calendar of Events section
for additional information)

Summary:

*The Groundwater Act of 1973 authorizes the board to declare groundwater management areas and apply corrective controls to conserve, protect and beneficially utilize the goundwater resources of the Commonwealth and to ensure the preservation of the public welfare, safety and health.*

*The purpose of the proposal is to expand the existing Groundwater Management Area in Southeastern Virginia to include the counties of Charles City, James City, King William, New Kent, and York; and areas of Chesterfield, Hanover, and Henrico counties east of Interstate 95; the the cities of Hampton, Newport News, Poquoson, and Williamsburg. Two recently released United States Geological Survey reports that were prepared in cooperation with the board document the need to declare the area under consideration a groundwater management area.*

*The State Water Control Board proposes to repeal existing regulations and administer this program. The board will issue certificates of groundwater right upon receipt of registration statements and will evaluate applications for groundwater withdrawal permits (permits) and either issue permits, issue permits with conditions, or deny permits.*

**VR 680-13-04. Eastern Virginia Groundwater Management Area.**

*§ 1. Definitions.*

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

*"Act" means the Groundwater Act of 1973 §62.1-44.83 et seq of the Code of Virginia).*

*"Area" means the Eastern Virginia Groundwater*

*Management Area.*

*"Board" means the State Water Control Board.*

*"Groundwater management area" means a geographically defined groundwater area in which the board has deemed the levels, supply or quality of groundwater to be adverse to public welfare, health and safety.*

*"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this Commonwealth, whatever may be the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.*

*§ 2. Declaration of groundwater management area.*

*A. The board hereby orders the declaration of the eastern part of Virginia as a groundwater mamagement area. This area shall be known as the Eastern Virginia Groundwater Managment Area.*

*B. The Area encompasses the counties of Charles City, Isle of Wight, James City, King William, New Kent, Prince George, Southampton, Surry, Sussex, and York; the areas of Chesterfield, Hanover, and Henrico counties east of Interstate 95; and the cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.*

*C. All aquifers located between the land surface and basement rock within the geographic area defined will be included in the area and will be subject to the corrective controls set forth in Act.*

* * * * * * * *

Title of Regulations:
**VR 680-21-01. Surface Water Standards with General, Statewide Application.**
**VR 680-21-01.2. General Standard.**
**VR 680-21-01.4. ~~Standards Application:~~ Stream Flow** */Effluent Limitations Based on Stream Flow.*
**VR 680-21-03. Water Quality Criteria for Surface Water.**
**VR 680-21-10.** *Policy for* **Mercury in Fresh Water.**

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

Public Hearing Dates:
August 22, 1989 - 10 a.m.
August 22, 1989 - 7 p.m.
August 23, 1989 - 2 p.m.
August 29, 1989 - 2 p.m.
August 31, 1989 - 7 p.m.
(See Calendar of Events section for additional information.)

Background:

*Water quality standards and criteria consist of narrative statements that describe water quality requirements in general terms and numerical limits for specific physical, chemical and biological characteristics of water. These statements and limits describe water quality necessary for reasonable, beneficial uses such as swimming, propagation and growth of aquatic life, and domestic water supply.*

*These amendments are proposed in order to comply with § 303(c)(2)(B) of the Clean Water Act which states that water quality standards must be adopted for § 307(a) toxic pollutants.*

Summary:

*The proposed amendments would add a new regulation, VR 680-21-01.14 (Standards for Surface Water), to the water quality standards. This new regulation would include numerical limitations for 41 pollutants, an application of saltwater and freshwater standards, a schedule of implementation for these standards, and methods for deriving alternate permit limitations based on these numerical standards due to site-specific factors, technology/economic limitations or in cases where natural background levels exceed standards. Other amendments proposed are necessary for clarification of the new regulations. These other amendments include revisions of regulations VR 680-21-01.2 (General Standard), VR 680-21-01.4 (Stream Application: Stream Flow), VR 680-21-01.10 (Mercury in Fresh Water), and repeal of regulation VR 680-21-03 (Water Quality Criteria for Surface Water).*

**VR 680-21-01. Surface Water Standards with General, Statewide Application.**

**VR 680-21-01.2. General Standard.**

A. All state waters shall be maintained at such quality as will permit all reasonable, beneficial uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them. Reasonable beneficial uses include, but are not limited to, ~~recreational uses, e.g. swimming and boating; and production of edible and marketable natural resources e.g., fish and shellfish~~ *the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, cultural and aesthetic values, domestic (including public water supply), agricultural, electric power generation, commercial and industrial uses .*

B. All state waters shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with reasonable, beneficial uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life. Specific substances to be controlled include,

but are not limited to: floating debris, oil, scum, and other floating materials; toxic substances *(including those which are bioaccumulated in aquatic tissue and the bioaccumulation is harmful either to aquatic life or human health, or both)* ; substances that produce color, tastes, turbidity, odors, or settle to form sludge deposits ~~;~~ *;* and substances which nourish undesirable or nuisance aquatic plant life. Effluents which tend to raise the temperature of the receiving water will also be controlled.

**VR 680-21-01.4. Stream Flow/Effluent Limitations Based on Stream Flow.**

~~Stream Standards shall apply whenever flows are equal to, or greater than, the lowest flow which, statistical basis would occur for a 7-consecutive day period once every 10 years.~~

*A. Water quality standards, other than those identified in paragraph "B" below, shall not be considered to be contravened by permitted dischargers if the effluent limitations included in the permit are being met and are based on the lowest flow which, on a statistical basis, would occur for a seven-consecutive day period once every 10 years.*

*B. Water quality standards for ammonia, chlorine, and dissolved oxygen shall not be considered to be contravened by permitted dischargers if the effluent limitations included in the permit are being met and are based on the lowest flow for a high flow season or a low flow season, as defined below, which would occur for a seven-consecutive day period once every 10 years.*

*1. High flow season. A single period consisting of two or more contiguous months each of which have a monthly mean flow greater than the period of record mean flow. At sites where the hydrologic record displays two or more separate periods according to the above, the low flow season values shall apply.*

*2. Low flow season. A single period consisting of two or more contiguous months each of which have a monthly mean flow less than or equal to the period of record mean flow.*

*C.* Manmade alterations in stream flow shall not contravene reasonable, beneficial uses ~~including protection of the propagation and growth of aquatic life~~ *as defined in section VR 680-21-01.2* .

**VR 680-21-01.10. Policy for Mercury in Fresh Water.**

~~A. Standard~~

~~0.05 ug/l(ppb) total recoverable mercury in fresh water. 0.01 ug/l (ppb) methyl mercury in fresh water.~~

~~B. Policy~~

~~1.~~ *A.* The board, pursuant to § 62.144.15(3)(a) of the Code of Virginia ~~(1950), as amended,~~ hereby sets forth its policy that, with respect to any state waters in which the water quality standard for total recoverable mercury ~~and/or methyl mercury~~ is exceeded, the board shall identify the point and nonpoint sources of mercury contamination and institute appropriate abatement action against such sources to reduce the level of mercury in such state waters to a concentration less than or equal to the Water Quality Standard. Such abatement action shall include the submittal, by the owner of the source, of a plan and schedule for the reduction of such mercury contamination and an evaluation of the potential for environmental cleanup with a plan and schedule for said cleanup as appropriate.

~~2.~~ *B.* The board, pursuant to § 62.144.15(3)(a) of the Code of Virginia ~~(1950), as amended,~~ hereby sets forth its policy that the level of methyl mercury in edible fish tissue in fresh water, as an arithmetic mean of a representative sampling of the fish population tested by or at the direction of the board, shall not exceed a concentration of 750 ng/g (ppb). A representative sampling shall consist of individuals of at least two species representing two trophic levels, including a predator species, chosen at the direction of the board. The edible tissue of the individual fish shall be analyzed and, wherever practicable, when more than one location is sampled, the same species shall be collected at all locations.

With respect to any state waters in which the foregoing concentration is exceeded, the board shall identify the point and nonpoint sources of mercury contamination and institute abatement action against such sources, as appropriate, to reduce the level of methyl mercury in edible fish tissue in such state waters, as an arithmetic mean of a representative sampling of the fish population tested by or at the direction of the board, to a concentration not exceeding 750 ng/g (ppb). Such abatement action shall include the submittal, by the owner of the source, of a plan and schedule for the reduction of such mercury contamination and an evaluation of the potential for environmental cleanup with a plan and schedule for said cleanup, as appropriate.

~~3.~~ *C.* Further, the board, pursuant to § 62.144.15(3)(a) of the Code of Virginia (1950), as amended, hereby sets forth its policy that a concentration of total mercury in the freshwater river sediments in excess of 300 nanograms per gram (parts per billion-ppb) shall be an index of potential mercury contamination. Wherever this level is exceeded, the staff shall determine mercury levels in edible fish tissue and the water column and take appropriate action pursuant to §§ 1 and 2 of this policy.

~~4.~~ *D.* Compliance with any order issued by the board to any such owner for cause involving mercury shall constitute "appropriate abatement action" under the terms of this policy for the duration of such order.

~~5.~~ *E.* Notwithstanding the above, pursuant to § 62.144.4

of the Code of Virginia, in waters in which the mercury concentrations are below this standard or any level enumerated in this policy, the board may initiate action under this policy to ensure that state waters are maintained at, or returned to, the quality existing at the time of adoption of this standard.

VR680-21-01.14 Standards for Surface Water

A. Table of Parameters

| Substance | Daily Average Instream Concentrations (ug/L) | |
|---|---|---|
| | Freshwater | Saltwater |
| Aldrin | 0.3 | .013 |
| Aluminum (total recoverable) | 87 | --- |
| Ammonia | See Tables 1 and 2 | |
| Arsenic III (total recoverable) | 190 | 36 |

| Substance | Daily Average Instream Concentrations (ug/L) | |
|---|---|---|
| | Freshwater | Saltwater |
| Cadmium (total recoverable) | $e^{(0.7852[\ln(\text{hardness}*)]-3.490)}$ | 9.3 |
| Chlordane | 0.0043 | .0040 |
| Chloride | 230000 | --- |
| Chlorine | See Section VR680-21.01.11** | |
| Chlorpyrifos | 0.041 | 0.0056 |
| Chromium III (total recoverable) | $e^{(0.8190[\ln(\text{hardness}*)]+1.561)}$ | --- |
| Chromium VI (total recoverable) | 11 | 50 |
| Copper (total recoverable) | $e^{(0.8545[\ln(\text{hardness}*)]-1.465)}$ | 2.9 |
| Cyanide (total) | 5.2 | 1.0 |
| DDT and metabolites | .001 | .0010 |
| Demeton | .1 | .1 |
| Dieldrin | .0019 | .0019 |
| Dissolved Oxygen | See Section VR680-21.01.5** | |
| Endosulfan | 0.056 | .0087 |
| Endrin | 0.0023 | 0.0023 |
| Guthion | 0.01 | 0.01 |
| Heptachlor | 0.0038 | 0.0036 |
| Hexachlorocyclohexane (Lindane) | 0.080 | 0.01 |

| Substance | Daily Average Instream Concentrations(ug/L) | |
|---|---|---|
| | Freshwater | Saltwater |
| Hydrogen Sulfide | 2.0 | 2.0 |
| Iron | 1000 | --- |
| Kepone | zero | zero |
| Lead (total recoverable) | $e^{(1.273[\ln(\text{hardness}^*)]-4.705)}$ | 5.6 |
| Malathion | 0.1 | 0.1 |
| Manganese | --- | 100 |
| Mercury (total recoverable) | .012 | .025 |
| Methoxyclor | 0.03 | 0.03 |
| Mirex | zero | zero |
| Nickel (total recoverable) | $e^{(0.8460[\ln(\text{hardness}^*)]+1.1645)}$ | 8.3 |
| Parathion | 0.013 | --- |
| Pentachlorophenol | $e^{[1.005(\text{pH})-5.290]}$ | 7.9 |
| pH | See Section VR680-21-01.5** | |
| Phenol | 256 | --- |
| Phosphorus (Elemental) | --- | 0.10 |
| di-2-ethyl-hexyl phthalate | 358 | --- |
| Polychlorinated Biphenyls | 0.014 | 0.030 |
| Radioactivity | See Section VR680-21-01.12** | |
| Selenium (total recoverable) | 5.0 | 71 |
| Silver (total recoverable) | 0.12 | 0.92 |
| Temperature | See Section VR680-21-01.5** | |
| Toxaphene | 0.0002 | 0.0002 |
| Tributyltin | See Section VR680-21-01.13** | |
| Zinc (total recoverable) | $e^{(.8473[\ln(\text{hardness}^*)]+0.8604)}$ | 86 |

*Hardness = as calcium carbonate mg/L ($CaCO_3$)

**These parameters have been included in order to provide a complete listing of standards for water constituents. Amendments to Sections VR680-21-01.5, VR680-21-01.11, VR680-21-01.12 and VR680-21-01.13 are not proposed to be changed in this rulemaking.

TABLE 1 Freshwater Ammonia Standard

A. Salmonids or Other Sensitive Coldwater Species Present

Un-ionized Ammonia (mg/liter $NH_3$)

| pH | 0°C | 5°C | 10°C | 15°C | 20°C | 25°C | 30°C |
|---|---|---|---|---|---|---|---|
| 6.50 | 0.0007 | 0.0009 | 0.0013 | 0.0019 | 0.0019 | 0.0019 | 0.0019 |
| 6.75 | 0.0012 | 0.0017 | 0.0023 | 0.0033 | 0.0033 | 0.0033 | 0.0033 |
| 7.00 | 0.0021 | 0.0029 | 0.0042 | 0.0059 | 0.0059 | 0.0059 | 0.0059 |
| 7.25 | 0.0037 | 0.0052 | 0.0074 | 0.0105 | 0.0105 | 0.0105 | 0.0105 |
| 7.50 | 0.0066 | 0.0093 | 0.0132 | 0.0186 | 0.0186 | 0.0186 | 0.0186 |
| 7.75 | 0.0109 | 0.0153 | 0.022 | 0.031 | 0.031 | 0.031 | 0.031 |
| 8.00 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| 8.25 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| 8.50 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| 8.75 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| 9.00 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |

Total Ammonia (mg/liter $NH_3$)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6.50 | 2.5 | 2.4 | 2.2 | 2.2 | 1.49 | 1.04 | 0.73 |
| 6.75 | 2.5 | 2.4 | 2.2 | 2.2 | 1.49 | 1.04 | 0.73 |
| 7.00 | 2.5 | 2.4 | 2.2 | 2.2 | 1.49 | 1.04 | 0.74 |
| 7.25 | 2.5 | 2.4 | 2.2 | 2.2 | 1.50 | 1.04 | 0.74 |
| 7.50 | 2.5 | 2.4 | 2.2 | 2.2 | 1.50 | 1.05 | 0.74 |
| 7.75 | 2.3 | 2.2 | 2.1 | 2.0 | 1.40 | 0.99 | 0.71 |
| 8.00 | 1.53 | 1.44 | 1.37 | 1.33 | 0.93 | 0.66 | 0.47 |
| 8.25 | 0.87 | 0.82 | 0.78 | 0.76 | 0.54 | 0.39 | 0.28 |
| 8.50 | 0.49 | 0.47 | 0.45 | 0.44 | 0.32 | 0.23 | 0.17 |
| 8.75 | 0.28 | 0.27 | 0.26 | 0.27 | 0.19 | 0.15 | 0.11 |
| 9.00 | 0.16 | 0.16 | 0.16 | 0.16 | 0.13 | 0.10 | 0.08 |

B. Salmonids and Other Sensitive Coldwater Species Absent

Un-ionized Ammonia (mg/liter $NH_3$)

| pH | 0°C | 5°C | 10°C | 15°C | 20°C | 25°C | 30°C |
|---|---|---|---|---|---|---|---|
| 6.50 | 0.0007 | 0.0009 | 0.0013 | 0.0019 | 0.0026 | 0.0026 | 0.0026 |
| 6.75 | 0.0012 | 0.0017 | 0.0023 | 0.0033 | 0.0047 | 0.0047 | 0.0047 |
| 7.00 | 0.0021 | 0.0029 | 0.0042 | 0.0059 | 0.0083 | 0.0083 | 0.0083 |
| 7.25 | 0.0037 | 0.0052 | 0.0074 | 0.0105 | 0.0148 | 0.0148 | 0.0148 |
| 7.50 | 0.0066 | 0.0093 | 0.0132 | 0.0186 | 0.026 | 0.026 | 0.026 |
| 7.75 | 0.0109 | 0.0153 | 0.022 | 0.031 | 0.043 | 0.043 | 0.043 |
| 8.00 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.050 | 0.050 | 0.050 |
| 8.25 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.050 | 0.050 | 0.050 |
| 8.50 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.050 | 0.050 | 0.050 |
| 8.75 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.050 | 0.050 | 0.050 |
| 9.00 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.050 | 0.050 | 0.050 |

Total Ammonia (mg/liter $NH_3$)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 6.50 | 2.5 | 2.4 | 2.2 | 2.2 | 2.1 | 1.46 | 1.03 |
| 6.75 | 2.5 | 2.4 | 2.2 | 2.2 | 2.1 | 1.47 | 1.04 |
| 7.00 | 2.5 | 2.4 | 2.2 | 2.2 | 2.1 | 1.47 | 1.04 |
| 7.25 | 2.5 | 2.4 | 2.2 | 2.2 | 2.1 | 1.48 | 1.05 |
| 7.50 | 2.5 | 2.4 | 2.2 | 2.2 | 2.1 | 1.49 | 1.06 |
| 7.75 | 2.3 | 2.2 | 2.1 | 2.0 | 1.98 | 1.39 | 1.00 |
| 8.00 | 1.53 | 1.44 | 1.37 | 1.33 | 1.31 | 0.93 | 0.67 |
| 8.25 | 0.87 | 0.82 | 0.78 | 0.76 | 0.76 | 0.54 | 0.40 |
| 8.50 | 0.49 | 0.47 | 0.45 | 0.44 | 0.45 | 0.33 | 0.25 |
| 8.75 | 0.28 | 0.27 | 0.26 | 0.27 | 0.27 | 0.21 | 0.16 |
| 9.00 | 0.16 | 0.16 | 0.16 | 0.16 | 0.17 | 0.14 | 0.11 |

TABLE 2 Saltwater Ammonia Standard

| pH | 0°C | 5°C | 10°C | 15°C | 20°C | 25°C | 30°C | 35°C |
|---|---|---|---|---|---|---|---|---|
| **Salinity = 10 g/kg** | | | | | | | | |
| 7.0 | 41 | 29 | 20 | 14 | 9.4 | 6.6 | 4.4 | 3.1 |
| 7.2 | 26 | 18 | 12 | 8.7 | 5.9 | 4.1 | 2.8 | 2.0 |
| 7.4 | 17 | 12 | 7.8 | 5.3 | 3.7 | 2.6 | 1.8 | 1.2 |
| 7.6 | 10 | 7.2 | 5.0 | 3.4 | 2.4 | 1.7 | 1.2 | 0.84 |
| 7.8 | 6.6 | 4.7 | 3.1 | 2.2 | 1.5 | 1.1 | 0.75 | 0.53 |
| 8.0 | 4.1 | 2.9 | 2.0 | 1.40 | 0.97 | 0.69 | 0.47 | 0.34 |
| 8.2 | 2.7 | 1.8 | 1.3 | 0.87 | 0.62 | 0.44 | 0.31 | 0.23 |
| 8.4 | 1.7 | 1.2 | 0.81 | 0.56 | 0.41 | 0.29 | 0.21 | 0.16 |
| 8.6 | 1.1 | 0.75 | 0.53 | 0.37 | 0.27 | 0.20 | 0.15 | 0.11 |
| 8.8 | 0.69 | 0.50 | 0.34 | 0.25 | 0.18 | 0.14 | 0.11 | 0.08 |
| 9.0 | 0.44 | 0.31 | 0.23 | 0.17 | 0.13 | 0.10 | 0.08 | 0.07 |
| **Salinity = 20 g/kg** | | | | | | | | |
| 7.0 | 44 | 30 | 21 | 14 | 9.7 | 6.6 | 4.7 | 3.1 |
| 7.2 | 27 | 19 | 13 | 9.0 | 6.2 | 4.4 | 3.0 | 2.1 |
| 7.4 | 18 | 12 | 8.1 | 5.6 | 4.1 | 2.7 | 1.9 | 1.3 |
| 7.6 | 11 | 7.5 | 5.3 | 3.4 | 2.5 | 1.7 | 1.2 | 0.84 |
| 7.8 | 6.9 | 4.7 | 3.4 | 2.3 | 1.6 | 1.1 | 0.78 | 0.53 |
| 8.0 | 4.4 | 3.0 | 2.1 | 1.5 | 1.0 | 0.72 | 0.50 | 0.34 |
| 8.2 | 2.8 | 1.9 | 1.3 | 0.94 | 0.66 | 0.47 | 0.31 | 0.24 |
| 8.4 | 1.8 | 1.2 | 0.84 | 0.59 | 0.44 | 0.30 | 0.22 | 0.16 |
| 8.6 | 1.1 | 0.78 | 0.56 | 0.41 | 0.28 | 0.20 | 0.15 | 0.12 |
| 8.8 | 0.72 | 0.50 | 0.37 | 0.26 | 0.19 | 0.14 | 0.11 | 0.08 |
| 9.0 | 0.47 | 0.34 | 0.24 | 0.18 | 0.13 | 0.10 | 0.08 | 0.07 |

| pH | 0°C | 5°C | 10°C | 15°C | 20°C | 25°C | 30°C | 35°C |
|---|---|---|---|---|---|---|---|---|
| **Salinity = 30 g/kg** | | | | | | | | |
| 7.0 | 47 | 31 | 22 | 15 | 11 | 7.2 | 5.0 | 3.4 |
| 7.2 | 29 | 20 | 14 | 9.7 | 6.6 | 4.7 | 3.1 | 2.2 |
| 7.4 | 19 | 13 | 8.7 | 5.9 | 4.1 | 2.9 | 2.0 | 1.4 |
| 7.6 | 12 | 8.1 | 5.6 | 3.7 | 3.1 | 1.8 | 1.3 | 0.90 |
| 7.8 | 7.5 | 5.0 | 3.4 | 2.4 | 1.7 | 1.2 | 0.81 | 0.56 |
| 8.0 | 4.7 | 3.1 | 2.2 | 1.6 | 1.1 | 0.75 | 0.53 | 0.37 |
| 8.2 | 3.0 | 2.1 | 1.4 | 1.0 | 0.69 | 0.50 | 0.34 | 0.25 |
| 8.4 | 1.9 | 1.3 | 0.90 | 0.62 | 0.44 | 0.31 | 0.23 | 0.17 |
| 8.6 | 1.2 | 0.84 | 0.59 | 0.41 | 0.30 | 0.22 | 0.16 | 0.12 |
| 8.8 | 0.78 | 0.53 | 0.37 | 0.27 | 0.20 | 0.15 | 0.11 | 0.09 |
| 9.0 | 0.50 | 0.34 | 0.26 | 0.19 | 0.14 | 0.11 | 0.08 | 0.07 |

*B. Application of freshwater and saltwater numerical standards.*

*The numerical water quality standards listed in VR 680-21-01.14.A (excluding dissolved oxygen, pH, temperature and chlorine) shall be applied according to the following classes of waters (see section VR 680-21-01.5), and boundary designations:*

| CLASS OF WATERS | NUMERICAL STANDARD |
|---|---|
| I | Saltwater standards apply |
| II(Estuarine Waters) | |
| II(Transition Zone | More stringent of either the freshwater or saltwater standards apply |
| II(Tidal Freshwater) | Freshwater standards apply |
| III | |
| IV | |
| V | |
| VI | |

*The following describes the boundary designations for Class II, (estuarine, transition zone and tidal freshwater waters) by river basin:*

*1. Rappahannock Basin.*

*Tidal freshwater is from the fall line of the Rappahannock River to Buoy 37 near Tappahannock, Virginia, including all tidal tributaries that enter the tidal freshwater Rappahannock River.*

*Transition zone is from Buoy 37 to Buoy 11 near Morattico, Virginia, including all tidal tributaries that enter the transition zone of the Rappahannock River.*

*Estuarine waters are from Buoy 11 to the mouth of the Rappahannock River (Buoy 6), including all tidal tributaries that enter the estuarine waters of the Rappahannock River.*

*2. York Basin.*

*Tidal freshwater is from the fall line of the Mattaponi River to Clifton, Virginia and from the fall line of the Pamunkey River to Sweet Hall Landing, Virginia, including all tidal tributaries that enter the tidal freshwaters of the Mattaponi and Pamunkey Rivers.*

*Transition zone of the Mattaponi River is from Clifton, Virginia to the York River and the transition zone of the Pamunkey River is from Sweet Hall Landing, Virginia to the York River. The transition zone for the York River is from West Point, Virginia to Buoy 13 near Poropotank Bay. All tidal tributaries that enter the transition zones of the Mattaponi, Pamunkey, and York Rivers are themselves in the transition zone.*

*Estuarine waters are from Buoy 13 to the mouth of the York River (Tue Marsh Light) including all tidal tributaries that enter the estuarine waters of the York River.*

*3. James Basin.*

*Tidal freshwater is from the fall line of the James River to the confluence of the Chickahominy River (Buoy 70), including all tidal tributaries that enter the tidal freshwater James River.*

*Transition zone is from Buoy 70 to Buoy 47 near Jamestown Island including all tidal tributaries that enter the transition zone of the James River.*

*Estuarine waters are from Buoy 47 to the mouth of the James River (Buoy 25) including all tidal tributaries that enter the estuarine waters of the James River.*

*4. Potomac Basin.*

*Tidal freshwater includes all tidal tributaries that enter the Potomac River from its fall line to Buoy 43 near Quantico, Virginia.*

*Transition zone includes all tidal tributaries that enter the Potomac River from Buoy 43 to Buoy 33 near Dahlgren, Virginia.*

*Estuarine waters includes all tidal tributaries that enter the Potomac River from Buoy 33 to the mouth of the Potomac River (Buoy 44B).*

*5. Chesapeake Bay, Atlantic Ocean, and Small Coastal Basins.*

*Estuarine waters include the Atlantic Ocean tidal tributaries, and the Chesapeake Bay and its small coastal basins from the Virginia State line to the mouth of the Bay (a line from Cape Henry drawn through Buoys 3 and 8 to Fishermans Island), and its tidal tributaries, excluding the Potomac tributaries and those tributaries listed above.*

*C. Schedule of implementation.*

*1. New sources, new dischargers, indirect dischargers who become new sources or new dischargers (as defined in VR 680-14-01), or dischargers who expand or upgrade facilities (such as flow increases from sewage treatment or industrial facilities, or addition of new process lines at industrial facilities) do not qualify for an implementation schedule in the VPDES permit. These discharges must meet the surface water standards upon commencing discharge. In addition, these discharges must not be either acutely or chronically toxic (as required by VR 680-14-03) upon commencing discharge.*

*2. a. Existing discharges subject to the Toxic Management Regulation (VR 680-14-03) must meet the surface water standards listed in VR 680-21-01.14 on the same implementation schedule that the discharge must meet the Toxicity Reduction Plan as required by VR 680-14-03. Exceptions to this requirement include chlorine, dissolved oxygen, pH, and temperature. These discharges must already be compling with these paramenters. The VPDES permit issued to these dischargers may specify a schedule, when appropriate, leading to compliance with the surface water standards and the Toxic Management Regulation as soon as possible. The VPDES permit for these dischargers shall be processed in accordance with the procedures set forth in VR 680-14-01.*

*b. Existing discharges not subject to the Toxic Mcnagement Regulation (VR 680-14-03) must meet the surface water standards listed in VR 680-21-01.14 as these permits are issued, reissued, or modified. The VPDES permit may specify a schedule, when appropriate, leading to compliance with the surface water standards as soon as possible. The VPDES permit for these dischargers shall be processed in accordance with the procedures set forth in VR 680-14-01.*

*c. Notwithstanding 2 a and b above, existing discharges may be required to meet the surface water standard for ammonia as soon as possible without following the provisions of VR 680-14-03 if the Executive Director determines ammonia is the single toxic pollutant of concern in the discharge as defined in VR 680-14-03. The VPDES permit issued to these dischargers may specify a schedule when appropriate, leading to compliance with the surface water standard for ammonia as soon as possible but no later than two years from the effective date of the permit issuance, reissuance or modification.*

*D. Exemptions to permit limitations based on water quality standards in VR 680-21-01.14 A.*

*1. None of the exemptions in subsection "D" shall apply to chlorine (VR 680-21-01.11), tributyltin (VR 680-21-01.13), and dissolved oxygen, pH, and temperature (VR 680-21-01.5).*

*2. Site specific permit limitations. The board may consider site specific modifications to permit limitations which are based on numerical water quality standards in VR 680-21-01.14 A where the applicant or permittee demonstrates that alternate effluent limitations may be applied. Demonstration must be provided that the alternate limitations are sufficient to protect all reasonable, beneficial uses (see VR 680-21-01.2) of that particular surface water segment or body. These studies shall be conducted in accordance with guidelines set forth in Chapter 3 (Water Body Survey and Assessment Guidance for Conducting Use Attainability Analyses) and Chapter 4 (Guidelines for Deriving Site Specific Water Quality Criteria) of the U.S. EPA Water Quality Standards Handbook, 1983.*

*3. Alternate Permit Limitations to those based on numerical water quality standards due to technology.*

*a. Alternate permit limitations to those based on numerical standards in VR 680-21-01.14 may be allowed on a case-by-case basis where the applicant affirmatively demonstrates that:*

*(1) The specific substance for which an alternate limitation is requested cannot be sufficiently controlled or abated with currently available and economically achievable technology, and*

*(2) The alternate limitation will not result in a loss of an existing beneficial use (see VR 680-21-01.2) of the surface water segment or body.*

*b. In cases where alternate limitations for 2 a above are granted, all feasible best management practices, including recycle or reuse must be applied.*

*4. Permit limitations based on natural background exceedances. The applicant or permittee may demonstrate that natural conditions exceed established standards. In that event, permit limitations may allow for discharges at natural background levels. Natural background conditions shall be identified as those resulting from other than manmade sources.*

*5. Procedures for promulgation and review of alternate permit limitations resulting from VR 680-21-01.14 D 1, 2, and 3*

*a. To the extent feasible, the request for an alternate permit limitation demonstrated through VR 680-21-01.14 D 1, 2, and 3 above shall be conducted as part of any pending discharge VPDES permit proceeding pursuant to VR 680-14-01 and VR 680-14-03.*

*b. In any proceeding where such alternate limitations are at issue the board shall include such issue in the public notice released in accordance with the procedures set forth in VR 680-14-01.*

*c. Any alternate limitations granted pursuant to the above shall not extend beyond the expiration date of the permit.*

*d. When a permit containing one of the above alternate limitations is to be reissued, the procedure is as follows:*

*(1) The permittee must request at the time of application for reissuance that the alternate limitation be continued.*

*(2) At the time of application, the permittee must provide a basis for that continuance. The basis should include certification that: (a) plant operating conditions, load factors, and effluent characteristics are unchanged and are expected to remain so for the term of the reissued permit, (b) there is no known loss of an existing beneficial use (see VR 680-21-01.2). (c) For alternate permit limitations granted due to technology, the permittee must also provide certification that there is no known currently available and economically achievable technology.*

*e. A listing of alternate limitations granted under the above will be maintained and made available to the public by the board.*

~~VR6802103 WATER QUALITY CRITERIA FOR SURFACE WATER~~

~~VR 680-21-03.1. General Requirements.~~

~~Section VR 680-21-03.2 below establishes water quality criteria for certain substances in surface waters. Groundwater criteria are found in VR 680-21-04.4. One basic distinction differentiates water quality criteria from water quality standards found in VR 680-21-01 and VR 680-21-04 of these regulations. The standards are always mandatory while the criteria are not. Criteria shall be utilized as mandatory requirements when in the judgement of the board they are necessary to ensure the protection of the beneficial uses of the water body. The agency will employ the criteria values or any others it deems appropriate in establishing effluent limitations or other limitations necessary to protect the beneficial uses. The board may consider modifications to these criteria, on a casebycase basis, dependent upon a sitespecific determination performed by the permittee which demonstrates that alternate criteria are sufficient to ensure protection of water quality.~~

VR680-21-01.2. Water Quality Criteria for Surface Water

Chronic Criteria for Protection of Aquatic Life ug/l

| Substance[1] | Value | Applicability |
|---|---|---|
| Aldrin | 0.03 | Freshwater |
| | 0.001 | Saltwater |
| Ammonia | SEE TABLE ATTACHED | Freshwater |
| Arsenic trivalent, inorganic, total recoverable | 190 | Freshwater |
| | 36 | Saltwater |
| Cadmium | e 0.7852(ln(hardness))-3.490 | Freshwater |
| total recoverable | 9.3 | Saltwater |
| Chlordane | 0.0043 | Freshwater |
| | 0.004 | Saltwater |
| Chromium hexavalent, total recoverable | 11 | Freshwater |
| | 50 | Saltwater |
| trivalent, total recoverable | e 0.819(ln(hardness))+1.561 | Freshwater |
| | No saltwater Value | |
| Copper, total recoverable | e 0.8545(ln(hardness))-1.465 | Freshwater |
| | 2.9 | Saltwater |
| Cyanide, total | 5.2 | Freshwater |
| | 1.0 | Saltwater |
| DDT | 0.001 | All Waters |
| Demoton | 0.1 | All Waters |
| Dieldrin | 0.0019 | All Waters |
| Endosulfan | 0.056 | Freshwater |
| | 0.0087 | Saltwater |
| Endrin | 0.0023 | All Waters |
| Guthion | 0.01 | All Waters |
| Heptachlor | 0.0038 | Freshwater |
| | 0.0036 | Saltwater |
| Hydrogen Sulfide | 2.0 | All Waters |
| Iron | 1,000 | Freshwater |
| | No Saltwater value | |

Total unless otherwise indicated

Chronic Criteria for Protection of Aquatic Life ug/l

| Substance[1] | Value | Applicability |
|---|---|---|
| Kepone | Zero | All Waters |
| Lead, total recoverable | e 1.266(ln(hardness))-4.661 | Freshwater |
| | 5.6 | Saltwater |
| Lindane | 0.080 | Freshwater |
| | 0.0016 | Saltwater |
| Malathion | 0.1 | All Waters |
| Manganese | 100 | Saltwater |
| Mercury | 0.10 | Saltwater |
| Methoxychlor | 0.03 | All Waters |
| Mirex | Zero | All Waters |
| Nickel, total recoverable | e 0.76(ln(hardness))+1.06 | Freshwater |
| | 7.1 | Saltwater |
| Parathion | 0.04 | All Waters |
| Phenol | 1.0 | All Waters |
| Phthalate Esters | 3.0 | All Waters |

Ammonia Criteria

| pH | Salmonids or Other Sensitive Coldwater Species Present | | | | | | |
|---|---|---|---|---|---|---|---|
| | 0 C | 5 C | 10 C | 15 C | 20 C | 25C | 30C |
| | Un-ionized Ammonia (mg/liter $NH_3$) | | | | | | |
| 6.50 | 0.0007 | 0.0009 | 0.0013 | 0.0019 | 0.0019 | 0.0019 | 0.0019 |
| 6.75 | 0.0013 | 0.0017 | 0.0023 | 0.0033 | 0.0033 | 0.0033 | 0.0033 |
| 7.00 | 0.0021 | 0.0029 | 0.0042 | 0.0059 | 0.0059 | 0.0059 | 0.0059 |
| 7.25 | 0.0037 | 0.0052 | 0.0074 | 0.0105 | 0.0105 | 0.0105 | 0.0105 |
| 7.50 | 0.0066 | 0.0093 | 0.0132 | 0.0186 | 0.0186 | 0.0186 | 0.0186 |
| 7.75 | 0.0109 | 0.0153 | 0.022 | 0.031 | 0.031 | 0.031 | 0.031 |
| 8.00 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| 8.25 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| 8.50 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| 8.75 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| 9.00 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| | Total Ammonia (mg/liter $NH_3$) | | | | | | |
| 6.50 | 2.5 | 2.4 | 2.2 | 2.2 | 1.49 | 1.04 | 0.73 |
| 6.75 | 2.5 | 2.4 | 2.3 | 2.3 | 1.49 | 1.04 | 0.73 |
| 7.00 | 2.5 | 2.4 | 2.3 | 2.3 | 1.49 | 1.04 | 0.74 |
| 7.25 | 2.5 | 2.4 | 2.3 | 2.3 | 1.50 | 1.04 | 0.74 |
| 7.50 | 2.5 | 2.4 | 2.2 | 2.2 | 1.50 | 1.05 | 0.74 |
| 7.75 | 2.3 | 2.2 | 2.1 | 2.0 | 1.40 | 0.99 | 0.71 |
| 8.00 | 1.53 | 1.44 | 1.37 | 1.33 | 0.93 | 0.66 | 0.47 |
| 8.25 | 0.87 | 0.82 | 0.78 | 0.76 | 0.54 | 0.39 | 0.26 |
| 8.50 | 0.49 | 0.47 | 0.45 | 0.44 | 0.32 | 0.23 | 0.17 |
| 8.75 | 0.28 | 0.27 | 0.26 | 0.27 | 0.19 | 0.15 | 0.11 |
| 9.00 | 0.16 | 0.16 | 0.16 | 0.16 | 0.13 | 0.10 | 0.08 |

| | | |
|---|---|---|
| Polychlorinated Biphenyls | 0.014 | Freshwater |
| | 0.03 | Saltwater |
| Selenium, total inorganic | 35 | Freshwater |
| | 54 | Saltwater |
| Silver, $e^{1.72[\ln(\text{hardness})]-6.52}$ | | Freshwater |
| total | 0.023 | Saltwater |
| recoverable | | |
| Toxaphene | 0.013 | Freshwater |
| | 0.0007 | Saltwater |
| Zinc, total recoverable | 47 | Freshwater |
| | 58 | Saltwater |

*Total values otherwise indicated

~~B. Salmonids and Other Sensitive Coldwater Species Absent~~

~~Un-ionized Ammonia (mg/liter $NH_3$)~~

| ~~pH~~ | ~~0C~~ | ~~5C~~ | ~~10C~~ | ~~15C~~ | ~~20C~~ | ~~25C~~ | ~~30C~~ |
|---|---|---|---|---|---|---|---|
| ~~6.50~~ | ~~0.0007~~ | ~~0.0009~~ | ~~0.0013~~ | ~~0.0019~~ | ~~0.0026~~ | ~~0.0026~~ | ~~0.0026~~ |
| ~~6.75~~ | ~~0.0012~~ | ~~0.0017~~ | ~~0.0023~~ | ~~0.0033~~ | ~~0.0047~~ | ~~0.0047~~ | ~~0.0047~~ |
| ~~7.00~~ | ~~0.0021~~ | ~~0.0029~~ | ~~0.0042~~ | ~~0.0059~~ | ~~0.0083~~ | ~~0.0083~~ | ~~0.0083~~ |
| ~~7.25~~ | ~~0.0037~~ | ~~0.0052~~ | ~~0.0074~~ | ~~0.0105~~ | ~~0.0148~~ | ~~0.0148~~ | ~~0.0148~~ |
| ~~7.50~~ | ~~0.0066~~ | ~~0.0093~~ | ~~0.0132~~ | ~~0.0186~~ | ~~0.026~~ | ~~0.026~~ | ~~0.026~~ |
| ~~7.75~~ | ~~0.0109~~ | ~~0.0153~~ | ~~0.022~~ | ~~0.031~~ | ~~0.043~~ | ~~0.043~~ | ~~0.043~~ |
| ~~8.00~~ | ~~0.0126~~ | ~~0.0177~~ | ~~0.025~~ | ~~0.035~~ | ~~0.050~~ | ~~0.050~~ | ~~0.050~~ |
| ~~8.25~~ | ~~0.0126~~ | ~~0.0177~~ | ~~0.025~~ | ~~0.035~~ | ~~0.050~~ | ~~0.050~~ | ~~0.050~~ |
| ~~8.50~~ | ~~0.0126~~ | ~~0.0177~~ | ~~0.025~~ | ~~0.035~~ | ~~0.050~~ | ~~0.050~~ | ~~0.050~~ |
| ~~8.75~~ | ~~0.0126~~ | ~~0.0177~~ | ~~0.025~~ | ~~0.035~~ | ~~0.050~~ | ~~0.050~~ | ~~0.050~~ |
| ~~9.00~~ | ~~0.0126~~ | ~~0.0177~~ | ~~0.025~~ | ~~0.035~~ | ~~0.050~~ | ~~0.050~~ | ~~0.050~~ |

~~B. Salmonids and Other Sensitive Coldwater Species Absent (cont.)~~

~~Total Ammonia (mg/liter $NH_3$)~~

| ~~pH~~ | ~~0C~~ | ~~5C~~ | ~~10C~~ | ~~15C~~ | ~~20C~~ | ~~25C~~ | ~~30C~~ |
|---|---|---|---|---|---|---|---|
| ~~6.50~~ | ~~2.5~~ | ~~2.4~~ | ~~2.2~~ | ~~2.2~~ | ~~2.1~~ | ~~1.46~~ | ~~1.03~~ |
| ~~6.75~~ | ~~2.5~~ | ~~2.4~~ | ~~2.2~~ | ~~2.2~~ | ~~2.1~~ | ~~1.47~~ | ~~1.04~~ |
| ~~7.00~~ | ~~2.5~~ | ~~2.4~~ | ~~2.2~~ | ~~2.2~~ | ~~2.1~~ | ~~1.47~~ | ~~1.04~~ |
| ~~7.25~~ | ~~2.5~~ | ~~2.4~~ | ~~2.2~~ | ~~2.2~~ | ~~2.1~~ | ~~1.48~~ | ~~1.05~~ |
| ~~7.50~~ | ~~2.5~~ | ~~2.4~~ | ~~2.2~~ | ~~2.2~~ | ~~2.1~~ | ~~1.49~~ | ~~1.06~~ |
| ~~7.75~~ | ~~2.3~~ | ~~2.2~~ | ~~2.1~~ | ~~2.0~~ | ~~1.98~~ | ~~1.39~~ | ~~1.00~~ |
| ~~8.00~~ | ~~1.53~~ | ~~1.44~~ | ~~1.37~~ | ~~1.33~~ | ~~1.31~~ | ~~0.93~~ | ~~0.67~~ |
| ~~8.25~~ | ~~0.87~~ | ~~0.82~~ | ~~0.78~~ | ~~0.76~~ | ~~0.76~~ | ~~0.54~~ | ~~0.40~~ |
| ~~8.50~~ | ~~0.49~~ | ~~0.47~~ | ~~0.45~~ | ~~0.44~~ | ~~0.45~~ | ~~0.33~~ | ~~0.25~~ |
| ~~8.75~~ | ~~0.28~~ | ~~0.27~~ | ~~0.26~~ | ~~0.27~~ | ~~0.27~~ | ~~0.21~~ | ~~0.16~~ |
| ~~9.00~~ | ~~0.16~~ | ~~0.16~~ | ~~0.16~~ | ~~0.16~~ | ~~0.17~~ | ~~0.14~~ | ~~0.11~~ |

~~Site specific criteria development is strongly suggested at temperatures above 20°C because of the limited data available to generate the criteria recommendation, and at temperatures below 20°C because of the limited data and because small changes in the criteria may have significant impact on the level of treatment required in meeting the recommended criteria.~~

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 CORRECTIONS (STATE BOARD OF)**

Title of Regulation: **VR 230-30-002. Community Diversion Program Standards.**

Statutory Authority: § 53.1-182 of the Code of Virginia.

Effective Date: September 1, 1989

Summary:

*The Community Diversion Program Standards have been developed for the administration and operation of local community diversion programs, and addresses the following:*

** The establishment of a community corrections resources board.*

** Uniform administrative structure for each program.*

** Fiscal management.*

** Minimum number of Department of Corrections' approved training for program staff.*

** The utilization of volunteers.*

** The requirement for a written policy and procedure manual.*

** The establishment of offender eligibility criteria.*

** The establishment of written policies and procedures for offender evaluation, diversion, monitoring, and termination.*

** The proper maintenance of case files and the confidentiality of offender information.*

** Intensive supervision of offenders.*

** The transfer of cases from one program to another.*

** Victim restitution.*

** Community service.*

** The establishment of services and service providers.*

** The purchase of services.*

** The utilization of residential treatment programs.*

VR 230-30-002. Community Diversion Program Standards.

*PART I.*
*INTRODUCTION.*

*Article 1.*
*Definitions.*

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

*"Behavioral contract" means a written agreement between the offender and the program containing at a minimum:*

*1. A provision that the offender shall not change residence without prior notification to the case manager;*

*2. The number of community service hours to be completed;*

*3. A provision for restitution, if applicable;*

*4. Behavioral or treatment goals, or both;*

*5. A provision for intensive supervision;*

*6. A statement that the offender shall remain in the program until released by the court; and*

*7. A signed statement by the offender, witnessed by program staff, agreeing to abide by the contract.*

*"Case file" means the information that shall be maintained in a central location on each offender, and which shall contain, at a minimum:*

*1. Pre- or Post-Sentence report (PSI) for a felon offender, if available.*

*2. All diagnostic evaluation information purchased by or made available to the program.*

*3. Document of referral signed by the judge or clerk of court. This may not be applicable for misdemeanants.*

*4. Document of Diversion signed by the judge or clerk of court.*

*5. Behavioral contract.*

*6. Community Service Agreement.*

*7. Offender's current address, phone number (if available), date of birth, and social security number.*

*8. Offender contract summaries.*

*9. Documentation of services provided.*

*10. Documentation of termination.*

*"Case manager" means the person designated by the program director to perform intensive supervision of offenders, or to monitor offenders' compliance with the terms of behavioral contracts.*

*"Community Service Agreement" means a written agreement between the offender and the program staff, containing at a minimum:*

*1. Work site agency*

*2. Work site supervisor*

*3. Work site location*

*4. Job duties*

*5. Service hours required*

*6. Time frame for completion*

*"Eligibility criteria" means the minimum requirements which shall be met by an offender for the Community Corrections Resources Board to evaluate for diversion, to recommend diversion to the referring court, and for the offender to participate in a local community diversion program. The criteria shall contain, at a minimum:*

*1. Each offender shall have received a sentence to be incarcerated in a state or local adult correctional institution.*

*2. Each offender shall be nonviolent as determined by the Community Corrections Resources Board. The Community Corrections Resources Board shall define "nonviolent."*

*3. No offender shall have a demonstrated pattern of violence as determined by the Community Corrections Resources Board.*

[ ~~*4. No offender shall be diverted from a sentence that cannot be suspended due to legal restrictions.*~~ ]

[ ~~*5.*~~ *4.* ] *No offender shall have any outstanding criminal charges, detainers, or dispositions which would preclude eventual program participation.*

[ ~~*6.*~~ *5.* ] *Each offender shall be deemed suitable for program participation by the Community Corrections Resources Board's determination that an appropriate, rational behavioral contract can be developed.*

*"Intensive supervision for local offenders" means at least two face-to-face contacts each 30 days after the program staff is made aware of the diversion. These contacts shall be with the program director* [ ~~*or his designee*~~ *or the person he has designated in writing* ] *to monitor compliance with the terms of the behavioral contract. At least one of these contacts shall be made by appropriate program staff.* [ *The initial contact shall be made by appropriate program staff within seven days after the program staff is made aware of the diversion.* ] *Within 30 days after the program staff is made aware of the diversion, one of the contacts shall be made at the offender's home by appropriate program staff. Subsequent face-to-face home contacts shall be made within every 90-day period until termination* [ *; the offender's place of residence shall be verified monthly by program staff* ] *. Home contacts are not required for an offender living out-of-state* [ *, but verification of the offender's place of residence shall be documented monthly by program staff* ].

*"Intensive supervision for state offenders" means at least one weekly, face-to-face contact with appropriate program staff to monitor compliance with the terms of the behavioral contract. The first weekly contact shall be made within seven days after the program staff is made aware of the diversion. During each calendar month, one of these contacts shall be made at the offender's home by appropriate program staff. The first home contact shall be made within 30 days after* [ ~~*supervision commences*~~ *the program staff is made aware of the diversion* ].

*"Local offender" means an individual who has been sentenced to a term which would result in incarceration in a local adult correctional institution* [ *and who is not eligible for parole* ].

*"Program" means the plan or system of diversion services of a unit of government or of a public or private agency as outlined in §§ 53.1-180 through 53.1-185 of the Code of Virginia.*

*"Program contract" means the Community Corrections Contract between the Department of Corrections and the program that sets forth the terms and conditions for funding and program operation.*

*"Program staff" means any program administrator, program director, case manager, or clerical worker who is employed by, contracts with, or volunteers services to the program.*

*"State offender" means an individual who has been sentenced to a term which would result in incarceration in a state adult correctional institution* [ *or a term which would result in the offender being eligible for parole* ].

*Article 2.*
*Legal Base.*

*§ 1.2. The Code of Virginia is the legal base for the development of Community Diversion Program Standards. Section 53.1-182 of the Code of Virginia directs the State Board of Corrections to prescribe standards for the development, operation, and evaluation of programs and services authorized by the Community Diversion Incentive Act (§ 53.1-180 et seq.).*

*Article 3.*
*Administration.*

*§ 1.3. The Community Diversion Program Standards, adopted by the Board of Corrections in February, 1984, are superseded on the effective date of these standards.*

*§ 1.4. The primary responsibility for application of these standards shall be with the program administrator.*

*PART II.*
*PROGRAM ADMINISTRATION AND MANAGEMENT.*

*Article 1.*
*Community Corrections Resources Board.*

*§ 2.1. Each program shall have a Community Corrections Resources Board whose composition and duties shall be in compliance with the Community Diversion Incentive Act.*

*§ 2.2. Each Community Corrections Resources Board shall adopt bylaws for the conduct of business in compliance with the Freedom of Information Act, [ § ~~2.1-344~~ ~~A~~ §§ 2.1-340 through 2.1-346.1 ] of the Code of Virginia.*

*Article 2.*
*Administrative Responsibility.*

*§ 2.3. Each program shall have a program administrator who is an administrative officer of a unit of government or of a public or private agency and who is responsible for applying for Community Diversion Incentive Act funds, receiving these funds, administering these funds, and ensuring full implementation of the program contract.*

*§ 2.4. Each program shall also have a program director who is responsible for the overall daily administration of the program.*

*§ 2.5. The program's lines of authority, including an organizational chart and written roles and responsibilities of the program staff and the Community Corrections Resources Board, shall be documented.*

*§ 2.6. The program director shall provide Community Corrections Resources Board members and program staff with orientation as to their respective duties and responsibilities within 30 days of appointment or employment.*

*§ 2.7. The Community Corrections Resources Board of each program utilizing volunteers or unpaid staff shall develop and implement written policies and procedures for the recruitment, selection, training, supervision and termination of those volunteers or unpaid staff.*

*§ 2.8. There shall be a written agreement between the program director and each volunteer or unpaid staff member that outlines the roles and responsibilities of the volunteer or unpaid staff member.*

*§ 2.9. The program director and all full-time program staff, excluding clerical staff, employed by the program shall complete a minimum of 40 hours of Department of Corrections approved training annually. Part-time program staff and clerical staff shall complete a minimum of 20 hours of Department of Corrections approved training annually.*

*§ 2.10. All program staff shall be bonded.*

*[ § 2.11. The program shall submit financial, offender, and program activity reports and data as required by the Department of Corrections. ]*

*Article 3.*
*Policy and Procedure Manual.*

*[ § ~~2.11.~~ § 2.12. ] The Community Corrections Resources Board shall develop a written policy and procedure manual for program administration and operation.*

*[ § ~~2.12.~~ § 2.13. ] The policy and procedure manual shall be provided to each chief judge of the judicial circuits and districts the program [ ~~services~~ serves ].*

*PART III.*
*FISCAL MANAGEMENT.*

*Article 1.*
*Responsibility.*

*§ 3.1. The Community Corrections Resources Board shall develop and implement written policies and procedures to approve and monitor program finances.*

*Article 2.*
*Maintenance of Financial Records.*

*§ 3.2. Audited financial records shall be maintained by the program director for at least three years. Unaudited financial records and completed audits shall be retained for the duration of the program and shall be made available to the Department of Corrections upon request.*

*[ Article 3.*
*Operation Within a Budget. ]*

*[ § 3.3. Each program shall operate within a Department of Corrections approved budget. ]*

*PART IV.*
*OFFENDER PARTICIPATION IN PROGRAM.*

*Article 1.*
*Eligibility.*

*§ 4.1. The Community Corrections Resources Board shall establish written offender eligibility criteria which include, at a minimum, the Board of Corrections' Eligibility Criteria (see § 1.1). These offender eligibility criteria shall be approved by the Department of Corrections.*

*§ 4.2. The Community Corrections Resources Board shall develop and implement written policies and procedures for offender referral.*

*§ 4.3. The Community Corrections Resources Board shall develop and implement written policies and procedures for providing the judge of the referring court the recommendations of the board on offenders.*

*Article 2.*
*Evaluation.*

*§ 4.4. The Community Corrections Resources Board shall develop and implement written policies and procedures for offender evaluation.*

*Article 3.*
*Diversion.*

*§ 4.5. The Community Corrections Resources Board shall develop and implement written policies and procedures for offender diversion.*

*§ 4.6. The Community Corrections Resources Board shall develop and implement written policies and procedures* [ ~~*to develop*~~ *for the development of* ] *an appropriate, rational behavioral contract for each offender participating in the program.*

*Article 4.*
*Termination.*

*§ 4.7. The Community Corrections Resources Board shall develop and implement written policies and procedures for offender termination.*

*§ 4.8. The offender's termination shall be determined by the sentencing court.*

*PART V.*
*CASE FILES.*

*Article 1.*
*Case File Maintenance.*

*§ 5.1. The program director shall maintain individual offender case files.*

*§ 5.2. Offender case files shall be secured to protect against loss, theft, or unauthorized use.*

*Article 2.*
*Confidentiality of Offender Information.*

*§ 5.3. The Community Corrections Resources Board shall develop and implement written policies and procedures to govern the confidentiality, dissemination, and maintenance of offender information. These shall be in compliance with all applicable state and federal laws, including the Freedom of Information Act (§§ 2.1-340 through 2.1-346.1 of the Code of Virginia), the Privacy Protection Act (§§ 2.1-377 through 2.1-386 of the Code of Virginia),* [ *the Virginia Public Records Act (§§ 42.1-76 through 42.1-91, of the Code of Virginia,* ] *and § 19.2-389 of the Code of Virginia (Dissemination of Criminal History Record Information).*

*PART VI.*
*OFFENDER MANAGEMENT.*

*Article 1.*
*Intensive Supervision.*

*§ 6.1. Intensive supervision shall be required for each diverted offender and documented in the case file.*

*§ 6.2. In lieu of a transfer, intensive supervision may be temporarily provided by another program's appropriate program staff if it is mutually agreed upon and the supervision is documented in the diverting program's case file.*

*§ 6.3. Placement of an offender in a residential treatment facility shall* [ *not* ] *satisfy the intensive supervision requirements while the offender is in residence at the facility. The residential treatment facility shall provide written monthly progress reports and a termination summary on the offender to the program.*

*§ 6.4. Intensive supervision requirements for an offender may be* [ ~~*waived*~~ *interrupted* ] *by the program director for a period not to exceed 15 days, under the following circumstances:*

[ ~~*1. Required contacts are not made as a result of the offender's failure to cooperate and repeated efforts have been made to effect the supervision.*~~ ]

[ ~~*2.*~~ *1.* ] *Inclement weather prevents supervision.*

[ ~~*3.*~~ *2.* ] *Court action has been requested for successful termination.*

[ ~~*4.*~~ *3.* ] *Excused absences for employment, training, vacation, military duty, medical emergencies, or family emergencies of the offender.*

[ ~~*5.*~~ *4.* ] *Offender incarcerated.*

*When intensive supervision is temporarily* [ ~~*waived*~~ *interrupted* ] *, such fact and circumstances shall be documented in the case file. Restoration of intensive supervision shall also be documented.*

*§ 6.5. Intensive supervision requirements for an offender may be [ ~~waived~~ interrupted [ by the Department of Corrections under [ ~~extenuating~~ extraordinary ] circumstances for a period not to exceed 90 days. When the Department of Corrections [ ~~waives~~ interrupts ] the supervision requirements, such fact, circumstances, and documentation shall be included in the case file. Restoration of intensive supervision shall also be documented.*

*Article 2.*
*Offender Monitoring.*

*§ 6.6. The Community Corrections Resources Board shall develop and implement written policies and procedures for the monitoring of an offender's compliance with the terms of the behavioral contract.*

*§ 6.7. The Community Corrections Resources Board shall develop and implement written policies and procedures for major and minor behavioral contract violations as defined by the Community Corrections Resources Board.*

*Article 3.*
*Transfer of Cases.*

*§ 6.8. The Community Corrections Resources Board shall develop and implement written policies and procedures to allow for the transfer of offenders to and from other programs.*

*§ 6.9. The referring program director or Community Corrections Resources Board, or both, shall approve or deny the proposed transfer of an offender to another program and shall, along with the sentencing court, retain jurisdiction over the offender.*

*§ 6.10. Prior to the transfer, the referring program director shall provide written notification to the chief probation and parole officer in the referring and receiving districts of the transfer of an offender under consecutive or concurrent probation supervision.*

*§ 6.11. The receiving program director or the Community Corrections Resources Board, or both, shall approve the proposed transfer of an offender from a referring program, provided the offender meets the receiving program's eligibility criteria.*

*§ 6.12. The referring program director shall be responsible for all treatment and supervision costs of an offender who is transferred to another program.*

*§ 6.13. The referring program director shall document that intensive supervision is being provided to an offender who may be transferred until the transfer process is completed.*

*§ 6.14. The receiving program director shall provide intensive supervision and monitor compliance with the terms of the referring program's behavioral contract of the transferred offender, and shall provide written monthly progress reports documenting such supervision and monitoring to the referring program director.*

*§ 6.15. The referring program director shall document that the receiving program director is providing intensive supervision and is monitoring the transferred offender's compliance with the terms of the behavioral contract.*

*§ 6.16. The referring program director shall maintain a case file on an offender transferred to another program.*

*§ 6.17. The receiving program director may return the transferred offender to the referring program director for noncompliance or a change in offender circumstances, provided the receiving program director documents such noncompliance or change in circumstances and communicates such information to the referring program director with at least 10 days notice prior to the return.*

*§ 6.18. The receiving program director shall notify the referring program director of the completion of the transferred offender's behavioral contract, with the request that the referring program director recommend termination by the diverting court.*

*§ 6.19. The referring program director shall notify the diverting court of the successful or unsuccessful completion of a transferred offender and, after termination by the diverting court, shall close the offender's case according to local procedures.*

*§ 6.20. The receiving program director shall continue to provide intensive supervision until the offender's case is terminated by the diverting court or the offender is returned to the referring program.*

*§ 6.21. The receiving program shall maintain a case file on each offender transferred to the program.*

*Article 4.*
*Restitution.*

*§ 6.22. The Community Corrections Resources Board shall develop and implement written policies and procedures for victim restitution.*

*Article 5.*
*Community Service.*

*§ 6.23. Community service shall be required of each offender participating in the program.*

*§ 6.24. The Community Corrections Resources Board shall develop and implement written policies and procedures for community service. Such service shall be unpaid and performed at public or private nonprofit agencies.*

*§ 6.25. The Community Corrections Resources Board shall develop and implement written policies and procedures to ensure equitable and consistent assignment of community service hours.*

*§ 6.26. The Community Corrections Resources Board shall establish a standard range of community service hours.*

*§ 6.27. Documented on-site supervision of each offender performing community service shall be provided by a work site supervisor. Work site supervision shall be at no cost to the program.*

*PART VII.*
*OFFENDER SERVICES.*

*Article 1.*
*Establishment of Services and Service Providers.*

*§ 7.1. The Community Corrections Resources Board shall develop and implement written policies and procedures to establish services for offenders based on an assessment of the offenders' needs and community resources.*

*§ 7.2. The Community Corrections Resources Board shall develop and implement written policies and procedures to recruit, screen, and select service providers.*

*Article 2.*
*Purchases of Services.*

*§ 7.3. The Community Corrections Resources Board shall develop and implement written policies and procedures to monitor the purchase of offender services.*

*§ 7.4. The program director may only purchase services on behalf of the offender; no direct financial allowances are to be made to an offender.*

*§ 7.5. Routine offender services, including evaluations, shall be purchased through written formal contracts or agreements with service providers.*

*§ 7.6. Offender service funds may be used for the purchase of emergency services for food, clothing, housing, medical services and transportation. Food or housing services shall continue for no longer than 31 days. Emergency services shall not be a regular stipend or support for the offender.*

*Article 3.*

*Residential Services.*

*§ 7.7. The program director shall document that the facilities in which offenders are placed for residential treatment are in compliance with applicable state and local health and fire regulations.*

## STATE COUNCIL OF HIGHER EDUCATION

Title of Regulation: **VR 380-01-01. Regulations for the Senior Citizen Higher Education Program.**

Statutory Authority: § 23-9.6:1 of the Code of Virginia.

Effective Date: August 16, 1989

Summary:

*Senior Citizens who have completed 75% of their degree requirements may enroll for courses at the same time as tuition-paying students, rather than waiting until regular registration is completed. (1988 Acts of the Assembly, Chapter 90).*

*The federal taxable income limit under which a senior citizen may enroll tuition free in courses for academic credit was raised from $7,500 to $10,000. (1989 Acts of Assembly, Chapter 101).*

VR 380-01-01. Regulations for the Senior Citizen Higher Education Program.

General Rules.

§ 1. Definitions.

Section 23-38.55 of the Senior Citizens Higher Education Act defines several words and terms. Unless otherwise noted, they shall have the following meanings ascribed to them:

"Course" means any course of study offered in any state institution of higher education including the regular curriculum of any department, or school, or subdivision of any such institution or any special course given for any purpose, including but not limited to, adult education.

"Full-time equivalent student (FTES)" means the statistic used for budgetary purposes by the Commonwealth. It is derived by calculating total credit hours generated by students at a particular level and dividing that number by the number of credit hours generally considered a full-time load at that level.

"Senior citizen" means any person who, before the beginning of any term, semester or quarter in which such person claims entitlement to the benefits of this chapter, (i) has reached sixty years of age, and (ii) has had his legal domicile in this Commonwealth for one year.

"Senior Citizens Higher Education Act" is set forth in Chapter 4.5 (§ 23-38.54 et seq.) of Title 23 of the Code of Virginia.

§ 2. Eligibility.

A senior citizen may take courses without paying tuition or required fees, except for course materials, under certain conditions. If the senior citizen had a federal taxable income of not more than ~~$7,500~~ *$10,000* in the preceding year, the individual may take a course for academic credit. If the person's taxable income exceeded ~~$7,500~~ *$10,000* , the individual may only audit the course

for free. A senior citizen, regardless of income level, may take a noncredit course for free.

No limit is placed on the number of terms, quarters or semesters in which a senior citizen who is not enrolled for academic credit may register for courses, but the individual can take no more than three noncredit courses in any one term, quarter or semester. There will be no restriction on the number of courses that may be taken for credit in any term, semester or quarter, or on the number of terms, semesters or quarters in which an eligible senior citizen may take courses for credit.

The two additional conditions listed below shall be met before a senior citizen may take a course under the provisions of this program:

1. The senior citizen shall meet the appropriate admission requirements of the institution in which the student plans to enroll, and

2. The senior citizen may be admitted to a course only on a "space-available" basis after all tuition-paying students have been accommodated , *unless the senior citizen has completed 75% of the degree requirements necessary for a degree. At such time in the senior citizen's program, the senior citizen can enroll in courses at the same time as other tuition-paying students* .

An institution has no special obligation to offer courses specifically to meet the needs of senior citizens or to continue to provide a particular course for a senior citizen who has registered for the course if the regular enrollment in the course is not adequate to justify the offering.

§ 3. Application.

A senior citizen who wishes to take courses under the provisions of the Senior Citizens Higher Education Act shall complete an application at the institution in which the person plans to enroll. The institution shall determine all aspects of the persons's eligibility. The application process shall include a determination of income eligibility (review of an IRS 1040 form, for example), if the individual makes application to take courses for academic credit.

§ 4. Inclusion of the senior citizen in an institution's FTE count.

Senior citizens shall be included in the FTES count effective July 1, 1986.

§ 5. Reporting requirement.

Although the Council will not require an institution to submit an annual report on the number of eligible students who receive free tuition and fees under the provisions of this Act, it may periodically request such information in order to respond to executive or legislative inquiries.

An institution should, therefore, be prepared to report the headcount and FTE number of senior citizens taking courses for academic credit, the headcount and student credit hours of senior citizens who are auditing courses, and the headcount of those who are taking noncredit courses.

§ 6. Notification to senior citizens.

As required in § 23-38.59 of the Code of Virginia, each state-supported institution shall prominently include in its catalogue a statement of the benefits available to senior citizens under this program.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

NOTICE: The Virginia Housing Development Authority is exempted from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, under the provisions of § 9-6.14:22 B, it is required to publish all proposed and final regulations.

Summary:

*Pursuant to its Rules and Regulations, the Authority has previously adopted Procedures, Instructions and Guidelines to set forth the requirements and procedures for its programs. The use by the Authority of both its Rules and Regulations and its Procedures, Instructions and Guidelines with respect to the Authority's programs has, in certain instances, resulted in unnecessary duplication of provisions and may have created confusion as to applicable procedures and requirements.*

*These amendments adopt and incorporate the provisions of the Authority's Procedures, Instructions and Guidelines into its Rules and Regulations. The amendments also include certain changes for clarification and technical correction of existing provisions in the Rules and Regulations and the Procedures, Instructions and Guidelines.*

*The Authority has amended 16 regulations.*

*A summary will not be provided with each regulation since each summary is identical to the one above.*

Title of Regulation: **VR 400-01-0001. Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority (Formerly: Rules and Regulations).**

Statutory Authority: § 36-35.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-01-0001. Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority.

NOTICE: As provided in § 9-6.14:22, this regulation is not being republished. It was adopted as it was proposed in 5:16 VA.R. 2091 May 8, 1989

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Title of Regulation: **VR 400-02-0001. Rules and Regulations for Multi-Family Housing Developments (Formerly: Procedures, Instructions and Guidelines for Multi-Family Housing Developments.)**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0001. Rules and Regulations for Multi-Family Housing Developments.

NOTICE: As provided in § 9-6.14:22, this regulation is not being republished. It was adopted as it was proposed in 5:16 VA.R. 2105 May 8, 1989

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Title of Regulation: **VR 400-02-0002. Rules and Regulations for Single Family Housing Developments (Formerly: Procedures, Instructions and Guidelines for Single Family Housing Developments).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0002. Rules and Regulations for Single Family Housing Developments.

NOTICE: As provided in § 9-6.14:22, this regulation is not being republished. It was adopted as it was proposed in 5:16 VA.R. 2120 May 8, 1989

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Title of Regulation: **VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income ((Formerly: Procedures, Instructions and Guidelines for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.

NOTICE: As provided in § 9-6.14:22, this regulation is not being republished. It was adopted as it was proposed in 5:16 VA.R. 2126 May 8, 1989

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Title of Regulation: **VR 400-02-0004. Rules and Regulations for Home Rehabilitation Loans (Formerly: Procedures, Instructions and Guidelines for Home Rehabilitation Loans).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0004. Rules and Regulations for Home Rehabilitation Loans.

NOTICE: As provided in § 9-6.14:22, this regulation is not being republished. It was adopted as it was proposed in 5:16 VA.R. 2146 May 8, 1989

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Title of Regulation: **VR 400-02-0005. Rules and Regulations for Energy Loans (Formerly: Procedures, Instructions and Guidelines for Energy Loans).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0005. Rules and Regulations for Energy Loans.

§ 1. Purpose and applicability.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* will be applicable to loans which are made or are proposed to be made by the authority to persons and families of low and moderate income for the purpose of financing certain energy saving improvements to eligible residences owned and occupied by such persons and families. Such loans are referred to herein as "energy loans."

*Loans may be made or financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.*

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any energy loan to waive or modify any provisions herein where deemed appropriate by him for good cause, to the extent not inconsistent with the ~~Authority's~~ Act ~~, Rules and Regulations, and any applicable covenants and agreements with the holders of its notes or bonds~~ .

~~"Executive director" as used herein means the Executive director of the Authority or any other officer or employee of the Authority who is authorized to act on behalf of the Authority pursuant to a resolution of the~~

~~Board.~~

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be made for the sole and exclusive benefit and protection of the authority, and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority or the borrower under the agreements and documents executed in connection with the energy loan.

The ~~procedures, instructions and guidelines~~ *rules and regulations* set forth herein are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of loans under the authority's energy loan program. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by the authority and may be supplemented by policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority from time to time with respect to the energy loan program.

Notwithstanding anything to the contrary herein, all energy loans must comply with ~~(1)~~ *(i)* the ~~Authority's~~ Act and *the authority's* rules and regulations, ~~(2)~~ *(ii)* the applicable federal laws, rules and regulations governing the federal tax exemption of any notes or bonds issued by the authority to finance such energy loans, ~~(3)~~ *(iii)* in the case of energy loans subject to federal mortgage insurance or other assistance, all applicable federal laws, rules and regulations relating thereto and ~~(4)~~ *(iv)* the requirements set forth in the resolutions pursuant to which the notes or bonds, if any, are issued by the authority to finance the energy loans. Copies of the authority's note and bond resolutions shall be available upon request.

§ 2. *Terms of energy loans.*

The amortization period and principal amount of each energy loan shall be established by the executive director based upon his review and analysis of the application for such loan; provided, however, that the amortization period shall not exceed 30 years and the principal amount shall not exceed the total cost of the improvements to be financed. Furthermore, in no event shall the principal amount of an energy loan be less than $500 nor shall the scheduled monthly payment of principal and interest for any energy loan be less than $10 per month. The interest rate or rates to be charged on energy loans shall be determined by the executive director in accordance with applicable provisions of the ~~Authority's~~ Act and *the authority's* rules and regulations. *The executive director may require that energy loans be insured by private mortgage insurance companies or be insured or otherwise assisted by an appropriate agency of the federal or state government.* If an energy loan is subject to federal mortgage insurance or assistance, the terms of such energy loan shall comply with all applicable federal law, rules and regulations.

§ 3. Eligibility of applicant.

In order to be qualified as a person or family of low or moderate income eligible for an energy loan, the person or family must ~~(a)~~ *(i)* , in the case of an energy loan not subject to any federal mortgage insurance or assistance, have an adjusted family income (as defined in the authority's rules and regulations) which does not exceed the applicable limit established from time to time by the ~~Authority's~~ board of ~~Commissioners~~ *the authority for ownership and occupancy of single family homes financed by the authority* or ~~(b)~~ *(ii)* in the case of an energy loan subject to federal mortgage insurance or assistance, have an income (calculated in accordance with applicable federal rules and regulations) which does not exceed the limits under applicable federal rules and regulations as may be approved by the ~~Authority's~~ board of ~~Commissioners~~ *the authority* with any modifications thereto, provided that if such federal rules and regulations do not establish any income limits, the requirement of ~~(a)~~ [ ~~*subdivision*~~ ] *(i)* of this paragraph shall be applicable in determining the person's or family's eligibility for an energy loan. The applicant must also satisfy such underwritinig criteria and standards as the executive director may from time to time establish and modify in order to determine the financial capacity and creditworthiness of the applicant.

§ 4. Eligibility of residence.

The applicant must own and occupy the residence to which the improvements are to be made. The residence must be the principal residence of the applicant, must be located in the Commonwealth of Virginia, and must have been completed prior to such date as may be established from time to time by the executive director or as may be required by any applicable federal rules and regulations.

§ 5. Eligibility of improvements.

Proceeds of an energy loan may be used to finance the purchase and installation of eligible improvements. Improvements which are eligible for financing are energy saving devices and alternative energy sources which will reduce the reliance on present sources of energy. Such eligible improvements include, but are not limited to, the following:

~~(a)~~ *1. Insulation,* caulking and weatherstripping;

~~(b)~~ *2.* Furnace efficiency modifications including: replacement of burners, furnaces or boilers or any combination thereof which increases the energy efficiency of the heating system; devices for modifying flue openings which will increase energy efficiency of the heating system; and electrical and mechanical furnace ignition systems which replace standing gas pilot lights;

~~(c)~~ *3.* Clock thermostats;

~~(d)~~ *4.* Sealing attic wall floor and duct insulation;

~~(e)~~ *5.* Water heater insulation;

~~(f)~~ *6.* Storm windows and doors, multi-glazed windows and doors, heat absorbing or heat reflecting window and door materials;

~~(g)~~ *7.* Devices associated with load management techniques; ~~and~~

~~(h)~~ *8.* Replacement air conditioners *; and*

*9. Solar energy devices.*

In order to be eligible an improvement must have a "pay back" of six years or less. An improvement has such a "pay back" if the estimated energy saving resulting from the installation of the improvement will within six years equal or exceed the initial cost of purchasing and installing the improvement. This determination shall be made by the authority based upon a review of the home energy audit and the cost estimate provided by the applicant and approved by the authority.

If the energy loan is to be subject to any federal mortgage insurance or assistance, the improvements to be financed must also satisfy the requirements of any and all applicable federal law, rules and regulations.

Energy loan proceeds may not be used to finance any improvements which have been completed at the time the application is submitted to the authority.

All work financed with the proceeds of an energy loan shall be performed pursuant to a duly issued building permit, if required, and shall comply with all applicable state and local health, housing, building, fire prevention and housing maintenance codes and other applicable standards and requirements. Compliance with the foregoing shall be evidenced by such documents and certifications as shall be prescribed by the executive director.

All work financed with the proceeds of an energy loan shall be covered by a warranty for workmanship and materials. The warranty shall be in such form and shall contain such terms and conditions as the executive director may prescribe.

§ 6. Lien requirement.

The executive director may from time to time establish maximum principal amounts of energy loans which may be financed without a lien as security therefor. Any energy loan having an original principal amount in excess of any such maximum principal amount applicable thereto shall be secured by a duly recorded deed of trust creating a valid, binding and enforceable lien on the residence. Such a lien shall also be required as security for any energy loan which, in the determination of the executive director, would involve an unacceptable risk to the authority without the security of such a lien.

§ 7. Home energy audit.

In conjunction with an application for an energy loan, the applicant must have a home energy audit performed on the residence. The purpose of this audit is to determine which improvements will result in the greatest energy and cost savings to the applicant. The authority may determine not to finance any improvements which, in the judgment of the executive director, will not represent, in comparison with alternative energy saving improvements, a reasonable expenditure of funds to provide energy and cost savings. The executive director may specify the procedure to be followed in the conduct of the home energy audit and may prescribe the form on which the results of the home energy audit will be described. The home energy audit must be conducted by a professional in the energy conservation field who is familiar with the conduct of home energy audits in the manner required under the energy loan program. If such a professional auditor is not available to the applicant, the executive director may, if he deems appropriate under the circumstances, allow the applicant to complete certain sections of the home energy audit, subject to such conditions as he may require.

The completed home energy audit comprises a part of the application for an energy loan and must be submitted to the authority with the application.

§ 8. Origination of energy loans by mortgage lenders.

The origination of energy loans (i.e., the processing of applications and the disbursement of proceeds) may be performed through commercial banks, savings and loans associations, mortgage bankers, and state and local governmental agencies and instrumentalities (the foregoing are collectively referred to herein as "mortgage lenders") approved by the the authority pursuant to this section. The authority may originate energy loans directly utilizing its own staff, and, in such event, the following provisions of this section shall be inapplicable.

Interested mortgage lenders may submit to the authority a loan origination application for participation in the energy loan program. This application must be completed on such forms and shall contain such information and documents as the executive director may prescribe. The executive director shall review each loan origination application and may accept or reject such application after an analysis of factors which may include the mortgage lender's net worth, financial and corporate history, experience in originating similar loans, capability in terms of personnel and facilities to originate energy loans, and accessibility to the public. If the loan origination application is approved, the executive director is empowered to execute on behalf of the authority a loan origination agreement with the mortgage lender authorizing the mortgage lender to originate energy loans. The loan

origination agreement shall contain the terms under which the mortgage lender may originate energy loans on behalf of the authority, including:

~~(a)~~ *1.* Covenants and warranties by the mortgage lender that it will comply with the ~~Authority's~~ Act ~~and~~ , *these* rules and regulations ~~,~~ ~~these procedures, instructions, and guidelines~~ and all applicable federal and state laws, rules and regulations with respect to the origination of energy loans;

~~(b)~~ *2.* Agreements to maintain in force such bonds, insurance policies, and qualifications that the executive director may require;

~~(c)~~ *3.* Fees and reimbursements payable to the mortgage lender;

~~(d)~~ *4.* Documentation required in order to originate energy loans;

~~(e)~~ *5.* Provisions for termination of the loan origination agreement; and

~~(f)~~ *6.* Such other terms and conditions as shall be deemed by the executive director to be necessary or appropriate for the origination of energy loans.

§ 9. Allocation of funds.

The executive director shall allocate funds for the making of energy loans hereunder in such manner, to such persons and entities, in such amounts, for such periods, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. Without limiting the foregoing, the executive director may allocate funds ~~(a)~~ *(i)* to loan applicants for energy loans on a first-come, first-serve or other basis and/or ~~(b)~~ *(ii)* to mortgage lenders (who have been approved by the authority pursuant to § 8) for the origination of energy loans to qualified applicants. In determining how to so allocate the funds, the executive director may consider such factors as he deems relevent, including any of the following:

~~(a)~~ *1.* The need for the expeditious commitment and disbursement of such funds for energy loans;

~~(b)~~ *2.* The need and demand for the financing of energy loans with such funds in the various geographical areas of the Commonwealth;

~~(c)~~ *3.* The cost and difficulty of administration of the allocation of funds;

~~(d)~~ *4.* The capability, history and experience of any mortgage lenders who are to receive an allocation;

~~(e)~~ *5.* Housing conditions in the Commonwealth;

~~(f)~~ *6.* Relative climatic conditions in the Commonwealth; and

~~(g)~~ *7.* Requirements of federal or state law.

The executive director may from time to time take such actions as he may deem necessary or proper in order to solicit applications for allocation of funds hereunder. Such actions may include advertising in newspapers and other media, mailing of information to perspective applicants and other members of the public, and other methods of public announcements which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which funds of the authority are to be allocated and such other matters as he shall deem appropriate relating thereto. The authority may also consider and approve applications for allocations of funds submitted from time to time to the authority without any solicitation therefor on the part of the authority.

§ 10. Application and processing.

The applicant shall submit such forms, documents and information as the executive director may require in order to apply for an energy loan.

The authority shall submit the home energy audit to the staff of the State Office of Emergency and Energy Services (the "state office") for review. The state office shall review the home energy audit to determine if the proposed improvements are eligible hereunder and if the audit has been conducted properly. Upon completion of its review, the state office shall forward the home energy audit to the authority with its recommendations.

If the energy loan is to be originated through a mortgage lender, the application shall be initially reviewed by the mortgage lender for compliance with the ~~Authority's~~ Act ~~and~~ , [ *these* ] rules and regulations ~~,~~ ~~these procedures, instructions and guidelines,~~ and any applicable federal law, rules and regulations. If the mortgage lender determines that the application so complies, the application shall be forwarded to the authority for its review and approval.

The executive director shall review the application, and, if he determines that the application complies with the ~~Authority's~~ Act ~~and~~ , [ *these* ] rules and regulations ~~,~~ ~~these procedures, instructions and guidelines,~~ *rules and regulations* and any applicable federal law, rules and regulations, he may issue on behalf of the authority a commitment to the applicant with respect to such energy loan, subject to the ratification thereof by the ~~Authority~~ board *of the authority* . The principal amount, amortization period and interest rate on the energy loan, and such other terms, conditions and requirements as the

executive director deems necessary or appropriate shall be set forth in the commitment. The closing of the energy loan shall be consummated in accordance with the terms of the commitment. The improvements to be financed by the energy loan shall be completed in accordance with the agreements and documents executed and submitted at the closing and within such period of time as the executive director may deem necessary therefor. The authority shall have the right from time to time to enter upon the property on which the residence is located in order to inspect the improvements. Any such inspection shall be made for the sole and exclusive benefit and protection of the authority.

The executive director may, in his discretion, delegate to any mortgage lenders the responsibility for issuing commitments for energy loans and disbursing the proceeds hereof without prior review and approval by the authority. The issuance of such commitments shall be subject to ratification thereof by the board of the authority. If the executive director determines to make any such delegation, he shall establish criteria under which mortgage lenders may qualify for such delegation. If such delegation has been made, the mortgage lenders shall submit all required documentation to the authority after closing of the energy loan. If the executive director determines that the energy loan does not comply with the ~~Authority's~~ Act ~~or~~ , [ *these* ] rules and regulations ~~, these procedures, instructions and guidelines~~ , or any applicable federal law, rules or regulations, he may require the mortgage lender to purchase the energy loan, subject to such terms and conditions as he may prescribe.

§ 11. Loan servicing procedures.

The executive director may contract with one or more mortgage lenders to service energy loans. Interested mortgage lenders may submit a loan servicing application which shall be on such form and shall contain such information as the executive director may require. The executive director shall review each loan servicing application and may accept or reject such application after analysis of relevant factors which may include the mortgage lender's net worth, financial and corporate history, experience in servicing similar loans, capability in terms of personnel and facilities to service energy loans, and accessibility to the public. Upon approval of a loan servicing application, the mortgage lender and the authority shall execute a servicing agreement which shall specify the mortgage lender's duties and responsibilities, the compensation which the mortgage lender will receive from the authority for such services, and all other terms and conditions pursuant to which energy loans will be serviced. The mortgage lender's duties and responsibilities may include any of the following:

~~(a)~~ *1.* Collection, when due, of all payments on energy loans;

~~(b)~~ *2.* Deposit of payments collected with respect to energy loans into such accounts as the authority may direct;

~~(c)~~ *3.* Safekeeping and retention of all documents;

~~(d)~~ *4.* Delivery of payment schedules to the borrower;

~~(e)~~ *5.* Accounting to the authority at such times and in such manner as the authority may direct; and

~~(f)~~ *6.* Such other duties as the executive director may deem necessary and appropriate with respect to the servicing of energy loans.

The mortgage lender shall maintain adequate insurance and bonding coverage in such amounts as may be deemed necessary by the executive director and as shall be set forth in the servicing agreement.

The mortgage lender shall maintain adequate procedures to monitor delinquent energy loans, shall use diligence to obtain payment of installments due on energy loans, and shall promptly inform the authority of any delinquencies.

The authority may service energy loans directly with its own staff and perform any or all of the above duties and responsibilities in connection therewith.

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Title of Regulation: **VR 400-02-0006. Rules and Regulations for Section 8 Existing Housing Assistance Payment Program (Formerly: Procedures, Instructions and Guidelines for Section 8 Existing Housing Assistance Payments Program).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0006. Rules and Regulations for Section 8 Existing Housing Assistance Payment Program.

NOTICE: As provided in § 9-6.14:22, this regulation is not being republished. It was adopted as it was proposed in 5:16 VA.R. 2153 May 8, 1989

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Title of Regulation: **VR 400-02-0007. Rules and Regulations for Section 8 Moderate Rehabilitation Program (Formerly: Procedures, Instructions and Guidelines for Section 8 Moderate Rehabilitation Program).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0007. Rules and Regulations for Section 8 Moderate Rehabilitation Program.

NOTICE: As provided in § 9-6.14:22, this regulation is not

being republished. It was adopted as it was proposed in 5:16 VA.R. 2295 May 22, 1989

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Title of Regulation: **VR 400-02-0008. Rules and Regulations for Virginia Rental Rehabilitation Program (Formerly: Procedures, Instructions and Guidelines for Virginia Rental Rehabilitation Program).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0008. Rules and Regulations for Virginia Rental Rehabilitation Program.

§ 1. Definitions.

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

~~*"Executive Director"* means the Executive Director of VHDA or any other officer or employee of VHDA who is authorized to act on behalf of VHDA pursuant to a resolution of the Board.~~

*"Grantee"* means any unit of local government that enters into a grant agreement with ~~VHDA~~ *the authority* to administer a rental rehabilitation grant.

*"HUD"* means the U. S. Department of Housing and Urban Development.

*"Section 8"* means Section 8 of the United States Housing Act of 1937, as amended, and the applicable rules and regulations promulgated thereunder.

~~*"VHDA"* means Virginia Housing Development Authority.~~

These definitions supplement those contained in 24 CFR 511.2 and other applicable sections of the Code of Federal Regulations. Only those terms not defined in the ~~Federal~~ Code *of Federal Regulations* or used differently herein have been defined.

§ 2. Purpose and applicability.

These ~~procedures, instructions and guidelines~~ *rules and regulations* are adopted ~~pursuant to Rule 103 of the VHDA Rules and Regulations adopted on January 17, 1984,~~ pursuant to § 36-55.30:3 of the Code of Virginia.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* are applicable to all grants made by ~~VHDA~~ *the authority* to units of local government with funds allocated to ~~VHDA~~ *the authority* by HUD for the purpose of carrying out local rental rehabilitation programs for the benefit of lower income families and persons. Such grants are referred to herein as "rental rehabilitation grants."

*Rental rehabilitation grants may be made to Grantees pursuant to these rules and regulations only if and to the extent that the authority has received from HUD grant funds available therefor.*

These ~~procedures, instructions and guidelines~~ *rules and regulations* supplement and clarify rather than supercede federal program requirements. ~~VHDA~~ *The authority* and all local grantees are fully bound by the applicable requirements of 24 CFR Part 511, as well as governing federal and state laws in the administration and use of funds received from HUD under the federal Rental Rehabilitation Program.

Notwithstanding anything to the contrary herein, the Executive Director is authorized with respect to any rental rehabilitation grant to waive or modify any provisions herein where deemed appropriate by him for good cause, to the extent not inconsistent with ~~VHDA's~~ *the* Act ; ~~Rules and Regulations,~~ and any applicable federal regulations.

All reviews, analyses, evaluations, inspections, determinations and other actions by ~~VHDA~~ *the authority* pursuant to the provisions of these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be made for the sole and exclusive benefit and protection of ~~VHDA~~ *the authority* , and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of ~~VHDA~~ *the authority* or the grantee under the agreements and documents executed in connection with a rental rehabilitation grant.

The ~~procedures, instructions and guidelines~~ *rules and regulations* set forth herein are intended to provide a general description of ~~VHDA's~~ *the authority's* requirements and are not intended to include all actions involved or required in the administration of grants under the Virginia Rental Rehabilitation Program. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by ~~VHDA~~ *the authority* and may be supplemented by policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by ~~VHDA~~ *the authority* from time to time with respect to the Virginia Rental Rehabilitation Program.

§ 3. Program eligibility.

A. Eligible localities.

~~VHDA~~ *The authority* will accept applications for rental rehabilitation grants from any city, town or county determined by HUD to be eligible for participation in the Virginia Rental Rehabilitation Program. ~~VHDA~~ *The authority* will maintain a current listing of eligible local governments.

B. Eligible neighborhoods.

Applicants must document that each neighborhood in which rental rehabilitation grants are used meets the following two conditions:

1. Neighborhood income level.The median household income in the neighborhood must be at or below 80% of the median income for the Metropolitan Statistical Area (MSA) in which it is located, or, in the case of a neighborhood not within a MSA, at or below 80% of the median income for the state's nonmetropolitan areas.

2. Rent stability/affordability. Rents in the neighborhood must be stable and generally affordable to lower income persons. An applicant must document rent stability/affordablity in one of the following three ways:

a. Rent trends. An applicant may document that, according to the U. S. Census, the increase in average contract rent in the neighborhood between 1970 and 1980 was equal to or less than the increase in average contract rent in the housing market area;

b. Current rent survey. An applicant may survey current neighborhood rents to document that rents are generally at or below the Section 8 Fair Market Rent limits for existing housing; or

c. Other evidence. An applicant may document that, according to the 1980 U. S. Census, the median gross rent in the neighborhood was at or below the Section 8 Fair Market Rent limit for an existing two-bedroom unit that was applicable for the housing market area in April, 1980, and provide some type of evidence that the neighborhood housing market has been stable since 1980 (e.g., assessed property values or building permit activity have not increased more rapidly than in the housing market area as a whole).

C. Eligible projects.

Rental rehabilitation grants may only be used to rehabilitate projects meeting the requirements of 24 CFR 511.10(c).

§ 4. Allocation of funds.

A. Types of allocations.

~~VHDA~~ *The authority* will accept the following two types of applications from eligible local governments for rental rehabilitation grants:

1. General allocations. ~~VHDA~~ *The authority* will make allocations of funds to local governments on a first-come, first-served basis for use in carrying out locally-designed rental rehabilitation programs. The following conditions will apply:

a. Each local allocation will be limited to a specific dollar amount.

b. Once a local government has committed 80% of its funds to specific projects, it will be eligible to apply for an additional general allocation.

c. An initial allocation to a grantee will expire 12 months after the date ~~VHDA~~ *the authority* enters into a grant agreement with the grantee with respect to such allocation; provided, however, that ~~VHDA~~ *the authority* may, in its discretion, extend the term of an allocation one or more times for a period not to exceed 12 months for each such extension.

d. Upon the expiration of an allocation, any uncommitted grant funds will be recaptured.

e. ~~VHDA~~ *The authority* will reserve the right to recapture monies from an additional general allocation prior to its expiration, if necessary, due to poor local performance and the need to commit state program funds in a timely manner.

2. Funding for specific projects. ~~VHDA~~ *The authority* will fund, on a first-come, first-served basis, applications submitted by eligible local governments for specific projects. The following conditions will apply:

a. Total funding, including any prior general or project allocations, will be limited to a specific dollar amount.

b. A locality with an uncommitted general allocation will be expected to commit these funds to the project prior to requesting additional monies.

The funding limit for specific projects will be lifted only in the event that state grant monies are not being committed in a timely manner.

B. Application procedures.

~~VHDA~~ *The authority* shall, from time to time, give notice of funds availability to eligible units of local government throughout the Commonwealth. Such notice will may include the applicable funding limits and a timetable for the submission and review of applications for each type of funds allocation.

Specific application requirements and review procedures will be provided in application packets and through such workshops/training sessions as ~~VHDA~~ *the authority* deems appropriate. Applications for grant funds will be expected to include the followng types of information:

1. General allocations. Applications for general allocations will include an identification and description of program neighborhoods; the locality's

method of identifying and selecting projects; a description of local program operating procedures; a description of steps to be taken to ensure adequate maintenance and operation of projects receiving rental rehabilitation funds; a description of steps to be taken to encourage the use of minority and women-owned businesses; a description of the anticipated form of assistance to be provided to property owners and the means by which the amount of assistance will be determined; an indication of the anticipated source of matching funds; a description of any assistance to be provided to property owners in obtaining matching funds; an affirmative marketing plan (see § 5.I.2.); an agreement to comply with all federal and state program requirements; and other information as requested by ~~VHDA~~ *the authority* in the application packet.

2. Funding for specific projects. An application for funding for a specific project will include information concerning the project's conformance with neighborhood standards'; a description of local program operating procedures; a description of steps to be taken to ensure adequate project maintenance and operation; a description of steps to be taken to encourage the use of minority and women-owned businesses; a description of the project's financing package; an affirmative marketing plan; information concerning expected displacement/relocation of lower income persons; an agreement to comply with all federal and state program requirements; and other information as requested by ~~VHDA~~ *the authority* in the application packet.

3. Requests for increases in allocations. After receiving an allocation of funds under the Virginia Rental Rehabilitation Program, a grantee may request an increase in such allocation by applying therefor on such form or forms as ~~VHDA~~ *the authority* shall provide.

C. Grant agreement.

Upon the approval of an application for funding, ~~VHDA~~ *the authority* will enter into a grant agreement with the local government stating the terms and conditions under which funds will be provided.

§ 5. Program requirements.

A. Lower income benefit.

Each grantee must use at least 70% of its rental rehabilitation grant to benefit lower income families in accordance with 24 CFR 511.10(a)(4). This benefit standard must be maintained by each grantee in its program at all times unless waived by ~~VHDA~~ *the authority* . A waiver will only be approved when such a waiver will not prevent ~~VHDA~~ *the authority* from achieving an overall 70% benefit standard in the Virginia Rental Rehabilitation Program.

B. Family benefit.

Each grantee must use at least 70% of its rental rehabilitation grant to rehabilitate units containing two or more bedrooms in accordance with 24 CFR 511.10(k). This standard must be maintained by each grantee in its program at all times unless waived by ~~VHDA~~ *the authority* . A waiver will only be approved when such a waiver will not prevent ~~VHDA~~ *the authority* from achieving an overall 70% standard in the Virginia Rental Rehabilitation Program, except in cases where ~~VHDA~~ *the authority* has applied for and received from HUD a special waiver form the 70% standard.

C. Funding priorities.

Each grantee must include the following priorities in its method for selecting projects to receive rental rehabilitation funds.

1. Units occupied by very low income families. Each grantee must give funding priority to projects which contain substandard units which, prior to rehabilitation, are occupied by very low income families. This priority may include unoccupied units if:

a. The units could be expected to be occupied by very low income families but for the units' substandard condition; and

b. The grantee agrees to assign Section 8 certificates and/or vouchers for at least 70% of the rehabilitated units in order to enable it to be occupied by very low income families.

2. Efficient use of grant funds. Each grantee must give funding priority to projects which require a minimum percentage of rental rehabilitation grant subsidy.

Proposed projects meeting these priorities, which are financially feasible and which meet all other program requirements, must be selected for funding prior to projects which do not meet the priorities. In cases where these priorities conflict, the first priority must be given precedence by grantees.

D. Adequate maintenance and operation of rehabilitated units.

Each grantee must adopt one or more of the following measures to ensure adequate maintenance and operation of projects receiving rental rehabilitation funds:

1. Establishment of minimum equity requirements for investors;

2. Assignment of priority to projects in which private investors and lenders are taking a long-term financial risk in project success;

3. Restriction of funding to investors with a satisfactory record of maintaining and operating rental housing (the applicant must have standards and procedures for assessing an investor's record); or

4. Establishment of other reasonable standards and/or procedures for ensuring adequate maintenance and operation of rehabilitated units.

E. Project funding limits.

Each grantee must comply with the maximum project funding limits set by 24 CFR 511.10(e).

~~VHDA~~ *The authority* will seek a waiver from HUD of the $5,000 average per unit funding limit for a specific project at the request of a grantee if the grantee can document a need for such a waiver in accordance with 24 CFR 511.10(e)(2).

F. Minimum level of rehabilitation.

A grantee may establish a minimum level of rehabilitation to be required for participation in its rental rehabilitation program in excess of that established in 24 CFR 511.10(f).

G. Eligible rehabilitation costs.

A grantee may use a rental rehabilitation grant only to cover costs permitted under 24 CFR 511.10(g). No more than 20% of the rental rehabilitation funds assigned to a project may be used to make relocation payments to tenants who are displaced by rehabilitation activity.

H. Displacement and tenant assistance.

A grantee must provide any lower income family displaced from a project assisted by a rental rehabilitation grant with financial and advisory assistance as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601. A family will be determined to be displaced in accordance with the definitions contained in 24 CFR 511.10(h)(1). No tenant will be considered displaced if the tenant has been offered a decent, safe and sanitary dwelling unit in the project at an affordable rent.

I. Affirmative marketing.

Each grantee must ensure the affirmative marketing of units in rehabilitated projects for a period of seven years beginning on the date on which all the units in a projects are completed, in accordance with 24 CFR 511.10(1)(2). "Affirmative Marketing" is defined as adherence to federal, state and local fair housing laws, and positive efforts to ensure that persons of similar income levels in the same housing market area are made aware of a housing project and its benefits regardless of race, creed, religion, national origin, sex or handicap. All fair housing laws must be scrupulously observed by those who participate in the Virginia Rental Rehabilitation Program. Failure to comply with affirmative marketing requirements will subject the grantee and/or property owner to sanctions.

In order to meet its affirmative marketing responsibilities, each grantee must comply with, or ensure property owner compliance with, the following requirements and procedures:

1. General requirement. In conjunction with the marketing of all rehabilitated units, except for units occupied by families receiving Section 8 certificates or vouchers, the following five specific requirements must be met:

a. All advertising, brochures, leaflets and other printed material must include the Equal Housing Opportunity logo and the slogan or statement, and all advertisng depicting persons must depict persons of majority and minority groups, including both sexes;

b. The Equal Housing Opportunity slogan, "Equal Housing Opportunity", utilized in the newspaper classified advertisements should be at least eight [ ~~(8)~~ ] point boldface type, and display advertising must include the Equal Housing logo and slogan;

c. If other logotypes are used in the advertisement, then the Equal Opportunity logotype should be of a size equal to the largest of other logotypes;

d. All signs, off-site and on-site, must prominently display the logo and slogan, or the statement in a size that would not be smaller than the largest letters used on the sign; and

e. The logo and slogan, or the statement and the HUD Equal Housing Opportunity Poster (HUD Form 928.1 dated 7-75), must be prominently displayed in the on-site office or wherever applications are being taken.

2. Affirmative marketing plan. Any local government making application to ~~VHDA~~ *the authority* for a rental rehabilitation grant must submit as part of its application, on a form supplied by ~~VHDA~~ *the authroity* , a local affirmative marketing plan covering the leasing of all rehabilitated units, except for those occupied by families receiving Section 8 certificates or vouchers. Such plan must include the following information for each neighborhood in which the local government proposes to operate a rental rehabilitation program:

a. An identification of the predominant racial/ethnic composition of the neighborhood;

b. An identification of the group(s) in the housing market area that are least likely to apply for

housing in the neighborhood because of its location and other factors without special outreach efforts;

c. An identification of the types of advertising and outreach procedures (e.g., use of community contacts) which participating property owners may use to meet their affirmative marketing responsibilities;

d. A description of the information to be provided to participating property owners, their staff or managing agents to enable them to carry out their affirmative marketing and fair housing responsibilities; and

e. The anticipated results of the local affirmative marketing plan (i.e., the percent of vacancies expected to be filled by the identified target group(s)).

3. Affirmative marketing agreements. Any property owner applying for rental rehabilitation funds from a grantee must submit to such grantee a description of its proposed affirmative marketing procedures which must conform with the grantee's affirmative marketing plan. This description must be in a form prescribed by the grantee, and must include the form(s) of advertising and community contacts to be used by the owner or the owner's managing agent in publicizing all vacancies, except for units rented to families receiving Section 8 certificates or vouchers, in order to attract the group(s) identified by the grantee as being least likely to apply.

Upon approval of proposed efforts, owners must enter into a compliance agreement with the grantee which must include:

a. An agreement to comply with federal, state and local fair housing law;

b. An agreement to carry out specified affirmative marketing procedures;

c. An agreement to maintain records on the racial/ethnic and gender characteristics of tenants occupying units before and after rehabilitation, records on tenants moving from and (initially after rehabilitation) into rehabilitated units, records on applications for tenancy within 90 days following completion of rehabilitation, data on the race and ethnicity of displaced households and, if available, the address of the housing units to which each displaced household relocated, and information documenting affirmative marketing efforts in a form specified by the grantee;

d. An agreement to report such information to the grantee on an annual basis; and

e. Sanctions to be imposed by the grantee in the event of noncompliance by the property owner.

Such agreement must be effective for a period of seven years beginning on the date on which the rehabilitation of the units in the projects is completed.

4. Grantee requirements. Each grantee shall be responsible for:

a. Informing property owners' staff and owners' managing agents of their responsibility to comply with federal, state and local fair housing laws;

b. Informing property owners of the affirmative marketing requirements of the Virginia Rental Rehabilitation Program, as well as the provisions of the grantee's affirmative marketing plan;

c. Reviewing and approving affirmative marketing procedures proposed by property owners;

d. Entering into legally binding affirmative marketing agreements with property owners;

e. Monitoring compliance by property owners with affirmative marketing agreements and imposing prescribed sanctions as necessary; and

f. Collecting, and reporting to ~~VHDA~~ *the authority* on an annual basis, information regarding the racial/ethnic and gender characteristics of tenants occupying units before and after rehabilitation, information on tenants moving from and (initially after rehabilitation) into rehabilitated units, records on applications for tenancy within 90 days following completion of rehabilitation, data on the race and ethnicity of displaced households and, if available, the address of the housing units to which each displaced household relocated, and information documenting property owner compliance with affirmative marketing requirements (e.g., records of all advertisements, notices and marketing information).

J. Use of minority and women's business enterprises. Each grantee must encourage the use of minority and women's business enterprises in connection with activities funded with rental rehabilitation grant monies in accordance with 24 CFR 511.10(m)(1)(v). Such efforts must include the following activities.

1. Targets. Upon entering into a grant agreement with ~~VHDA~~ *the authority* , each grantee must establish local dollar or other measurable targets based on factors that the grantee regards as appropriate and related to the purpose of its rental rehabilitation program. A copy of such targets must be forwarded to ~~VHDA~~ *the authority* prior to the drawing down of any grant funds.

2. List of businesses. Upon entering into a grant agreement with ~~VHDA~~ *the authority* , each grantee must prepare a list of minority and women's business enterprises which are potential suppliers or rehabilitation services and materials to property owners receiving grant assistance. A grantee should make use of the services of the Virginia Office of Minority Business Enterprise and appropriate federal agencies, as needed, in preparing such a list. Each grantee must forward a copy of the list to ~~VHDA~~ *the authority* prior to drawing down any grant funds.

3. Bid solicitation. Each grantee must make reasonable efforts to include qualified minority and women's business enterprises on bid solicitation lists and to ensure that such businesses are solicited whenever they are potential sources of services and materials.

4. Negotiated contracts. Whenever competitive bidding is not required of a property owner, the grantee must provide the property owner with a list of minority and women's business enterprises which are potential sources of services or materials.

5. Subcontracts. Each grantee must ensure that property owners require that all subcontractors be provided with a list of minority and women's business which are potential suppliers of materials or services.

6. Records. Each grantee must keep records of the number and dollar amount of participation by minority and women's business enterprises, including subcontractors and owners of rental properties, in connection with activities funded with rental rehabilitation grant monies.

K. Use of local area and minority contractors, suppliers and employees.

Each grantee must encourage the use of local area and minority contractors, suppliers and employees in connection with activities funded with rental rehabilitation grant monies in accordance with 24 CFR 511.10(m)(1)(v). Such activities must include the development of a plan that includes the following elements:

1. Area definition. The plan must include a definition of the local area in which residents and businesses are the intended beneficiaries of rental rehabilitation activities (usually the applicant locality or, in the case of a town or small city, the locality plus the adjacent county).

2. Procedures. The plan must include procedures to be followed to encourage the use of local area and minority contractors, suppliers and employees in connection with activities funded with rental rehabilitation grant monies.

A copy of this plan (such federally required plans are often referred to as "Section 3 Plans") must be forwarded to ~~VHDA~~ *the authority* prior to the drawing down of any grant funds.

L. Architectural barriers to the handicapped.

Each grantee must ensure that, in the case of projects involving the rehabilitation of 25 or more units where the cost of rehabilitation is greater than or equal to 75% of the value of the project after rehabilitation, the owner improves any unit occupied by a handicapped person prior to rehabilitation in a manner which removes architectural barriers in accordance with the requirements of 24 CFR 511.10(m)(1)(ii).

M. Age discrimination in employment.

Each grantee must ensure that property owners do not discriminate against employees based on age, nor that property owners use contractors who so discriminate, in accordance with 24 CFR 511.10(m)(1)(ii).

N. Labor standards.

Each grantee must ensure that all laborers and mechanics, except laborers and mechanics employed by a local government acting as the principal contractor on the project, employed in the rehabilitation of a project receiving rental rehabilitation grant assistance that contains 12 or more units, are paid at the prevailing wage rates set under the Davis Bacon Act, 40 USC 276a, and that contracts involving their employment are subject to the provisions of the Contract Work Hours and Safety Standards Act, 40 USC 327, in accordance with the requirements of 24 CFR 511.11(a).

O. Environmental and historic reviews.

Each grantee must comply with the environmental and historic review requirements contained in 24 CFR Part 58. Grantees must submit requests for release of funds to ~~VHDA~~ *the authority* for review. VHDA will forward its recommendation, together with the request, the environmental certification and the objections, to HUD. All approvals for release of funds will be made by HUD.

P. Conflicts of interest.

Each grantee must comply with the conflict of interest requirements contained in 24 CFR 511.11(e).

Q. Lead-based paint.

Each grantee must ensure that any property owner receiving rental rehabilitation grant assistance takes steps to remove the hazards of lead-based paint in accordance with the requirements of 24 CFR Part 35.

R. Use of debarred, suspended or ineligible contractors.

Each grantee must comply with the requirements of 24 CFR Part 24 in the employment, engagement of services,

awarding of contracts, or funding of any contractors or subcontractors with rental rehabilitation grant funds.

S. Legal agreement with property owner.

Each grantee must execute an agreement with the owner of a property receiving rental rehabilitation assistance, including a cooperative or mutual housing association, under which the owner:

1. Agrees, for a period of at least 10 years beginning on the date on which the rehabilitation of the units in the project is completed, not to:

a. Discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance program;

b. Discriminate against prospective tenants on the basis that the tenants have a minor child or children who will be residing with them, except for housing projects for elderly persons; and

c. Convert the units to condominium ownership or any form of ineligible cooperative ownership.

2. Agrees, for a period of seven years beginning on the date on which the rehabilitation of the units in the project is completed, to:

a. Comply with federal, state or local fair housing laws;

b. Carry out specified affirmative marketing procedures; and

c. Maintain records on the racial/ethnic and gender characteristics of tenants occupying units before and after rehabilitation, records on tenants moving from and (initially after rehabilitation) into rehabilitated units, records on applications for tenancy within 90 days following completion of rehabilitation, data on the race and ethnicity of displaced households and, if available, the address of the housing units to which each displaced household relocated, and information documenting affirmative marketing efforts in a form specified by the grantee, and to report such information to the grantee on an annual basis (see § 5 I 3).

Such agreement must contain sanctions to be imposed by the grantee in the event of noncompliance by the property owner. Guidelines are contained in 24 CFR 511.10(i) and (j).

§ 6. Grant administration.

A. Responsibility for grant administration.

Grantees are responsible for ensuring that rental rehabilitation grants are administered in accordance with the requirements of these ~~procedures, instructions and guidelines~~ *rules and regulations* , all applicable sections of 24 CFR Part 511 and other applicable state and federal laws.

B. Records to be maintained.

Each grantee must maintain records specified by ~~VHDA~~ *the authority* that clearly document its performance under each requirement of these ~~procedures, instructions and guidelines~~ *rules and regulations* . Required records must be retained for a period of three years from the date of final close-out of the rental rehabilitation grant. Public disclosure of records and documents must comply with the requirements of 24 CFR 511.72.

C. Grant management and audit.

Each grantee must comply with the policies, guidelines and requirements of 24 CFR 511.11(c) in the acceptance and use of rental rehabilitation grant funds. Access to grantee records and files must be provided in accordance with the requirements of 24 CFR 511.73. The financial management systems used by grantees must conform to the requirements of 24 CFR 511.74.

D. Disbursement of funds/cash management systems.

Grant monies will be disbursed to grantees for payment of eligible program costs in accordance with the following procedures:

1. Project accounts. Grantees must identify to ~~VHDA~~ *the authority* each project for which they wish to provide rental rehabilitation funds and the amount of grant monies to be committed to each project. Upon receipt of all necessary project information, ~~VHDA~~ *the authority* will establish a project account with HUD.

2. Disbursement of funds. Grant monies will be disbursed on a project-by-project basis by electronic funds transfer to a designated depository institution in accordance with HUD procedures and guidelines. ~~VHDA~~ *The authority* will designate a depository institution and make all requests to HUD for funds transfer, unless such authority is formally delegated to a grantee by ~~VHDA~~ *the authority* . Grantees will notify ~~VHDA~~ *the authority* of the need for grant funds to pay eligible rehabilitation costs. ~~VHDA~~ *the authority* will in turn request HUD to transfer funds to ~~VHDA~~ *the authority* . Upon receipt of such monies, ~~VHDA~~ *the authority* will disburse grant funds to the grantee or, at ~~VHDA's~~ *the authority's* option, ~~VHDA~~ *the authority* may, prior to receiving the grant funds requested from HUD, disburse to the grantee its own funds in an amount equal to such requested grant funds and reimburse itself with the HUD funds upon receipt thereof.

3. Conditions for requesting draw-downs of funds.

Grantees must not request draw-downs of funds until such funds are actually needed for payment of eligible costs. A request for funds for payment of a contractor may only be made after the work has been inspected and found to be satisfactory. Grant funds must be drawn down at no greater proportion than the amount of rental rehabilitation funds in the project. For example, if on a $10,000 rehabilitation project, $5,000 of rental rehabilitation grant funds were provided and the construction was 50% complete, no more than $2,500 in rental rehabilitation grant funds could be drawn down for the project. Disbursement of any grant funds is conditioned on the submission of satisfactory information by the grantee about the project and compliance with other procedures established by ~~VHDA~~ *the authority* and HUD.

§ 7. Allocation and administration of § 8 certificates and vouchers.

A. Allocation of rental assistance.

Subject to the availability (as determined by HUD) of contract and budget authority for certificates or vouchers under Section 8, [ ~~VHDA~~ *the Authority* ] will assign contract authority for up to one voucher or certificate for use in the Virginia Rental Rehabilitation Program for each $5,000 of rental rehabilitation grant monies allocated to a grantee. Such rental assistance must be used in accordance with 24 CFR 511.41(a) and other governing HUD rules, regulations, procedures and requirements.

B. Administration of rental assistance.

~~VHDA~~ *The authority* will enter into Annual Contributions Contracts with HUD to administer contract authority for Section 8 certificates or vouchers allocated to Virginia for use in the Virginia Rental Rehabilitation Program. ~~VHDA~~ *The authority* will administer such contract authority in accordance with the applicable ~~VHDA Procedures, Instructions and Guidelines~~ *rules and regulations of the authority* .

§ 8. Annual performance review.

A. Performance elements.

~~VHDA~~ *The authority* uwill review the performance of all grantees in carrying out their responsibilities under these ~~procedures, instructions and guidelines~~ *rules and regulations* and under all the applicable requirements of 24 CFR Part 511 at least annually. These reviews will analyze whether the grantee has:

1. Carried out its activities in a timely manner, including the commitment of rental rehabilitation grant funds to specific projects;

2. Has carried out its activities in accordance with all state and federal requirements; and

3. Has a continuing capacity to carry out its activities in a timely manner.

B. Grantee reports to ~~VHDA~~ *the authority* .

Each grantee must submit the following reports to ~~VHDA~~ *the authority* at such times and such formats as ~~VHDA~~ *the authority* may prescribe:

1. Management reports. Each grantee must submit reports to ~~VHDA~~ *the authority* on the management of its rental rehabilitation grant as requested by ~~VHDA~~ *the authority* .

2. Annual performance report. Each grantee must submit an annual performance report to ~~VHDA~~ *the authority* at such times as ~~VHDA~~ *the authority* may prescribe. This report must contain such information and be in such form as prescribed by ~~VHDA~~ *the authority* , and will include at least the elements prescribed in 24 CFR 511.81(2).

C. Remedial actions and sanctions.

In the event of failure by a grantee to carry out its responsibilities in administering its rental rehabilitation grant, ~~VHDA~~ *the authority* will seek remedial actions on the part of the grantee and, if necessary, impose sanctions including the recapture of uncommitted rental rehabilitation grant funds and barring the local government from future participation in the Virginia Rental Rehabilitation Program.

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Title of Regulation: **VR 400-02-0009. Rules and Regulations For Virginia Homesteading Program (Formerly: Procedures, Instructions and Guidelines for Virginia Homesteading Program).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0009. Rules and Regulations for Virginia Homesteading Program.

§ 1. Definitions.

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

~~*"Executive Director"* means the Executive Director of VHDA or any other officer or employee of VHDA who is authorized to act on behalf of VHDA pursuant to a resolution of the Board of Commissioners.~~

*"FmHA"* means the Farmer's Home Administration of the U. S. Department of Agriculture.

*"HUD"* means the U. S. Department of Housing and Urban Development.

*"Locality"* means any unit of local government in which a Virginia Homesteading Program is implemented.

*"PHA"* means any state, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development and operation of low-income housing.

~~*"VHDA" means the Virginia Housing Development Authority.*~~

*"VA" means the Veterans' Administration.*

These definitions supplement those contained in 24 CFR Part 590.5 and other applicable sections of the Code of Federal Regulations. Only those terms not defined in the ~~Federal~~ Code *of Federal Regulations* or used differently herein have been defined.

§ 2. Purpose and applicability.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* are applicable to all program activities carried out by ~~VHDA~~ *the authority* with funds provided by HUD or other source for the purpose of carrying out the Virginia Homesteading Program (herein referred to as "the program") for the benefit of lower-income families and persons.

These ~~procedures, instructions and guidelines~~ *rules and regulations* supplement and clarify rather than supercede the requirements of the federal Urban Homesteading Program as described in 24 CFR Part 590. ~~VHDA~~ *The authority* is fully bound by all applicable requirements of 24 CFR Part 590, as well as governing federal and state laws in the administration or use of funds received from HUD under the federal Urban Homesteading Program.

*Properties will be acquired and construction loans may be made pursuant to these rules and regulations only if and to the extent that the authority has received or expects to receive section 810 funds from HUD for such acquisition and has made or expects to make loan funds available for the making of such construction loans.*

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any homesteading project to waive or modify any provisions herein where deemed appropriate by him for a good cause, to the extent not inconsistent with ~~VHDA's~~ *the* Act, *these* rules and regulations, and any applicable federal laws and regulations.

All reviews, analyses, evaluations, inspections, determinations, and other actions by ~~VHDA~~ *the authority* pursuant to the provisions of these ~~procedures, instructions, and guidelines~~ *rules and regulations* , shall be made for the sole and exclusive benefit and protection of ~~VHDA~~ *the authority* , and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of ~~VHDA~~ *the authority* or program participants under the agreements and documents executed in connection with the program.

The ~~procedures, instructions and guidelines~~ *rules and regulations* set forth herein are intended to provide a general description of this program and are not intended to include all actions involved or required in the administration of funds under the program. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by ~~VHDA~~ *the authority* and may be supplemented by policies, ~~procedures, instructions, and guidelines~~ *rules and regulations* adopted by ~~VHDA~~ *the authority* from time to time with respect to the program. These ~~procedures, instructions and guidelines~~ *rules and regulations* are adopted ~~under Rules 103 and Part V of VHDA's Rules and Regulations adopted on January 17, 1984,~~ pursuant to § 36-55.30:3 of the Code of Virginia. ~~The effective date of these procedures, instructions and guidelines is January 15, 1985.~~

§ 3. General program description.

Under the program ~~VHDA~~ , *the authority* will acquire foreclosed properties from the FmHA, HUD, and VA. ~~VHDA~~ *The authority* may also utilize properties from its own inventory of foreclosures or may acquire units which are owned by local governments. The acquisition of these properties will be financed using Section 810 Funds supplied by HUD. The emphasis will be on properties located in rural areas and in small towns. These properties will be acquired in groups which are concentrated geographically, preferably within the same subdivision or neighborhood. The properties will also be properties which are in need of a significant amount of rehabilitation in order to bring them into compliance with ~~VHDA~~ *the authority* , FmHA, and the statewide building code requirements.

A pool of eligible applicants from within the locality and surrounding area will be developed, with a priority being given to lower-income families. In the case where the demand from eligible families exceeds the supply of properties available, applicants for specific properties will be selected on the basis of a lottery. Upon sale of the property to an applicant for the price of $1.00, the applicant becomes a homesteader. The homesteader will be required to rehabilitate the property in accordance with a work plan developed by ~~VHDA~~ *the authority* .

~~VHDA~~ *The authority* will provide a temporary construction-period loan to the homesteader to cover the cost of rehabilitation. Permanent financing will be provided primarily by the FmHA. Other sources of permanent financing may also be used, including ~~VHDA~~ *the authority* , FHA, Section 312 of the Housing Act of 1964, as amended, loan programs operated by the locality

or local PHA, and conventional sources of financing.

Title to the property is not conveyed to the homesteader at the time of purchase. Instead, ~~VHDA~~ *the authority* will sell the property by means of an installment sales contract, which has a five-year term, during which time ~~VHDA~~ *the authority* retains title to the property. Over the five-year period, ~~VHDA~~ *the authority* will monitor the homesteader and the property to assure that certain program requirements are met. These are as follows:

~~A.~~ *1.* The homesteader must complete the rehabilitation of the property in accordance with the ~~VHDA~~ work plan *approved by the authority* and within the period of time prescribed by ~~VHDA~~ *the authority* ;

~~B.~~ *2.* The homesteader must maintain the property in good condition;

~~C.~~ *3.* The homesteader must keep payments for any financing on the property current;

~~D.~~ *4.* The homesteader may not sell or rent the property;

~~E.~~ *5.* The homesteader must continue to occupy the property as his principal residence; and

~~F.~~ *6.* The homesteader must permit inspections of the property at reasonable times by employees or designated agents of ~~VHDA~~ *the authority* .

Upon satisfactorily completing five years of occupancy, ~~VHDA~~ *the authority* will provide the homesteader with a deed to the property and will terminate its monitoring function.

The purpose of the program is two-fold. First, the program will provide homeownership opportunities to lower-income families in rural areas who have relatively few housing options, particularly with respect to homeownership. Secondly, the program will address the problem of vacant and deteriorating properties and the impact which they have on neighborhood viability. Often, these types of properties contribute to the decline of neighborhoods by creating a cycle where other homeowners feel they have no incentive to maintain their own properties due to declining values in the area which are caused primarily by the vacant and deteriorating houses. By rehabilitating these problem properties and placing stable families in them, it is possible to stabilize or reverse negative trends in the entire neighborhood.

§ 4. Program eligibility.

A. Eligible localities.

~~VHDA~~ *The authority* may operate the program within any jurisdiction in the state which does not currently operate its own program. Priority shall be given to those areas of the state which are eligible for participation in FmHA programs.

B. Eligible neighborhoods.

Any neighborhood shall be eligible for participation in the program, provided that it is located in an eligible jurisdiction and contains vacant and eligible housing units.

C. Eligible properties.

Any single-family house (including single-family detached, townhouse, or condominium) which meets the following conditions is eligible for acquisition under the program:

1. Foreclosed properties which are being held in the inventories of FmHA, HUD, VA, ~~VHDA~~ *the authority* , local PHA's or other agencies of federal, state, or local government, as well as properties which have been acquired by units of local government as a result of tax delinquency or other actions are eligible.

2. The house must be in need of rehabilitation which is substantial in nature and cost. The intent of the program is to select houses which require the correction of serious deficiencies in one or more of the functional systems of the house. These include structural, electrical, plumbing, heating/cooling, and roofing. In order to be eligible, the house must evidence a serious defect in at least one of these major housing component systems. The one exception to this would be the case of a house which exhibits a significant amount of deferred maintenance in a number of areas. If considered individually, these improvements would not be viewed as substantial rehabilitation, but when taken as a whole, they do constitute a substantial rehabilitation of the housing unit.

There is no cost threshold with respect to the level of rehabilitation required; however, in most cases it is expected that rehabilitation costs will, at a minimum, exceed 25% of the after-rehabilitation value of the property.

D. Eligibility of improvements.

Most general types of property improvements will be eligible under this program. As noted above, cosmetic improvements are eligible when undertaken in conjunction with improvements of a more substantial nature. Cosmetic improvements alone will not be allowed under any circumstances. In addition, luxury type improvements (i.e., swimming pools) will not be allowed.

Upon completion, the house must meet or exceed all FmHA standards with respect to property rehabilitation, including thermal performance standards, all ~~VHDA~~ *of the authority's* requirements with respect to substantial rehabilitation, as well as the statewide and local building code requirements.

There will be an emphasis placed upon improvements to the property which have an impact on the exterior appearance of the house and the entire subdivision. These would include improvements such as exterior painting, adding additional trimwork to the exterior (i.e., shutters), porches, carports, garages, yard landscaping (i.e., lawn seeding, shrubs, trees), improvements to driveways, improvements to drainage structures, fencing, etc. These types of improvements will be included in individual loans only to the extent that they are located entirely on the subject property.

~~VHDA~~ *The authority* will endeavor to work with the local government, as well as other federal and state agencies to encourage other public improvements which would benefit the neighborhood as a whole. These would include activities such as street, water, sewer, recreational, and other types of improvements. Further, ~~VHDA~~ *the authority* will endeavor to work with appropriate units of local government and other agencies in order to improve both governmental and private services which are available to the residents of the neighborhood (i.e., local transportation service, increased law enforcement patrol activity, housing counseling).

E. Eligibility of applicants.

The eligibility of families and persons under this program shall be limited to those households with incomes less than 80% of the median for the jurisdiction in which the housing is located. ~~VHDA~~ *The authority may* , in conjunction with the unit of local government, ~~may~~ establish priorities within this group. These priorities shall include the federal requirement to give special consideration to the applicant's need for housing and his ability to make, or cause to be made, the required property improvements.

In cases where the permanent mortgage financing available on the completed houses will be limited to certain programs (i.e., FmHA Section 502 and HUD 312 programs), then applicants would be prescreened to select those persons and families who meet the threshold criteria for those programs.

§ 5. Application and processing.

A. Selection of units.

From time to time, ~~VHDA~~ *the authority* will request the FmHA, HUD, VA, or other agencies to supply a list of properties currently in their inventory of foreclosed housing units. From this list, ~~VHDA~~ *the authority* will determine if there are concentrations of properties which are suitable for the implementation of the program. This determination will be made on the basis of physical examination of the properties and the neighborhoods and will include an evaluation of the selection criteria mentioned above, including the geographical proximity of the units, the number of units available, the condition of the units and required level of rehabilitation, evaluation of the local market for the units, and evaluation of the ability of the local government to contribute to community improvements and increased services.

As soon as the properties have been selected, ~~VHDA~~ *the authority* will notify the appropriate agency and request that no sales contracts be taken for those units until such time as acquisition can be arranged utilizing Section 810 Funds from HUD.

B. Marketing.

As soon as eligible properties have been selected and the agencies which own the properties have agreed to reserve them for use under the program, ~~VHDA~~ *the authority* will undertake a marketing effort in the locality in which the units are located. These activities may include newspaper advertising and public notices, public meetings, coordination with the local PHA, outreach to local housing groups, civic organizations, churches, etc.

Applications will be accepted for a specified period of time. The length of this application period will be determined by local conditions, including the number of properties and the size of the local market. Initial screening of applicants will then take place to determine which persons and families meet the threshold criteria for the program. After that, the applications will be prioritized according to the standards mutually agreed to by ~~VHDA~~ *the authority* and the unit of local government, as well as those which are federally mandated.

C. Lottery.

If the prequalified applicants exceed the number of properties available, all of these applicants will participate in a lottery to determine who will have the first opportunity to purchase one of the properties. A drawing will be held for each property with applicants able to submit their names to be considered for any or all of the properties. Any applicants who are selected for more than one of the properties would be required to choose which of the properties would be their first choice.

D. Application preparation.

For each property, approximately five names will be selected in the lottery. Then, beginning with the first, ~~VHDA~~ [ *the staff of* ] *the authority* [ ~~staff~~ ] will prepare a FmHA (or other applicable lending institution) mortgage loan application. This application will be submitted to FmHA along with a copy of the rehabilitation plans and specifications. If, during the process of preparing the application, the applicant is found to be ineligible or if the application is rejected by FmHA, then the process would be repeated with the ~~second~~ *next* person or family on the lottery selection list *until an applicant is determined to be eligible and acceptable to FmHA* .

E. Rehabilitation contract.

As soon as the permanent mortgage loan application has been approved, ~~VHDA~~ staff *of the authority* will, with the concurrence of the homesteader, put the rehabilitation contract out for bid, or negotiate with a local rehabilitation contractor. The lowest responsible bidder will be awarded the contract. Rehabilitation contractors will be subject to an investigation by ~~VHDA~~ *the authority* in order to determine their competence to perform the work.

The contract for rehabilitation will run between the homesteader and the contractor. ~~VHDA~~ *The authority* will not be a party to this contract. ~~VHDA~~ *The authority* will, however, act as a technical adviser to the homesteader in the preparation of the work plan, selection of the contractor, inspection of the property during the construction, disbursement of construction funds, and final inspection after completion.

F. Loan closing.

Once an acceptable rehabilitation contract has been obtained through bid or negotiation, the property will go to loan closing. At loan closing, the homesteader will sign the installment sales contract with ~~VHDA~~ *the authority* , a homesteading agreement with ~~VHDA~~ *the authority* and a construction loan note and agreement with ~~VHDA~~ *the authority* . The homesteader will also execute the rehabilitation contract with the contractor selected.

The ~~VHDA~~ *authority's* construction loan is provided for a term not to exceed 180 days and at an interest rate to be determined by the executive director. The amount of the construction loan shall not exceed the amount of the permanent mortgage loan commitment and shall include the cost of rehabilitation and any associated soft costs, including a pro rata share of ~~VHDA's~~ *the authority's* administrative expenses incurred in the implementation of the program.

G. Rehabilitation construction.

Rehabilitation construction shall commence within 30 days of loan closing. ~~VHDA~~ *The authority* shall monitor the rehabilitation construction and authorize all disbursements made to the contractor during the rehabilitation period, including the final disbursement upon completion. Such disbursements shall not exceed the value of the work in place, less a 10% retainage. The homesteader shall be required to sign off on all inspections and disbursements. Upon completion, ~~VHDA~~ *the authority* shall request inspection of the property by FmHA or other applicable permanent mortgage lender. Upon approval by the permanent mortgage lender, final disbursement shall be made to the contractor, including retainage. The permanent mortgage loan closing will take place shortly thereafter, at which time ~~VHDA's~~ *the authority's* construction loan will be paid off.

H. Post-occupancy monitoring.

~~VHDA~~ *The authority* shall monitor the homesteader with respect to the provisions in *subdivisions 1 through 5 of* § 3 ~~A-E~~ above for a period of five years. Upon successful completion of this period, ~~VHDA~~ *the authority* shall provide the homesteader with a deed to the property.

If the homesteader does not comply with the required provisions at any time during the five-year period, the homesteader shall receive a warning from ~~VHDA~~ *the authority* and be given a grace period during which to correct the deficiency. The length of this grace period will be dependent upon the nature of the deficiency and shall be determined by ~~VHDA~~ *the authority* for each individual case. If the deficiency is not corrected, ~~VHDA~~ *the authority* may declare the homesteader to be in default of the installment sales agreement and take back possession of the property pursuant to such agreement. In this case, the property would be made available to another applicant. If this second Homesteader also defaults in complying with the provisions required in *subdivisions 1 through 5 of* § 3 ~~A-E~~ above, ~~VHDA~~ *the authority* may dispose of the property in any manner which it determines to be appropriate.

* * * * * * * * *

Title of Regulation: **VR 400-02-0010. Rules and Regulations for Mortgage Credit Certificate Program (Formerly: Procedures, Instructions and Guidelines for Mortgage Credit Certificate Program).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0010. Rules and Regulations for Mortgage Credit Certificate Program.

PART I.
PURPOSE AND APPLICABILITY.

§ 1.1. Definitions.

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

*"Acquisition cost"* means the purchase price of a mobile/manufactured or site-built home, and the cost of land and improvements, including any well or septic system, if owned for less than two years; the cost of completing any unfinished space; the cost of any fixtures not included in the purchase price; any set-up costs including transportation of a mobile/manufactured home , if not included in the purchase price; settlement or financing costs which are in excess of usual or reasonable costs and the capitalized value of any ground rent.

*"Application for Commitment"* means a request to the authority by an applicant for an MCC commitment on a specified loan. This request shall be made on the Application for Commitment form.

*"Authority"* means the Virginia Housing Development Authority, a political subdivision of the Commonwealth of Virginia constituting a public instrumentality.

*"Certified indebtedness"* means the amount of indebtedness as determined by the authority incurred by the applicant to acquire a mobile/manufactured or site-built home, in accordance with federal requirements and as specified in the MCC.

*"Commitment"* means the obligation of the authority to provide an MCC to an eligible applicant pursuant to an approved Application for Commitment.

*"Commitment fee"* means the fee payable or paid by an eligible applicant to the authority in connection with an Application for Commitment.

*"Commitment term"* means the period of time during which the eligible applicant may obtain a loan to which the MCC applies and during which the authority is obligated to issue an MCC pursuant to a commitment.

*"Eligible applicant"* means any person meeting the criteria for an eligible applicant as set forth in Part II of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

*"Executive director"* means the executive director of the authority or any other officer or employee of the authority who is authorized to act on his behalf or on behalf of the authority pursuant to a resolution of the board ~~of Commissioners~~ of the authority.

*"Loan"* means any extension of credit, to which an MCC applies, provided to an eligible applicant to finance the purchase of a mobile/manufactured or site-built home which meets the conditions set forth in these ~~procedures, instructions and guidelines~~ *rules and regulations* .

*"Mobile/manufactured home"* means any mobile/manufactured housing unit that meets the criteria set forth in Part II of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

*"Mortgage credit certificate"* or "MCC" means a certificate issued by the authority pursuant to § 25 of the Internal Revenue Code *of 1986,* as amended ~~by § 612 of the Tax Reform Act of 1984~~ .

*"Mortgage credit certificate rate"* means the rate specified by the authority in the MCC that determines the allowable percentage of annual loan interest payments for which the applicant is eligible to take a federal tax credit.

*"Participating lender"* means any person or organization legally authorized to engage in the business of making loans for the purchase of mobile/manufactured homes or for the purchase or construction of site-built homes and meeting the qualifications set forth in these ~~procedures, instructions and guidelines~~ *rules and regulations* .

*"Principal residence"* means that the dwelling will be occupied as the primary residence of the purchaser and will not be property held in a trade or business, or investment property, and is not a recreational or second home and that no part of the dwelling shall be used for any business purposes for which expenses may be deducted for federal income tax purposes.

*"Program"* means the authority's Mortgage Credit Certificate Program.

*"Purchase price"* means, with regard to a mobile/manufactured home, the amount paid by the applicant or any other person to or for the benefit of the seller for such mobile/manufactured home (excluding the cost of any land or personal property which is not a permanently attached fixture); with regard to a site-built home it shall mean the amount paid for such home including land and improvements.

*"Qualified mortgage bond"* means a tax-exempt security, as defined under § [ ~~103A~~ *143* ] of the Internal Revenue Code *of 1986, as amended* , issued by a state, certain agencies or authorities or a local government, the proceeds of which are used to provide financing for owner-occupied residential property.

*"Qualified veterans bond"* means a tax-exempt security, as defined under § [ ~~103A~~ *143* ] of the Internal Revenue Code *of 1986, as amended* , issued by a state or certain agencies or authorities, the proceeds of which are used to provide financing for owner-occupied residences of certain veterans of military, naval or air service.

*"Site-built home"* means a single family residence intended to be the principal residence of the purchaser which is permanently affixed to real property and is not a mobile/manufactured home.

§ 1.2. Purpose and applicability.

Section 25 of the Internal Revenue Code *of 1986* , as amended, authorizes states and political subdivisions to issue MCC's in lieu of qualified mortgage revenue bonds. These MCC's entitle qualifying individuals to a credit against the individual's federal income taxes. The amount of the credit is determined by multiplying the certificate credit rate by the amount of mortgage interest paid or accrued by the taxpayer during the taxpayer's taxable year. The maximum allowable credit is $2,000 per year.

The authority has elected to participate in the program and hereby sets forth its ~~procedures, instructions and guidelines~~ *rules and regulations* thereunder.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* will be applicable to MCC's which are to be issued by the authority to persons and families of low and moderate income for the purpose of assisting them in the purchase of mobile/manufactured or site-built homes. ~~This program is being implemented pursuant to~~

~~federal regulations found in 26 CFR, Parts 1, 6a and 602, which were published in the Federal Register on May 8, 1985.~~

*MCC's may be issued to eligible persons and families pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make MCC's available therefor.*

Notwithstanding anything to the contrary herein, the executive director of the authority is authorized with respect to any MCC to waive or modify any provision herein where deemed appropriate by him "for good cause" to the extent not inconsistent with [ *the* ] ~~the Virginia Housing Development Authority~~ [ *Act* ] ~~(hereinafter "the Act"), the authority's rules and regulations~~ [ *and* ] federal statutes and regulations.

The ~~procedures, instructions and guidelines~~ *rules and regulations* set forth herein are intended to provide a general description of the authority's requirements and processing and are not intended to include all actions involved or required in the processing and administration of MCC's. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to amendment at any time by the authority and may be supplemented by policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority from time to time with respect to the program.

Notwithstanding anything to the contrary herein, all MCC's must comply with the applicable federal laws, rules and regulations governing the issuance of MCC's.

PART II.
ELIGIBILITY REQUIREMENTS.

§ 2.1. Eligible persons and families.

In order to be qualified as a person or family of low and moderate income eligible for an MCC, the person or family must have an annual gross family income (as defined in the authority's rules and regulations) which does not exceed those limits established from time to time ~~by the authority's Board of Commissioners~~ in the authority's ~~Procedures, Instructions and Guidelines~~ *Rules and Regulations* for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income ~~. Additionally, in order to be eligible to receive an MCC, an applicant must~~ *and must* , on the date the loan is made:

1. Be a purchaser who will use the mobile/manufactured or site-built home for a permanent principal residence within the Commonwealth of Virginia;

2. Possess the legal capacity to incur the obligations of the loan;

3. Agree to notify the authority if the mobile/manufactured or site-built home ceases to be the purchaser's permanent principal residence;

4. Agree not to sell or transfer the MCC; and

5. Shall not have had a present ownership interest in a principal residence at any time during the three-year period ending on the date on which the loan is executed (not applicable in targeted areas and not applicable to previous ownership of a mobile/manufactured home classified as personal property).

§ 2.2. Eligible properties.

A. General.

1. Mobile/manufactured homes which are eligible under the program are those units which are new and have not been previously occupied and which have a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and which are of a kind customarily used at a fixed location and designed primarily for residential housing for one family. The dwellings must be of a type which is manufactured with a permanently affixed chassis for the purpose of transporting the dwelling to its site. All permanently attached fixtures are included as a part of the dwelling unit.

2. Site-built homes which are eligible under the program are those units that meet BOCA standards and otherwise qualify under the authority's ~~Procedures, Instructions and Guidelines~~ *Rules and Regulations* for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.

B. Purchase price and acquisition cost limits.

The purchase price of the mobile/manufactured or site-built home may not exceed those limits established from time to time by the Board of Commissioners of the authority in the ~~Procedures, Instructions and~~ Guidelines *Rules and Regulations* for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income. The total acquisition cost, which includes the cost of land if owned by the applicant less than two years, may not exceed those limits established from time to time in compliance with the federal requirements.

C. Location of property.

At the time the MCC is issued or within 60 days thereafter, the property must be located and occupied within the Commonwealth of Virginia.

§ 2.3. Eligible lenders.

The authority may not limit the use of an MCC obtained under this program by an eligible applicant to loans incurred from any particular lender. Therefore, the eligible applicant may obtain a loan from any lender

engaged in the business of extending credit for the purchase of mobile/manufactured homes or the purchase or construction of site-built homes, who agrees to comply with all federal and authority MCC requirements and regulations. A loan may not be obtained from a related person, as defined in the federal regulations.

§ 2.4. Eligible loans.

A. Time of loan.

To be eligible for an MCC issued by the authority, an applicant's certified indebtedness must have been incurred during the period when the authority is permitted to offer MCC's to eligible applicants.

B. Type of loan.

MCC's will be issued only to eligible applicants who obtain loans for the purpose of financing the purchase of mobile/manufactured or site-built homes for use as the principal residences of the eligible applicants. No loan may be made to refinance an existing loan unless such loan was a bridge loan or similar temporary initial financing. No portion of the financing of the dwelling may be made from the proceeds of a qualified mortgage bond or a qualified veterans bond.

C. Interest rates and term.

The interest rate shall not exceed and the term of loans made in connection with MCC's shall not substantially vary from those that are customarily used with respect to mortgages not provided in connection with MCC's. The authority shall from time to time monitor prevailing rates and terms within the industry for the purpose of determining compliance with this section.

D. Permissible loan fees.

The lender may not, without the prior written approval of the authority, require the applicant to pay, either directly or indirectly in obtaining the loan to which the MCC is to be applied, any points, origination fees, servicing fees, application fees, insurance fees, or similar settlement or financing costs in amounts exceeding those that are customarily charged with respect to mortgages not provided in connection with MCC's.

PART III.
ALLOCATION OF CREDITS.

§ 3.1. Allocation of credits to targeted areas.

The authority will comply with all targeted area requirements as contained in federal regulations. This includes the reservation of 20% of the MCC authority for use in targeted areas for a period of one year from the date on which the MCC's are first made available. A complete listing of targeted areas is available from the authority as well as instructions regarding the procedures for the designation of new targeted areas.

§ 3.2. Discretion of authority to allocate.

Notwithstanding anything to the contrary herein, in administering the program, the executive director may impose limitations or restrictions on the allocation of MCC's in order to insure a broad geographic dispersal of MCC's throughout the Commonwealth.

PART IV.
APPLICATION AND PROCESSING.

§ 4.1. Application for and issuance of commitments.

The applicant shall submit such forms, documents and information and fees as the executive director may require in order to apply for an MCC. The executive director or his designee shall review the application and, if it is determined that the Application for Commitment complies with these ~~procedures, instructions and guidelines~~ *rules and regulations* and any applicable federal laws, rules and regulations, then the authority shall issue a commitment to the applicant with respect to such MCC, subject to the ratification thereof by the authority's board ~~of Commissioners~~ . The maximum principal amount, amortization period and interest rate on the applicant's loan and such other terms, conditions and requirements as the executive director deems necessary or appropriate shall be set forth in the commitment. The commitment term shall be for 60 days, except that the term may be extended "for good cause" in the sole discretion of the authority.

§ 4.2. Issuance of MCC.

The closing of the loan shall be consummated in accordance with the terms of the commitment. Upon receipt of such forms, documents, information and commitment fees as the executive director may require upon closing, the authority shall issue an MCC to the applicant. The MCC shall specify the applicable mortgage credit certificate rate and the certified indebtedness amount.

§ 4.3. Compliance inspections.

The authority shall have the right from time to time to enter upon the property on which the mobile/manufactured or site-built home is located in order to determine compliance with program requirements. Any such inspection shall be made for the sole and exclusive benefit and protection of the authority.

PART V.
REVOCATION OF A MORTGAGE CREDIT CERTIFICATE.

§ 5.1. The authority may impose such sanctions or pursue such remedies, as legally available, including revocation of a certificate holder's MCC for noncompliance with

applicable regulations and requirements pursuant to federal guidelines. Such noncompliance shall include, but is not limited to, the mobile/manufactured or site-built home ceasing to be the MCC holder's principal residence. An MCC may be revoked by the authority's notification to the certificate holder and the Internal Revenue Service that the certificate is revoked.

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Title of Regulation: **VR 400-02-0011. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (Formerly: Procedures, Instructions and Guidelines for Allocation of Low-Income Housing Tax Credits.**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0011. Rules and Regulations for Allocation of Low-Income Housing Tax Credits.

§ 1. Definitions.

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

~~*"Authority"* means the Virginia Housing Development Authority.~~

*"Code"* means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

*"Credits"* means the low-income housing tax credits as described in § 42 of the Code.

~~*"Executive director"* means the executive director of the authority or any other officer or employee of the authority who is authorized to act on behalf of the authority pursuant to a resolution of the authority.~~

*"Low-income housing units" means those units which are defined as "low income units" under § 42 of the Code.*

" *Qualified* low-income ~~housing units~~ *buildings*" means those ~~units~~ *buildings* which meet the applicable requirements in § 42 of the Code to qualify for *an allocation of* credits thereunder.

§ 2. Purpose and applicability.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* will govern the allocation by the authority of credits pursuant to § 42 of the Code.

Notwithstanding anything to the contrary herein, acting at the request or with the consent of the applicant for credits, the executive director is authorized to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Code.

The ~~procedures, instructions and guidelines~~ *rules and regulations* set forth herein are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of the credits. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by the authority and may be supplemented by policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority from time to time.

§ 3. General description.

The Code provides for credits to the owners of residential rental projects ~~providing~~ *comprised of qualified low-income buildings in which* low-income housing units *are provided, all* as described therein. The aggregate amount of such credits (other than credits for developments financed with certain tax-exempt bonds) allocated in any calendar year within the Commonwealth may not exceed the Commonwealth's annual low-income credit authority limitation for such year ~~, which is equal to $1.25 for every resident of the Commonwealth~~ *under the Code* . An amount equal to 10% of such limitation is set-aside for certain qualified nonprofit organizations. Credit allocations are counted against the Commonwealth's annual credit authority limitation for the calendar year in which the credits are allocated. The Code provides for the allocation of the Commonwealth's credit authority limitation to the housing credit agency of the Commonwealth. The authority has been designated by executive order of the Governor as the housing credit agency under the Code and, in such capacity, shall allocate for each calendar year credits to ~~owners of~~ *qualified* low-income ~~housing units~~ *buildings* in accordance herewith.

*Credits are allocated to each qualified low-income building in a development separately.* Credits may ~~not~~ be allocated ~~before~~ *to such buildings either (i) during* the calendar year in which ~~the subject~~ *such* building ~~in a development~~ is placed in service *or (ii) if the building meets the requirements of § 42 (h)(1)(E) of the Code, during one of the two years preceding the calendar year in which such building is expected to be placed in service* . Prior to such allocation, the authority shall receive and review applications for ~~set-asides~~ *reservations* of credits as described hereinbelow and shall make such ~~set-asides~~ *reservations* of credits to *qualified* low-income ~~housing units~~ *buildings* , subject to satisfaction of certain terms and conditions as described herein. Upon compliance with such terms and conditions and *, as applicable, either (i)* the placement in service of the *qualified* low-income ~~housing units~~ *buildings or (ii) the satisfaction of the requirements of § 42 (h)(1)(E) of the Code with respect to such buildings* , the credits shall be allocated to ~~the owner of~~ such ~~units~~ *buildings* in the calendar year for which such credits were ~~set-aside~~ *reserved* by the authority.

The authority shall charge to each applicant who ~~receives an allocation of~~ *applies for* credits an administrative fee in such amount as the executive director shall determine to be necessary to cover the administrative costs to the authority, but not to exceed the maximum amount permitted under the Code. Such fee shall be payable at such times ~~as hereinafter provided or at such other times~~ as the executive director shall ~~for good cause~~ require.

§ 4. Solicitations of applications.

The executive director may from time to time take such action he may deem necessary or proper in order to solicit applications for credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications and the selection thereof as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available credits are to be allocated and such other matters as he shall deem appropriate relating to the selection of applications. The authority may also consider and approve applications submitted from time to time to the authority without any solicitation therefor on the part of the authority.

§ 5. Application.

Application for a ~~set-aside~~ *reservation* of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority, including, but not limited to: site, elevation and unit plans; information with respect to the status of the proposed development site and the surrounding community; any option or sales contract to acquire the site; evidence of a source of financing for the proposed development; an evaluation of the need and effective demand for the proposed development in the market area of such site; information regarding the legal, business and financial status and experience of the members of the applicant's proposed development team and of the principals in any entity which is a member thereof, including current financial statements (which shall be audited in the case of a business entity) for the mortgagor (if existing), the general contractor and the principals therein; information regarding amenities and services proposed to be offered to the tenants; an estimate of the housing development costs and the individual components thereof; the proposed schedule of rents; identification of the low-income housing units; the maximum incomes of the persons and families who are to occupy the low-income housing units and the maximum rents which may be charged to such persons and families under the Code; an estimate of the annual operating budget and the individual components thereof; the estimated utility expenses to be paid by the residents of units in the proposed development; the allowances permitted by the Code for utility expenses to be paid by the residents of the low-income housing units; the amount of any governmental loan, insurance, subsidy or assistance which the applicant expects to receive for the proposed development; a schedule for the acquisition of the property, obtaining any financing, commencement and completion of any construction or rehabilitation, and placement of the development in service; a legal opinion [ or other assurances satisfactory to the executive director ] as to compliance of the proposed development with the Code; and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

*The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations.*

In the case of developments which are to be financed or otherwise assisted by a federal agency or instrumentality or on which the financing is to be insured by such an agency or instrumentality, the application may be submitted on the forms provided by such agency or instrumentality, provided that all information required by this § 5 is set forth on such forms or other documents submitted with such forms.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable ~~procedures, instructions and guidelines~~ *rules and regulations.*

The authority may consider and approve, in accordance herewith, *both* the *reservation and the* allocation of credits to *buildings in* any developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

§ 6. Review of application.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each application. Such review shall include, but not be limited to, the following:

1. A review of the rights of the applicant with respect

to the acquisition and ownership of the site and an analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;

2. A review of the proposed housing development costs and an analysis of the adequacy of the proposed financing and other available moneys to fund such costs;

3. A review and evaluation of the applicant's schedule and of the feasibility of placing the low-income housing units in service in accordance therewith;

4. A review of the estimated operating expenses, utility expenses and allowances, and proposed rents and an evaluation of the adequacy of the proposed rents and other income to sustain the proposed development based upon the occupancy rate approved or required by the authority and upon estimated operating expenses and financing costs;

5. A market analysis as to the present and projected demand for the proposed development in the market area;

6. A review of the terms and conditions of the proposed financing and any governmental assistance;

7. A review of the (i) ability, experience and financial capacity of the applicant and general contractor and (ii) the qualifications of the architect, management agent and other members of the proposed development team;

8. An analysis of the proposed design and structure of the development, including the functional use and living environment for the proposed residents, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management and maintenance characteristics of the proposed development; and

9. An analysis as to the feasibility of the applicant's qualifying for the credits in accordance with the Code.

In reviewing applications, the executive director may rely on the underwriting or other review procedures performed by or on behalf of any federal agency or instrumentality which is to finance, insure the financing on, or otherwise assist the development.

§ 7. Selection of application; ~~set-aside~~ *reservations* of credits.

Based on the authority's review of applications, documents and any additional information submitted by the applicants or obtained from other sources by the authority, the executive director shall prepare a recommendation to the board ~~Commissioners~~ of the authority that a ~~set-aside~~ *reservation* of credits *in the form of a binding commitment as described in § 42 of the Code* be made ~~to~~ *with respect to the buildings described in* those applications which he determines best satisfy the following criteria:

1. The vicinity of the proposed development is and will continue to be a residential area suitable for the proposed development and is not now, nor is it likely in the future to become, subject to uses or determination which could adversely affect its operation, marketability or economic feasibility.

2. There are or will be available on or before the estimated completion date such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks, recreational facilities and major public and private employers) in the area of the proposed development as the executive director determines to be necessary or desirable for use and enjoyment by the contemplated residents.

3. The characteristics of the site (such as its size, topography, terrain, soil and subsoil conditions, vegetation, and drainage conditions) are suitable for the construction and operation of the proposed development.

4. The location of the proposed development will promote and enhance the marketability of the units to the person and families intended for occupancy thereof.

5. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to proceed with the development in accordance with the proposed schedule and these ~~procedures, instructions and guidelines~~ *rules and regulations* .

6. The design of the proposed development will contribute to the marketability of the proposed development and will provide a safe living environment for such residents.

7. The applicant and general contractor have the experience, ability and financial capacity necessary to carry out their respective responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development.

8. The architect, management agent and other members of the proposed development team have the qualifications necessary to perform their respective functions and responsibilities.

9. The application and proposed development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of

these ~~procedures, instructions and guidelines~~ *rules and regulations* .

10. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multifamily rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the applicant will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

11. All operating expenses (including customary replacement and other reserves) necessary or appropriate for the operation of the proposed development are included in the proposed operating budget, and the estimated amounts of such operating expenses are reasonable, are based on valid data and information and are comparable to operating expenses experienced by similar developments.

12. Based upon the proposed rents and projected occupancy level required or approved by the executive director, the estimated income from the proposed development is reasonable and comparable to income received on similar developments. The estimated income may include (i) rental income from commercial space within the proposed development if the executive director determines that a strong, long-term market exists for such space and (ii) income from other sources relating to the operation of the proposed development.

13. The estimated income from the proposed development, including any governmental subsidy or assistance, is sufficient to pay debt service, operating expenses, and customary replacement and other reserves.

14. The low-income housing units will, prior to such data and during such period as the Code shall require, be occupied by persons and families whose incomes do not exceed the limits prescribed by the Code.

15. Sufficient demand in the market area of the development exists and will exist for the units in the development during the term of the credits. Occupancy of the development will be achieved in such time and manner that the proposed development will (i) attain self-sufficiency (i.e., the rental and other income from the development is sufficient to pay all operating expenses, debt service and replacement and other reserves and escrows) within the usual and customary time for a development for its size, nature, location and type and (ii) will continue to be self-sufficient for the full term of the credits.

16. The estimated utility expenses and other costs to be paid by the residents are reasonable, are based upon valid data and information and are comparable to such expenses experienced by similar developments, and the estimated amounts of such utility expenses and costs will not have a materially adverse effect on the occupancy of the units in accordance with paragraph [ 15 ] of this section.

17. The proposed development includes such appliances, equipment, facilities and amenities as are customarily used or enjoyed by the contemplated residents in similar developments.

18. In the case of any development to be insured, subsidized or otherwise assisted or aided by any federal, state or local government, the proposed development will comply in all respects with any laws, rules and regulations relating thereto, and adequate insurance, subsidy, or assistance is available for the development and will be expected to remain available in the due course of processing with the applicable governmental entity.

19. The gross rents to be paid by families for the low-income housing units do not exceed 30% of the applicable qualifying income for a family of its size (reduced by any utility allowances as required by the Code). The amounts of any utility allowances are calculated in accordance with the requirements of the Code.

20. The applicant will be able to proceed with the development in accordance with the schedule submitted with the application, and as a result the proposed development will be placed in service ~~prior to or during the initial year for which the credits are requested~~ *within the time period required by the Code* .

21. A reliable source of financing is available in an amount and on terms and conditions which will permit the applicant to proceed with the development as proposed. Such financing, together with other moneys to be available to the applicant, will be sufficient to fund the acquisition and any construction or rehabilitation of the proposed development.

22. The prerequisites necessary for the members of the applicant's development team to acquire, own, construct or rehabilitate, operate and manage the proposed development have been satisfied or can be satisfied within a period of time consistent with the applicant's schedule for the proposed development. These prerequisites include, but are not limited to obtaining: (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and

accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed development, (v) building, occupancy, and other permits required for any construction or rehabilitation and occupancy of the proposed development, and (vi) licenses and other legal authorizations necessary to permit each member to perform his or its duties and responsibilities in the Commonwealth of Virginia.

23. The allocation of credits to the applicant will result in an increase, or will prevent a decrease, in the supply of decent, safe and sanitary housing at affordable rents for the low-income persons and families intended to be served by the credits under the Code.

24. The applicant and the proposed development will satisfy all requirements set forth in the Code in order to be eligible for receipt of the credits in the amount requested.

In the application of the above criteria for the selection of applicants, the objective of the authority shall be that credits shall be ~~set aside~~ *reserved* for those developments which will best provide (with respect to location; design; quality of construction and management; cost of acquisition, rehabilitation or construction and operation; and other characteristics described in such criteria) decent, safe and sanitary housing at rents affordable to low income persons and families; will permit maximum use of the credits; will proceed successfully to completion or acquisition and operation; will qualify under the Code for such credits upon completion or acquisition; will thereafter continue to qualify for and fully utilize such credits in accordance with the requirements of the Code; and will best serve the housing needs of the Commonwealth.

If *applications are being reviewed on a first-come, first-served basis or if* only one application is being reviewed, the executive director shall recommend to the board ~~of Commissioners~~ *of the authority* that a ~~set-aside~~ *reservation* of credits be made ~~for such~~ *with respect to the buildings described in each such* application if he determines that such application adequately satisfies the criteria set forth above in this section.

In determining whether to recommend the selection of an application or applications, the executive director may take into account the desirability of allocating credits *with respect* to different ~~applicants~~ *developments located* throughout the Commonwealth. The executive director may also give special consideration to developments located in areas having severe shortages of low-income housing and to developments for the mentally and physically disabled and for persons and families having special housing needs.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual credit authority limitation shall be available for ~~set-asides~~ *reservation and allocation* to *buildings of* developments in which "qualified nonprofit organizations" materially participate in the development and operation thereof, as described in the Code. In no event shall more than 90% of the Commonwealth's annual credit authority limitation be available for developments other than those described in the preceding sentence.

If the executive director determines not to recommend the ~~set-aside~~ *reservation* of credits to an applicant, he shall so notify the applicant.

If the executive director determines that one or more of the criteria set forth above in this section have not been adequately satisfied by any applicant, he may nevertheless in his discretion recommend to the board ~~of Commissioners~~ that the ~~set-aside~~ *reservation* be approved subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

The board ~~of Commissioners~~ shall review and consider the analysis and recommendation of the executive director for the ~~set-aside~~ *reservation* of credits, and, if it concurs with such recommendation, it shall by resolution approve the application and authorize the executive director to ~~set aside~~ *reserve* the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the Code and these ~~procedures, instructions and guidelines~~ *rules and regulations* . If the board ~~of Commissioners~~ determines not to approve an application for a ~~set-aside~~ *reservation* of credits, the executive director shall so notify the applicant.

Upon approval by the board ~~of Commissioners~~ of a ~~set-aside~~ *reservation* of credits to an applicant, the executive director shall notify the applicant of such ~~set-aside~~ *reservation* and of any terms and conditions imposed with respect thereto ~~and may require the payment by the applicant of a nonrefundable processing fee, in such amount as the executive director determines, to reimburse the authority for its administrative costs in processing the application. Such fee shall be applied, upon allocation of the credits, toward the payment of the authority's administrative fee~~ . The executive director may ~~also~~ require the applicant to make a good faith deposit to assure that the applicant will comply with all requirements under the Code and these ~~procedures, instructions and guidelines~~ *rules and regulations* for allocation of the credits. Upon allocation of the credits, such deposit (or a pro rata portion thereof based upon the portion of credits so allocated) shall be refunded to the applicant.

*The executive director may reserve or allocate credits as provided herein prior to approval, but subject to ratification, by the board if he determines that circumstances warrant such action without further delay.*

As a condition to the ~~set-aside~~ *reservation* of credits, the executive director may require the submission of such legal and accounting opinions as he shall deem necessary to evidence that the ~~applicant~~ *buildings of the development*

will be entitled to the credits under the Code.

If ~~the low-income housing units in the development have been placed in service~~ *all or certain of the buildings of a development are qualified low-income buildings* as of the date the application is approved by the board ~~of Commissioners~~ and if the owner thereof is otherwise then entitled to ~~the use of~~ the credits under the Code, the executive director may at that time allocate ~~the~~ credits to such ~~owner~~ *qualified low-income buildings* without first providing a ~~set-aside~~ *reservation* of such credits.

The executive director may require that applicants to whom credits have been ~~assigned~~ *reserved* shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development at its compliance with the schedule submitted with the application. If on the basis of such written confirmation and documentation and other available information the executive director determines that the ~~low-income housing units~~ *buildings* in the development *which were to be qualified low-income buildings* will not be placed in service ~~prior to or during the calendar year for which such credits are set aside~~ *within the time period required by the Code* or will not otherwise qualify for such credits, then the executive director may terminate the ~~set-aside~~ *reservation* of such credits.

Any material changes to the development, as proposed in the application, occurring subsequent to the ~~set-aside~~ *reservation* of the credits therefor shall be subject to the prior written approval of the executive director. If such changes are made without the prior written approval of the executive director, he may terminate the ~~set-aside~~ *reservation* of such credits.

In the event *that* any ~~set-aside~~ *reservation* of credits are terminated by the executive director under this section, he may ~~set aside~~ *reserve* or allocate, as applicable, such credits to other qualified applicants in accordance with the provisions hereof on a competitive basis, on a first-come, first-served basis, on a pro rata basis or in such other manner as he shall deem appropriate.

§ 8. Allocation of credits.

At such time as ~~the low-income housing units in a development are placed in service~~ *one or more of an applicant's buildings which have received a reservation of credits* [ ~~becomes~~ *become* ] *qualified low-income buildings* , the applicant shall so advise the authority, shall request the allocation of all of the credits *so reserved* or such portion thereof to which the ~~applicant is~~ *applicant's buildings are then* entitled under the Code, and shall submit such certifications, legal and accounting opinions, and other documentation ~~(including, without limitations, evidence that the low-income housing units will be occupied within the time period required by the Code)~~ as the executive director shall require in order to determine that the ~~applicant is~~ *applicant's buildings are* entitled to such credits under the Code and these ~~procedures, instructions and guidelines~~ *rules and regulations* . If the executive director determines that ~~the applicant is~~ *such buildings are* so entitled to the credits, he shall allocate the credits (or such portion thereof ~~as~~ *to which* he deems the ~~applicant~~ *buildings* to be entitled) to the ~~applicant~~ *applicant's qualified low-income buildings* in accordance with the requirements of the Code. If the executive director shall determine that the ~~applicant is~~ *applicant's buildings are* not so entitled to the credits, he shall not allocate the credits ~~to the applicant~~ and shall so notify the applicant ; ~~provided, however, that he may nevertheless allocate such credits subject to satisfaction of terms and conditions as he shall deem necessary or appropriate to assure that the applicant shall become entitled to the credits. Upon approval or denial by the executive director of the applicant's request for allocation of credits, the applicant shall pay the balance of the administrative fee to the authority~~ . In the event that any such applicant shall not request ~~all of the~~ *an* allocation of ~~its~~ *all of its reserved* credits or *whose buildings* shall be deemed by the executive director not to be entitled to any or all of its reserved credits, the executive director may ~~set aside~~ *reserve* or allocate, as applicable, such unallocated credits to *the buildings of* other qualified applicants in accordance with the provisions hereof on a competitive basis, on a first-come, first-served basis, on a pro rata basis or in such other manner as he shall deem appropriate.

*The executive director may prescribe such deadlines for submissions of requests for allocations of credits for any calendar year as he deems necessary or desirable to allow sufficient processing time for the authority to make such allocations within such calendar year.*

Prior to the initial determination of the "qualified basis" (as defined in the Code) of the *qualified* low-income ~~housing units in~~ [ ~~building~~ *buildings* ] *of* a development pursuant to the Code, an applicant to ~~whom~~ *whose buildings* credits have been ~~set aside~~ *reserved* may request a ~~set-aside~~ *reservation* of additional credits. Subsequent to such *initial* determination of the qualified basis, the applicant may request an ~~increase in the amount~~ *additional allocation* of credits by reason of an increase in *qualified basis based on an increase in* the number of low-income housing units or in the amount of floor space of the low-income housing units. Any request for *an* additional *allocation of* credits shall include such opinions, certifications and documentation as the executive director shall require in order to determine that the ~~applicant~~ *applicant's buildings* will be entitled to such additional credits under the Code and these ~~procedures, instructions and guidelines~~ *rules and regulations* and shall be submitted, reviewed and selected by the executive director in accordance with the provisions hereof.

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NOTICE: The Virginia Housing Development Authority is exempted from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, under the

provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

Title of Regulation: **VR 400-02-0012. Rules and Regulations for the Virginia Housing Fund (Formerly: Virginia Housing Fund Procedures, Instructions and Guidelines).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0012. Rules and Regulations for the Virginia Housing Fund.

NOTICE: As provided in § 9-6.14:22, this regulation is not being republished. It was adopted as it was proposed in 5:16 VA.R. 2321 May 22, 1989

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NOTICE: The Virginia Housing Development Authority is exempted from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

Title of Regulation: **VR 400-02-0013. Rules and Regulations for Multi-Family Housing Developments for Mentally Disabled Persons (Formerly: Procedures, Instructions and Guidelines for Multi-Family Housing Developments for Mentally Disabled Persons).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0013. Rules and Regulations for Multi-Family Housing Developments for Mentally Disabled Persons.

§ 1. Definitions.

~~*"Act"* means the Virginia Housing Development Authority Act, being Chapter 1.2 (§ 36-55.24, et seq.) of Title 36 of the Code of Virginia.~~

~~*"Authority"* means the Virginia Housing Development Authority.~~

~~*"Board"* means the board of commissioners of the authority.~~

*"Closing"* means the time of execution by the mortgagor of the documents evidencing the M/D loan, including the deed of trust note, deed of trust and other documents required by the authority. (In the case of a construction loan, "closing" means the initial closing of the M/D loan.)

*"Construction"* means construction of new structures and the rehabilitation, preservation or improvement of existing structures.

*"DMHMR"* means the Department of Mental Health, Mental Retardation and Substance Abuse Services of the Commonwealth of Virginia.

~~*"Executive director"* means the executive director of the authority or any other officer or employee of the authority who is authorized to act on behalf of the authority pursuant to a resolution of the board.~~

*"Final closing"* means, for a construction loan, the time of final disbursement of the M/D loan proceeds after satisfaction by the mortgagor of all of the authority's requirements therefor.

*"M/D development"* means a multi-family housing development intended for occupancy by persons of low and moderate income who are mentally disabled.

*"M/D loan"* means a mortgage loan made by the authority to finance the development, construction, rehabilitation and/or the ownership and operation of an M/D development.

*"Seed loan"* means a mortgage loan made by the authority to finance preconstruction or other related costs approved by the authority and the financing of which by the authority is determined by the authority to be necessary to the mortgagor's ability to obtain an M/D loan for the construction of an M/D development.

§ 2. Purpose and applicability.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the ~~Virginia Housing Development~~ authority ~~(the "authority")~~ to mortgagors to provide the construction and/or permanent financing of M/D developments. ~~Such loans are referred to herein as "M/D loans."~~ These ~~procedures, instructions and guidelines~~ *rules and regulations* shall be applicable to the making of such M/D loans directly by the authority to mortgagors, the purchase of such M/D loans, the participation by the authority in such M/D loans with mortgage lenders and any other manner of financing of such M/D loans under the ~~Virginia Housing Development Authority~~ Act. These ~~procedures, instructions and guidelines~~ *rules and regulations* shall not, however, apply to any M/D developments which are subject to any other ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority. If any M/D loan is to provide either the construction or permanent financing (but not both) of an M/D development, these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be applicable to the extent determined by the executive director to be appropriate for such financing. In addition, notwithstanding the foregoing, the executive director may, in his discretion, determine that any M/D loan should be processed under the ~~Procedures, Instructions and Guidelines~~ *authority's Rules and Regulations* for Multi-Family Housing Developments, whereupon the application for such M/D loan and any

other information related thereto shall be transferred to the authority's multi-family division for processing under the aforementioned multi-family ~~Procedures, Instructions and Guidelines~~ *rules and regulations* .

*Mortgage loans may be made or financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.*

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any M/D development to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Act , ~~the authority's rules and regulations,~~ and covenants and agreements with the holders of its bonds.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the mortgagor, the contractor or other members of the development team under the closing documents as described in § 8 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

These ~~procedures, instructions and guidelines~~ *rules and regulations* are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of M/D loans under the authority's multi-family housing programs for M/D developments. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by the authority and may be supplemented by policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority from time to time with respect to any particular development or developments or any multi-family housing program or programs for M/D developments.

§ 3. Income limits and general restrictions.

The amounts payable, if any, by persons occupying M/D developments are deemed not to be rent. As a result, the authority's income limit set forth under § ~~1.2.B of~~ its rules and regulations limiting a person's or family's adjusted family income to an amount not greater than seven times the total annual rent is inapplicable; instead, in accordance with ~~the same aforementioned section of~~ the authority's rules and regulations, the income limits for persons occupying such developments shall be as follows: All units of each M/D development, with the sole exception of those units occupied by an employee or agent of the mortgagor, shall be occupied or held available for occupancy by persons who have adjusted family incomes (as defined in the authority's rules and regulations and as determined at the time of their initial occupancy) which do not exceed 150% of the applicable area median income as determined by the authority and who are mentally disabled.

*The board may establish, in the resolution authorizing any mortgage loan to finance an M/D development under these rules and regulations, income limits lower than those provided herein for the occupants of the units in such M/D development.*

If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in an M/D development, *the occupancy of the M/D development shall comply with such limitations, and* the adjusted family incomes (as defined in the authority's rules and regulations) of applicants for occupancy of all of the units in the M/D development shall be computed, for the purpose of determining eligibility for occupancy thereof under ~~the authority's~~ *these* rules and regulations ~~and these procedures, instructions and guidelines,~~ in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all M/D developments and the processing thereof under the terms hereof must comply with (i) the Act and the authority's rules and regulations, (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued by the authority to finance such M/D developments, *and* (iii) the requirements set forth in the resolutions pursuant to which the notes or bonds, if any, are issued by the authority to finance the M/D developments. Copies of the authority's applicable note and bond resolutions, if any, are available upon request.

§ 4. Terms of mortgage loans.

The authority may make or finance mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance M/D developments. The term of the mortgage loan shall be equal to (i) if the M/D loan is to finance the construction of the proposed M/D development, the period determined by the executive director to be necessary to: (1) complete construction of the M/D development, and (2) consummate the final closing of the M/D loan; plus (ii) if the M/D loan is to finance the ownership and operation of the proposed M/D development, an amortization period set forth in the M/D loan commitment but not to exceed 45 years. The executive director may require that such amortization period not extend beyond the termination date of any assistance or subsidy.

M/D loans may be made to (i) for-profit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the

M/D loan commitment (which amount shall in no event exceed 95% of the fair market value of the property as determined by the authority) or such percentage of the housing development costs of the M/D development as is established in such commitment, but in no event to exceed 95%, and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the M/D loan commitment (which amount shall in no event exceed [ 100% of the fair market value of the property as determined by the authority in those cases in which the nonprofit sponsor is the Commonwealth of Virginia or any agency or instrumentality thereof, and which shall in no event exceed ] 95% of the fair market value of the property as determined by the authority [ in those cases in which the nonprofit sponsor is not the Commonwealth of Virginia or an agency or instrumentality thereof ] ) or such percentage of the housing development costs of the M/D development as is established in such commitment, but in no event to exceed 100%.

The maximum principal amount and percentage of housing development costs specified or established in the M/D loan commitment shall be determined by the authority in such manner and based upon such factors as it deems relevant to the security of the M/D loan and the fulfillment of its public purpose. Such factors may include the economic feasibility of the proposed M/D development in terms of its ability to pay the projected debt service on the M/D loan and the projected operating expenses of the proposed M/D development.

*The categories of cost which shall be allowable by the authority in the acquisition and construction of an M/D development financed under these rules and regulations shall include all reasonable, ordinary and necessary costs and expenses (including, without limitations, those categories of costs set forth in the authority's rules and regulations for multi-family housing developments) which are incurred by the mortgagor in the acquisition and construction of the M/D development [ . Upon completion of the acquisition and construction of the M/D development* ], the total of housing development costs shall be certified to the authority in accordance with these rules and regulations, subject to the review and determination of the authority. In lieu of such certification of housing development costs, the executive director may require such other assurances of housing development costs as he shall deem necessary to enable the authority to determine with reasonable accuracy the actual amount of such housing development costs.

The interest rate on the M/D loan shall be established at the closing and may be thereafter adjusted in accordance with the authority's rules and regulations and the terms of the deed of trust note. The authority shall charge a financing fee equal to 1.5% of the M/D loan amount, unless the executive director shall for good cause require the payment of a different financing fee. Such fee shall be payable at such times as hereinafter provided or at such other times as the executive director shall for good cause require.

§ 5. Solicitation of proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals for the financing of M/D developments. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of proposals and the selection of M/D developments as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available funds of the authority are to be allocated and such other matters as he shall deem appropriate relating to the selection of proposals. The authority may also consider and approve proposals for financing of M/D developments submitted from time to time to the authority without any solicitation therefor on the part of the authority.

§ 6. Application and review.

A. Information to be submitted.

Application for an M/D loan shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority, including, but not limited to:

1. Information with respect to the status of the proposed development site and the surrounding community;

2. Any option or sales contract to acquire the site;

3. An evaluation of the need and effective demand for the proposed M/D development in the market area of such site;

4. Information regarding the legal, business and financial status and experience of the applicant;

5. Information regarding amenities and services proposed to be offered to the tenants;

6. A determination by DMHMR on such form or forms as the executive director may from time to time prescribe to the effect that (i) the mortgagor has the intent and ability to provide the services deemed necessary by DMHMR for the success of a housing development intended for occupancy by persons of low and moderate income who are mentally disabled, (ii)

that the proposed location and type of housing are suitable for the contemplated residents and that there exists a need in the area of the proposed location for housing for the mentally disabled, and (iii) that the development is economically feasible to the extent that it is projected to have or receive funds in an amount sufficient to pay the debt service on the proposed M/D loan and to pay for all of the requisite services deemed necessary by DMHMR for the success of such a development (for those M/D developments which are to receive funding other than that directly from the mortgagor, a breakdown of the source and amount of such funding upon which DMHMR relied in making its determination must be included);

7. Architectural and engineering plans, drawings and specifications in such detail as shall be necessary or

8. The applicant's (i) best estimates of the housing development costs and the components thereof, (ii) proposed M/D loan amount, (iii) proposed annual operating budget and the individual components thereof, (iv) best estimates of the monthly utility expenses and other costs for each dwelling unit if paid by the resident, and (v) amount of any subsidy or assistance, including any described in item 6 above, that the applicant is requesting for the proposed M/D development. The applicant's estimates shall be in such detail and with such itemization and supporting information as shall be requested by the executive director;

9. The applicant's *proposed* tenant selection ~~plans, including description and analysis of tenant selection strategies, techniques and procedures to be followed;~~ *plan which shall include, among other information that the executive director may require from time to time, the following: (i) any proposed fees to be charged to the tenants; (ii) the utilization of any subsidy or other assistance from the federal government or any other source; (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the applicant for tenant referrals or relocations from federal, state or local government agencies or community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priorities among eligible tenant applicants.*

10. Any documents required by the authority to evidence compliance with all conditions and requirements necessary to acquire, own, construct, operate and manage the proposed *M/D* development, including local governmental approvals, proper zoning status, availability of utilities, licenses and other legal authorizations necessary to perform requisite functions and any easements necessary for the construction and operation of the *M/D* development; and

11. A nonrefundable processing fee equal to 0.5% of the proposed M/D loan amount. Such fee shall be applied at closing toward the payment of the authority's financing fee.

In the selection of an application or applications for processing, the executive director may take into account the desirability of allocating funds to different sponsors throughout the Commonwealth of Virginia.

The executive director may for good cause permit the applicant to file one or more of the foregoing forms, documents and information at a later time, and any review, analysis, determination or other action by the authority or the executive director prior to such filing shall be subject to the receipt, review and approval by the executive director of such forms, documents and information.

An appraisal of the land and any improvements to be retained and used as a part of the M/D development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected by the authority. Such appraisal shall not be obtained until the authority has received the processing fee required by § 6.A.11 above. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed M/D development.

If at any time the executive director determines that the applicant is not processing the application with due diligence and best efforts or that the application cannot be successfully processed to commitment and closing within a reasonable time, he may, in his discretion, terminate the application and retain any fees previously paid to the authority.

B. Review of the application.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed M/D development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, recreational opportunities, shopping facilities and other factors affecting the site;

2. An evaluation of the ability, experience and financial capacity of the applicant;

3. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed M/D development;

4. A review of the tenant selection plans, including its effect on the economic feasibility of the proposed M/D development and its efficacy in carrying out the

programs and policies of the authority;

5. An analysis of the drawings and specifications, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management and maintenance characteristics of the proposed M/D development.

C. Requirement that application satisfy certain criteria.

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed M/D development, the executive director may issue a commitment for an M/D loan to the applicant with respect to the proposed M/D development provided that he has determined that all of the following criteria have been satisfied:

1. The vicinity of the proposed M/D development is and will continue to be a residential area suitable for the proposed M/D development and is not now, nor is it likely in the future to become, subject to uses or deterioration which could cause undue depreciation in the value of the proposed M/D development or which could adversely affect its operation, marketability or economic feasibility.

2. There are or will be available on or before the estimated completion date (i) direct access to adequate public roads and utilities and (ii) such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks and recreational facilities) in the area of the proposed M/D development as the executive director determines to be necessary or desirable for use and enjoyment by the contemplated residents.

3. The applicant either owns or leases the site of the proposed M/D development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.

4. The applicant and general contractor have the experience, ability and financial capacity necessary to carry out their respective responsibilities for the acquisition, construction, ownership, operation, maintenance and management of the proposed M/D development.

5. The application and proposed M/D development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

6. The proposed M/D development will assist in meeting the need for such housing in the market area of the proposed M/D development.

7. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed M/D development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the mortgagor will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

8. Subject to review by the authority, in the case of construction loans at final closing or in the case of permanent loans at closing, the categories of the estimated housing development costs to be funded from the proceeds of the mortgage loan are eligible for such funding under the closing documents or under such other requirements as shall be agreed to by the authority.

9. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or other nonhousing facilities to be included in the proposed M/D development are incidental or related to the proposed M/D development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed development.

10. The estimated income from the proposed M/D development, including any estimated subsidy or assistance, is sufficient to pay when due the estimates of the debt service on the mortgage loan, the operating expenses, and replacement and other reserves required by the authority.

11. The drawings and specifications shall demonstrate that the proposed M/D development as a whole and the individual units therein shall provide safe and habitable living accommodations and environment for the contemplated residents.

12. The tenant selection plans submitted by the applicant shall comply with ~~the authority's~~ *these* rules and regulations and shall be satisfactory to the authority.

13. The proposed M/D development will comply with (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued or to be issued by the authority to finance the proposed M/D development and (ii) all requirements set forth in the resolutions, if any, pursuant to which such notes or bonds are issued or to be issued.

14. The prerequisites necessary for the applicant to

acquire, own, construct or rehabilitate, operate and manage the proposed M/D development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed M/D development, (v) building permits, and (vi) fee simple ownership of the site, a sales contract or option giving the applicant or mortgagor the right to purchase the site for the proposed M/D development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the authority's security or the construction or operation of the proposed M/D development).

15. The proposed M/D development will comply with all applicable state and local laws, ordinances, regulations, and requirements.

16. The proposed M/D development will contribute to the fulfillment of the public purposes of the authority as set forth in its Act.

17. Subject to a final determination by the board, the financing of the proposed M/D development will meet the applicable requirements set forth in § 36-55.39 of the Code of Virginia. For the purposes of satisfying subsection B of the aforementioned code section, the term "substantial rehabilitation" means the repair or improvement of an existing housing unit, the value of which repairs or improvements equals at least 25% of the total value of the rehabilitated housing unit.

§ 7. Commitment.

If the executive director determines that the foregoing criteria set forth in § 6.C above are satisfied and that he will recommend approval of the application and issuance of the commitment therefor, he shall either (i) present his recommendations to the board or (ii) ~~in accordance with the authority's rules and regulations,~~ *if the maximum principal amount of the M/D loan does not exceed $300,000,* issue the commitment subject to the approval and ratification of the board. If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion either (i) in the case of an M/D loan application for which the board's approval is sought in advance of the issuance of the commitment therefor, recommend to the board that the application be approved and that a ~~mortgage loan~~ commitment be issued subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate or (ii) in the case of ~~an M/D loan~~ *a* commitment to be issued by the executive director subject to ratification by the board all in accordance with ~~the authority's~~ *these* rules and regulations, issue such commitment subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

~~In the case of an M/D loan application for which the board's approval is sought in advance of the issuance of the commitment therefor,~~ The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize *or ratify, as applicable, the M/D loan and* the issuance of a commitment *therefor* , subject to such terms and conditions as the board shall require in such resolution. ~~Such resolution and the commitment issued pursuant thereto shall in all respects conform to the requirements of the authority's rules and regulations.~~

*The term of the M/D loan, the amortization period, the estimated housing development costs, the principal amount of the M/D loan, the terms and conditions applicable to any equity contribution by the applicant, any assurances of successful completion and operational stability of the proposed M/D development, and other terms and conditions of such M/D loan shall be set forth in the board's resolution authorizing or ratifying such M/D loan or in the commitment therefor. The resolution or the commitment shall also include such terms and conditions as the authority considers appropriate with respect to the construction of the proposed M/D development, the marketing and occupancy of such M/D development (including any income limits or occupancy restrictions other than those set forth in these rules and regulations), the disbursement and repayment of the loan, and other matters related to the construction and the ownership, operation and occupancy of the proposed M/D development. Such resolution or commitment may include a financial analysis of the proposed M/D development, setting forth the approved initial budget for the operation of the M/D development and a schedule of the estimated housing development costs. Such a resolution authorizing an M/D loan to a for-profit housing sponsor shall prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the M/D development, expressed as a percentage of such for-profit housing sponsor's equity in such M/D development (such equity being established in accordance with § 10 of these rules and regulations), which rate, if any, shall not be inconsistent with the provisions of the Act. In connection with the establishment of any such rates, the board shall not prescribe differing or discriminatory rates with respect to substantially similar M/D developments. The resolution shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative.*

*An M/D loan shall not be authorized or ratified by the board unless the board by resolution shall make the applicable findings required by § 36-55.39 of the Code of*

*Virginia; provided, however, that the board may in its discretion authorize or ratify the M/D loan without making the finding, if applicable, required by subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the board prior to the financing of the M/D loan.*

If the executive director determines not to recommend approval of the application and issuance of a commitment, he shall so notify the applicant. If any application is not so recommended for approval, the executive director may select for processing one or more applications in its place.

§ 8. Closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "closing documents") required by the commitment within the time period specified. When the closing documents have been submitted and approved by the authority staff, the board has approved or ratified the commitment and has determined that the financing of the proposed M/D development meets all the applicable requirements of § 36-55.39 of the Code of Virginia, and all other requirements in the commitment have been satisfied, the closing of the M/D loan shall be held. At this closing, the closing documents shall be, where required, executed and recorded, and the mortgagor will pay to the authority the balance owed on the financing fee, will make any equity investment required by the closing documents and will fund such other deposits, escrows and reserves as required by the commitment. The initial disbursement of M/D loan proceeds will be made by the authority, if appropriate under the commitment and the closing documents.

The actual interest rate on the M/D loan shall be established by the executive director at the time of the execution of the deed of trust note at closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of such note.

The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction, completion, occupancy and operation of the M/D development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of credit, latent construction defect escrows, replacement reserves, and tax and insurance escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

§ 9. Construction.

In the case of construction loans, the construction of the M/D development shall be performed in accordance with the closing documents. The authority shall have the right to inspect the M/D development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the closing documents and to ascertain the propriety and validity of M/D loan disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. A disbursement of M/D loan proceeds may only be made upon compliance with the terms and conditions of the closing documents with respect to any such disbursement; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

§ 10. Completion of construction and final closing.

In the case of construction loans, the closing documents shall specify those requirements and conditions that shall be satisfied in order for the M/D development to be deemed to have attained final completion. Upon such final completion of the M/D development, the mortgagor, general contractor, and any other parties required to do so by the closing documents shall each diligently commence, complete and submit to the authority for review and approval their cost certification in accordance with the closing documents or in accordance with such other requirements as shall have been agreed to by the authority.

Prior to or concurrently with final closing, the mortgagor, general contractor and other members of the development team shall perform all acts and submit all contracts and documents required by the closing documents in order to attain final completion, make the final disbursement of M/D loan proceeds, obtain any subsidy or assistance and otherwise consummate the final closing.

At the final closing, the authority shall determine the following in accordance with the closing documents:

1. The total development costs, ~~the fair market value of the M/D development,~~ the final mortgage loan amount, the balance of M/D loan proceeds to be disbursed to the mortgagor, the equity investment of the mortgagor and, if applicable, the maximum amount of annual limited dividend distributions;

2. The interest rate to be applied initially upon commencement of amortization, the date for commencement and termination of the monthly amortization payments of principal and interest, the initial amount of such monthly amortization payments, and the initial amounts to be paid monthly into the escrow accounts for taxes, insurance, replacement

reserves, or other similar escrow items; and

4. Any other funds due the authority, the mortgagor, general contractor, architect or other parties that the authority requires to be disbursed or paid as part of the final closing.

The *equity investment of the mortgagor shall be the* difference *between the total housing development costs of* the *M/D development as finally determined by the* authority *and the final principal amount of the M/D loan* for *such M/D development.*

C. Seed money loans.

Notwithstanding anything herein to the contrary, the executive director may, in his discretion, approve an application on such forms as he may prescribe for a seed money loan and issue a commitment therefor subject to ratification by the board.

D. M/D loan increases.

Prior to closing, the principal amount of the M/D loan may be increased, if such an increase is justified by an increase in the estimated costs of the proposed M/D development, is necessary or desirable to effect the successful construction and operation of the proposed M/D development, can be funded from available proceeds of the authority's notes or bonds *or other available funds of the authority* , and is not inconsistent with the provisions of the Act or ~~the authority's~~ *these* rules and regulations ~~or~~ any of ~~the provisions of these procedures, instructions and guidelines~~ . Any such increase shall be subject to such terms and conditions as the authority shall require.

Subsequent to closing, the authority will consider and, if it is appropriate, approve an M/D loan increase to be funded from the proceeds of the authority's notes or bonds in the following instances:

1. Where cost increases are incurred as the direct result of (i) changes in work required or requested by the authority or (ii) betterments to the M/D development approved by the authority which will improve the quality or value of the M/D development or will reduce the costs of operating or maintaining the M/D development;

2. Where cost increases are incurred as a direct result of [ a ] failure by the authority during processing of the M/D development to properly perform an act for which the authority is solely responsible;

3. Where an M/D loan increase is determined by the authority, in its sole and absolute discretion, to be in the best interests of the authority in protecting its security for the mortgage loan; or

4. Where the authority has entered into an agreement with the mortgagor prior to closing to provide an M/D loan increase if certain cost overruns occur in agreed line items, but only to the extent set forth in such agreement.

Any such increase in the M/D loan subsequent to closing may be subject to such terms and conditions as the authority shall require, including (but not limited to) one or more of the following:

1. The ability of the authority to sell bonds to finance the M/D loan increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only to an M/D loan to be financed from the proceeds of the authority's notes or bonds).

2. The obtaining by the owner of additional subsidy (if the M/D development is to receive such subsidy) in amounts necessary to fund the additional debt service to be paid as a result of such M/D loan increase. The provision of such additional subsidy shall be made subject to and in accordance with all applicable federal regulations.

3. A determination by the authority that the M/D loan increase will have no material adverse effect on the financial feasibility or proper operation and maintenance of the M/D development.

4. A determination by the authority that the M/D loan, as increased, does not exceed such percentage of the total development cost (as certified in accordance with the closing documents as approved by the authority) as is established in the resolution authorizing the M/D loan in accordance with *§ 3 § 4* of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

5. Such terms and conditions as the authority shall require in order to protect the security of its interest in the M/D loan, to comply with covenants and agreements with the holders of its bonds issued to finance the mortgage loan, to comply with the Act and ~~the authority's~~ *these* rules and regulations, and to carry out its public purpose.

The executive director may, without further action by the board, increase the principal amount of the M/D loan at any time by an amount not to exceed 2.0% of the maximum principal amount of the M/D loan set forth in the commitment, provided that such increase is consistent with the Act and ~~the authority's~~ *these* rules and regulations ~~and the provisions of these procedures, instructions and guidelines~~ . Any increase in excess of such 2.0% shall require the approval of the board.

Nothing contained in this § 12 shall impose any duty or obligation on the authority to increase any M/D loan, as the decision as to whether to grant an M/D loan increase shall be within the sole and absolute discretion of the authority.

§ 13. Operation and management.

The M/D development shall be subject to certain regulatory covenants in closing documents entered into at closing between the authority and the mortgagor. Such regulatory covenants shall govern the occupancy, maintenance, operation, use and disposition of the M/D development and the activities and operation of the mortgagor. *The mortgagor shall execute such other documents with regard to the regulation of the M/D development as the executive director may determine to be necessary or appropriate to protect the interests of the authority and to permit the fulfillment of the authority's duties and responsibilities under the Act and these rules and regulations.*

The mortgagor shall lease the units in the M/D development only to persons who are eligible for occupancy thereof as described in § 3 of these ~~procedures, instructions and guidelines~~ *rules and regulations* . The mortgagor shall comply with the provisions of the authority's rules and regulations regarding (i) the examination and determination of the income and eligibility of applicants for initial occupancy of the M/D development and (ii) the periodic reexamination and redetermination of the income and eligibility of residents of the M/D development.

In selecting eligible residents, the mortgagor shall comply with such occupancy criteria and priorities and with the tenant selection plan approved by the authority pursuant to § 6 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

The authority shall have the power to supervise the mortgagor and the M/D development in accordance with § 36-55.34:1 of the Code of Virginia and the terms of the closing documents or other agreements relating to the M/D loans. The authority shall have the right to inspect the M/D development, conduct audits of all books and records of the M/D development and to require such reports as the authority deems reasonable to assure compliance with this § 13.

§ 14. Transfers of ownership.

A. It is the authority's policy to evaluate requests for transfers of ownership on a case-by-case basis. The primary goal of the authority is the continued existence of low and moderate income rental housing stock maintained in a financially sound manner and in safe and sanitary condition. Any changes which would, in the opinion of the authority, detrimentally affect this goal will not be approved.

The provisions set forth in this § 14 shall apply only to transfers of ownership to be made subject to the authority's deed of trust.

For the purposes hereof, the terms "transfer of ownership" and "transfer" shall include any direct or indirect transfer of a partnership or other ownership interest (including, without limitation, the withdrawal or substitution of any general partner) or any sale, conveyance or other direct or indirect transfer of the M/D development or any interest therein; provided, however, that if the owner is not then in default under the deed of trust or regulatory agreement, such terms shall not include (i) any sale, transfer, assignment or substitution of limited partnership interests prior to final closing of the M/D loan or, (ii) any sale, transfer, assignment or substitution of limited partnership interests which in any 12-month period constitute in the aggregate 50% or less of the partnership interests in the owner. The term "proposed ownership entity," as used herein, shall mean (i) in the case of a transfer of a partnership interest, the owner of the M/D development as proposed to be restructured by such transfer, and (ii) in the case of a transfer of the M/D development, the entity which proposes to acquire the M/D development.

B. The proposed ownership entity requesting approval of a transfer of ownership must initially submit a written request to the authority. This request should contain (i) a detailed description of the terms of the transfer, (ii) all documentation to be executed in connection with the transfer, (iii) information regarding the legal, business and financial status and experience of the proposed ownership entity and of the principals therein, including current financial statements (which shall be audited in the case of a business entity), (iv) an analysis of the current physical and financial condition of the M/D development, including a current audited financial report for the M/D development, (v) information regarding the experience and ability of any proposed management agent, and (vi) any other information and documents requested by the authority relating to the transfer. The request will be reviewed and evaluated in accordance with the following criteria:

1. The proposed ownership entity and the principals therein must have the experience, ability and financial capacity necessary to own, operate and manage the M/D development in a manner satisfactory to the authority.

2. The M/D development's physical and financial condition shall be acceptable to the authority as of the date of transfer or such later date as the authority may approve. In order to assure compliance with this criteria, the authority may require any of the following:

a. The performance of any necessary repairs and the correction of any deferred or anticipated maintenance work;

b. The addition of any improvements to the M/D development which, in the judgment of the authority, will be necessary or desirable for the successful marketing of the M/D development, will reduce the costs of operating or maintaining the

M/D development, will benefit the residents or otherwise improve the liveability of the M/D development, or will improve the financial strength and stability of the M/D development;

c. The establishment of escrows to assure the completion of any required repairs, maintenance work, or improvements;

d. The establishment of such new reserves and/or such additional funding of existing reserves as may be deemed necessary by the authority to ensure or preserve the financial strength and stability or the proper operation and maintenance of the M/D development; and

e. The funding of debt service payments, accounts payable and reserve requirements such that the foregoing are current at the time of any transfer of ownership.

3. The management agent, if any, to be selected by the proposed ownership entity to manage the M/D development on its behalf must have the experience and ability necessary to manage the M/D development in a manner satisfactory to the authority. The management agent must satisfy the qualifications established by the authority for approval thereof.

C. The authority will charge the proposed ownership entity a fee of $5,000 or such higher fee as the executive director may for good cause require. This fee is to be paid at the closing.

D. In the case of a transfer from a nonprofit owner to a proposed for-profit owner, the authority may require the proposed for-profit owner to deposit and/or expend funds in such amount and manner and for such purposes and to take such other actions as the authority may require in order to assure that the principal amount of the ~~mortgage~~ *M/D* loan does not exceed the limitations specified in the Act and ~~the authority's~~ *these* rules and regulations or otherwise imposed by the authority. No transfer of ownership from a nonprofit owner to a for-profit owner shall be approved if such transfer would, in the judgment of the authority, affect the tax-exemption of the notes or bonds, if any, issued by the authority to finance the development. The authority will not approve any such transfer of ownership if any loss of property tax abatement as a result of such transfer will, in the determination of the authority, adversely affect the financial strength or security of the M/D development.

The authority may require that any cash proceeds received by the nonprofit owner (after the payment of transaction costs and the funding of any fees, costs, expenses, reserves or escrows required or approved by the authority) be used for such charitable or other purposes as the authority may approve.

E. A request for tansfer of ownership shall be reviewed by the executive director and may be approved by him subject to such terms and conditions as he may require.

After approval of the request, an approval letter will be issued to the mortgagor consenting to the transfer. Such letter shall be contingent upon the delivery and execution of any and all closing documents required by the authority with respect to the transfer of ownership and the fulfillment of any special conditions required by the executive director.

The authority may require that the proposed ownership entity execute the then current forms of the authority's M/D loan documents in substitution of the existing M/D loan documents and/or to execute such amendments to the existing M/D loan documents as the authority may require in order to cause the provisions of such documents to incorporate the then existing policies, procedures and requirements of the authority. At the closing of the transfer, all documents required by the approval letter shall be, where required, executed and recorded; all funds required by the approval letter will be paid or deposited in accordance therewith; and all other terms and conditions of the approval letter shall be satisfied. If deemed appropriate by the executive director, the original mortgagor shall be released from all liability and obligations which may thereafter arise under the documents previously executed with respect to the M/D development.

In the case of an M/D development which is in default or which is experiencing or is expected by the authority to experience financial, physical or other problems adversely affecting its financial strength and stability or its proper operation, maintenance or management, the authority may waive or modify any of the requirements herein as it may deem necessary or appropriate in order to assist the M/D development and/or to protect the authority's interest as lender.

§ 15. Prepayments.

It shall be the policy of the authority that no prepayment of an M/D loan shall be made without its prior written consent for such period of time set forth in the note evidencing the M/D loan as the executive director shall determine, based upon his evaluation of then existing conditions in the financial and housing markets, to be necessary to accomplish the public purpose of the authority. The authority may also prohibit the prepayment of M/D loans during such period of time as deemed necessary by the authority to assure compliance with applicable note and bond resolutions and with federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued to finance such mortgage loans. Requests for prepayment shall be reviewed by the executive director on a case-by-case basis. In reviewing any request for prepayment, the executive director shall consider such factors as he deems relevant, including without limitation the following (i) the proposed use of the M/D development subsequent to prepayment, (ii) any

actual or potential termination or reduction of any subsidy or other assistance, (iii) the current and future need and demand for low and moderate housing *for mentally disabled persons* in the market area of the development, (iv) the financial and physical condition of the M/D development, (v) the financial effect of prepayment on the authority and the notes or bonds, if any, issued to finance the M/D development, and (vi) compliance with any applicable federal laws and regulations governing the federal tax exemption of such notes or bonds. As a precondition to its approval of any prepayment, the authority shall have the right to impose restrictions, conditions and requirements with respect to the ownership, use, operation and disposition of the M/D development, including without limitation any restrictions or conditions required in order to preserve the federal tax exemption of notes or bonds issued to finance the M/D development. The authority shall also have the right to charge a prepayment fee in an amount determined in accordance with the terms of the resolutions authorizing the notes or bonds issued to finance the M/D development or in such other amount as may be established by the executive director in accordance with the terms of the deed of trust note and such resolutions. The provisions of this § 15 shall not be construed to impose any duty or obligation on the authority to approve any prepayment, as the executive director shall have sole and absolute discretion to approve or disapprove any prepayment based upon his judgment as to whether such prepayment would be in the best interests of the authority and would promote the goals and purposes of its programs and policies.

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Title of Regulation: **VR 400-02-0014. Rules and Regulations for the Acquisition of Multi-Family Housing Developments (Formerly: Procedures, Instructions and Guidelines for the Acquisition of Multi-Family Housing Developments).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0014. Rules and Regulations for the Acquisition of Multi-Family Housing Developments.

§ 1. Purpose and applicability.

The following ~~procedures, instructions and guidelines~~ *rules and regulations* will be applicable to the acquisition, ownership and operation by the ~~Virginia Housing Development~~ authority ~~(the "authority")~~ or by any entity formed by the authority, on its own behalf or in conjunction with other parties, of multi-family housing developments intended for occupancy by persons and families of low and moderate income ("development" or "developments"). The developments to be acquired pursuant to these ~~procedures, instructions and guidelines~~ *rules and regulations* may be existing developments or may be developments to be constructed prior to acquisition. If the authority is to acquire an existing development, the provision of these ~~procedures, instructions and guidelines~~ *rules and regulations* relating to construction shall, to the extent determined by the executive director, not be applicable to such development. These ~~procedures, instructions and guidelines~~ *rules and regulations* shall also be applicable to the making of mortgage loans by the authority (i) to finance the construction of such developments prior to the acquisition thereof by the authority (such mortgage loans are referred to herein as construction loans) and (ii) to finance the acquisition and ownership of such developments by entities formed by the authority as described herein. If any development is to be subject to federal mortgage insurance or is otherwise to be assisted or aided, directly or indirectly, by the federal government, the applicable federal rules and regulations shall be controlling over any inconsistent provision herein. Furthermore, if the development is to be subject to mortgage insurance by the federal government, the provisions of these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be applicable to such development only to the extent determined by the executive director to be necessary in order to (i) protect any interest of the authority which, in the judgment of the executive director, is not adequately protected by such insurance or by the implementation or enforcement of the applicable federal rules, regulations or requirements or (ii) to comply with the ~~Virginia Housing Development Authority~~ Act ~~(the "Act")~~ or fulfill the authority's public purpose and obligations thereunder. The term "construct" or "construction," as used herein, shall include the rehabilitation, preservation or improvement of existing structures.

*Developments may be acquired pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.*

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any development to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Act ~~, the authority's rules and regulations,~~ and convenants and agreements with the holders of its bonds.

~~"Executive director" as used herein refers to the executive director of the authority or any other officer or employee of the authority who is authorized to act on behalf of the authority pursuant to a resolution of the board of commissioners of the authority (the "board").~~

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these ~~procedures, instructions and guidelines~~ *rules and regulations* shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the applicant, any mortgagor, or any contractor or other members of the

development team under the initial closing documents as described in § 7 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

These ~~procedures, instructions and guidelines~~ *rules and regulations* are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of proposals for the authority to acquire developments or to provide financing for such developments under the authority's multi-family housing acquisition program. These ~~procedures, instructions and guidelines~~ *rules and regulations* are subject to change at any time by the authority and may be supplemented by policies, ~~procedures, instructions and guidelines~~ *rules and regulations* adopted by the authority from time to time ~~with respect to any particular development or developments~~ .

§ 2. Income limits and general restrictions.

In order to be eligible for occupancy of a multi-family dwelling unit, a person or family shall not have an adjusted family income (as defined in the authority's rules and regulations) greater than seven times the annual rent, including utilities except telephone, applicable to such dwelling unit *; provided, however, that the foregoing shall not be applicable if no amounts are payable by or on behalf of such person or family or if amounts payable by such person or family are deemed by the board not to be rent* . In addition to the foregoing, at least 20% of the units in each development shall be occupied or held available for occupancy by persons and families whose annual adjusted family incomes (at the time of their initial occupancy of such units) do not exceed 80% of the area median income as determined by the authority, and the remaining units shall be occupied or held available for occupancy by persons and families whose annual adjusted family incomes (at the time of their initial occupancy of such units) do not exceed 150% of such area median income as so determined.

*The board may establish, in the resolution authorizing the acquisition of any development under these rules and regulations, income limits lower than those provided herein for occupancy of the units in such development.*

Furthermore, in the case of developments which are subject to federal mortgage insurance or assistance or are financed by notes or bonds exempt from federal income taxation, federal regulations may establish lower income limitations which in effect supersede the authority's income limits as described above. If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in a development, the adjusted family incomes (as defined in the authority's rules and regulations) of applicants for occupancy of all of the units in the development shall be computed, for the purpose of determining eligibility for occupancy thereof under ~~the authority's~~ *these* rules and regulations ~~and these procedures, instructions and guidelines~~ , in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all developments and the processing thereof under the terms hereof must comply with (i) the Act ~~and the authority's rules and regulations~~ , (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued by the authority to finance such developments, (iii) in the case of developments subject to federal mortgage insurance or other assistance, all applicable federal laws and regulations relating thereto and (iv) the requirements set forth in the resolutions pursuant to which the notes or bonds are issued by the authority to finance the developments. Copies of the authority's note and bond resolutions are available upon request.

§ 3. Terms of acquisition and construction loan.

The purchase price for a development to be acquired by the authority pursuant hereto shall be determined by the authority in such manner and shall be based upon such factors (including the fair market value of the development based on an appraisal thereof as well as on the estimated costs of the construction of the development, if applicable) as it deems relevant to the security of its ownership interest in the development and the fulfillment of its public purpose. The terms and conditions of such acquisition shall be contained in the commitment described in § 6 hereof and in the contract, if any, to acquire the development described in § 7 hereof.

*With respect to any development which the authority contracts to acquire, the authority may assign all of its right, title and interest under such contract to acquire such developments to an entity (a "successor entity") formed by the authority, on its own behalf or in conjunction with other parties, to serve as the housing sponsor for such development pursuant to § 36-55.33:2 of the Code of Virginia and may provide a mortgage loan to such entity to finance the acquisition and ownership of the development.*

In addition to the acquisition of developments, the authority may make or finance construction mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance the construction of such developments. The term of such a construction loan shall be equal to the period determined by the executive director to be necessary to complete construction of the development and to consummate the acquisition thereof by the authority. Such construction loans shall be made on such other terms and conditions as the authority shall prescribe in (i) the commitment described in § 6 hereof and (ii) any other applicable initial closing documents, described in § 7 hereof. Such construction loans may be made to: (i)

for-profit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the commitment or such percentage of the estimated housing development costs of the development as is established in such commitment, but in no event to exceed 95%, and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the commitment or such percentage of the estimated housing development costs of the development as is established in such commitment, but in no event to exceed 100%. The maximum principal amount and percentage of estimated housing development costs specified or established in the commitment shall be determined by the authority in such manner and based upon such factors as it deems relevant to the security of the mortgage loan and the fulfillment of its public purpose. Such factors may include the fair market value of the proposed development as completed. *In determining the estimated housing development costs, the categories of costs which shall be includable therein shall be those set forth in the authority's rules and regulations for multi-family housing developments to the extent deemed by the executive director to be applicable to the proposed development.* The interest rate on the construction loan shall be established at the initial closing and may be thereafter adjusted in accordance with the authority's rules and regulations and the terms of the deed of trust note. The authority shall charge a financing fee equal to 1.0% of the construction loan amount, unless the executive director shall for good cause require the payment of a different financing fee. Such fee shall be payable at initial closing or at such other times as the executive director shall for good cause require.

§ 4. Solicitation of proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals for the authority's acquisition and, if applicable, construction financing of developments. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of proposals and the selection of developments for acquisition and, if applicable, construction financing as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available funds of the authority are to be allocated for such acquisitions and financings and such other matters as he shall deem appropriate relating to the selection of proposals. The authority may also consider and approve proposals for acquisition and, if applicable, construction financing of developments submitted from time to time to the authority without any solicitation therefor on the part of the authority.

§ 5. Application and acceptance for processing.

Application for consideration of each proposal for the authority to acquire a development and, if applicable, to finance the construction thereof shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority, including, but not limited to: initial site, elevation and unit plans; information with respect to the status of the proposed development site and the surrounding community; any option or sales contract to acquire the site; an evaluation of the need and effective demand for the proposed development in the market area of such site; information regarding the legal, business and financial status and experience of the members of the applicant's proposed development team and of the principals in any entity which is a member thereof, including current financial statements (which shall be audited in the case of a business entity) for the owner (if existing), the general contractor and the principals therein; information regarding amenities and services proposed to be offered to the tenants; a preliminary estimate of the housing development costs and the individual components thereof; the proposed schedule of rents; a preliminary estimate of the annual operating budget and the individual components thereof; the estimated utility expenses to be paid by the tenants of dwelling units in the proposed development; and the amount of any federal insurance, subsidy or assistance which the applicant is requesting for the proposed development.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia, if applicable, and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;

2. An evaluation of the ability, experience and financial capacity of the applicant and general contractor and the qualifications of the artchitect, management agent and other members of the proposed development team;

3. A preliminary evaluation of the estimated construction costs and the proposed design and structure of the proposed development;

4. A preliminary review of the estimated operating expenses and proposed rents and a preliminary evaluation of the adequacy of the proposed rents to sustain the proposed development based upon the assumed occupancy rate and estimated purchase price

and financing costs; and

5. A preliminary evaluation of the marketability of the proposed development.

Based on the authority's review of the applications, documents and any additional information submitted by the applicants or obtained from other sources by the authority in its review of the proposed developments, the executive director shall accept for processing those applications which he determines best satisfy the following criteria:

1. The vicinity of the proposed development is and will continue to be a residential area suitable for the proposed development and is not now, nor is it likely in the future to become, subject to uses or deterioration which could cause undue depreciation in the value of the proposed development or which could adversely affect its operation, marketability or economic feasibility.

2. There are or will be available on or before the estimated completion date (i) direct access to adequate public roads and utilities and (ii) such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks, recreational facilities and major public and private employers) in the area of the proposed development as the executive director determines to be necessary or desirable for the use and enjoyment by the contemplated residents.

3. The characteristics of the site (such as its size, topography, terrain, soil and subsoil conditions, vegetation, and drainage conditions) are suitable for the construction and operation of the proposed development, and the site is free from any defects which would have a materially adverse effect on such construction and operation.

4. The location of the proposed development will promote and enhance the marketability of the units to the persons and families intended for occupancy thereof.

5. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.

6. The design of the proposed development is functional and appropriate for its intended use, will contribute to the marketability of the proposed development, makes use of materials to reduce energy and maintenance costs, provides for a proper mix of units for the residents intended to be benefited by the authority's program, provides for units with adequate, well-designed space, includes equipment and facilities customarily used or enjoyed in the area by the contemplated residents, and will otherwise provide a safe, habitable and pleasant living environment for such residents.

7. Subject to further review and evaluation by the authority's staff under § 6 of these ~~procedures, instructions and guidelines~~ *rules and regulations* , the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.

8. Subject to further review and evaluation by the authority's staff under § 6 of these ~~procedures, instructions and guidelines~~ *rules and regulations* , the proposed rents appear to be at levels which will (i) be affordable by the persons and families intended to be assisted by the authority, (ii) permit the successful marketing of the units to such persons and families, and (iii) sustain the operation of the proposed development.

9. The applicant and general contractor have the experience, ability and financial capacity necessary to carry out their respective responsibilities for the construction and, prior to acquisition thereof by the authority, the ownership, operation, marketing, maintenance and management of the proposed development.

10. The architect, management agent and other members of the proposed development team have the qualifications necessary to perform their respective functions and responsibilities.

11. The application and proposed development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

12. The proposed development will contribute to the implementation of the policies and programs of the authority in providing decent, safe and sanitary rental housing for low and moderate income persons and families who cannot otherwise afford such housing and will assist in meeting the need for such housing in the market area of the proposed development.

13. It appears that the proposed development and applicant will be able to meet the requirements for feasibility and commitment set forth in § 6 of these ~~procedures, instructions and guidelines~~ *rules and regulations* and that the proposed development will otherwise continue to be processed through initial closing and will be completed and conveyed to the authority all in compliance with the Act ~~and the authority's rules and regulations~~ , the documents and contracts executed at initial closing, applicable federal laws, rules and regulations, and the provisions of these ~~procedures, instructions and guidelines~~ *rules and*

*regulations* and without unreasonable delay, interruptions or expense.

If only one application is being reviewed for acceptance for processing, the executive director shall accept such application for processing if he determines that such application adequately satifies the foregoing criteria.

In the selection of an application or applications for processing, the executive director may take into account the desirability of acquiring developments from different sponsors throughout the Commonwealth of Virginia.

Applications shall be selected only to the extent that the authority has or expects to have funds available from the sale of its notes or bonds to finance the acquisition of and, if applicable, the construction loan for the proposed developments.

Nothing contained herein shall require the authority to select any application which, in the judgment of the executive director, does not adequately satisfy the foregoing criteria.

The executive director's determinations with respect to the above criteria shall be based only on the documents and information received or obtained by him at that time and are subject to modification or reversal upon his receipt of additional documents or information at a later time. In addition, the application shall be subject to further review in accordance with § 6 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

The executive director may impose such terms and conditions with respect to acceptance for processing as he shall deem necessary or appropriate. If ay proposed development is so accepted for processing, the executive director shall notify the sponsor of such acceptance and of any terms and conditions imposed with respect thereto.

If the executive director determines that a proposed development to be accepted for processing does not adequately satisfy one or more of the foregoing criteria, he may nevertheless accept such proposed development for processing subject to satisfaction of the applicable criteria in such manner and within such time period as he shall specify in his notification of acceptance. If the executive director determines not to accept any proposed development for processing, he shall so notify the sponsor.

§ 6. Feasibility and commitment.

In order to continue the processing of the application, the applicant shall file, within such time limit as the executive director shall specify, such forms, documents and information as the executive director shall require with respect to the feasibility of the proposed development, including without limitation the following:

1. Any additions, modifications or other changes to the application and documents previously submitted as may be necessary or appropriate to make the information therein complete, accurate and current;

2. Architectural and engineering plans, drawings and specifications in such detail as shall be necessary or appropriate to determine the requirements for construction of the proposed development;

3. The applicant's best estimates of (i) the housing development costs and the components thereof, (ii) proposed construction loan amount (if applicable), (iii) proposed rents, (iv) proposed annual operating budget and the individual components thereof, (v) best estimates of the monthly utility expenses and other costs for each dwelling unit if paid by the resident, and (vi) amount of any federal insurance, subsidy or assistance that the applicant is requesting for the proposed development. The applicant's estimates shall be in such detail and with such itemization and supporting information as shall be requested by the executive director;

*4. The proposed tenant selection plan which shall include, among other information that the executive director may require from time to time, the following: (i) the proposed rent structure; (ii) the utilization of any subsidy or other assistance from the federal government or any other source; (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the applicant for tenant referrals or relocations from federal, state or local governmental agencies of community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priority among eligible tenant applicants for occupancy of the proposed development.*

~~4.~~ *5.* The applicant's marketing *plan,* ~~and tenant selection plans,~~ including description and analysis of ~~marketing and tenant selection~~ strategies, techniques and procedures to be followed in marketing the units ~~and selecting tenants~~ prior to acquisition of the development by the authority; and

~~5.~~ *6.* Any documents required by the authority to evidence compliance with all conditions and requirements necessary to construct, and, prior to the acquisition by the authority of the development, to own, operate and manage the proposed development, including local governmental approvals, proper zoning status, availability of utilities, licenses and other legal authorizations necessary to perform requisite functions and any easements necessary for the construction and operation of the development.

The executive director may for good cause permit the applicant to file one or more of the foregoing forms, documents and information at a later time, and any review, analysis, determination or other action by the authority or the executive director prior to such filing shall be subject to the receipt, review and approval by the executive director of such forms, documents and

information.

An appraisal of the proposed development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected by the authority. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed development.

If at any time the executive director determines that the applicant is not processing the application with due diligence and best efforts or that the application cannot be successfully processed to commitment and initial closing within a reasonable time, he may, in his discretion, terminate the application and retain any fees previously paid to the authority.

The authority staff shall review and evaluate the documents and information received or obtained pursuant to this § 6. Such review and evaluation shall include, but not be limited to, the following:

1. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed development;

2. A market analysis as to the present and projected demand for the proposed development in the market area, including: (i) an evaluation of existing and future market conditions; (ii) an analysis of trends and projections of housing production, employment and population for the market area; (iii) a site evaluation (such as access and topography of the site, neighborhood environment of the site, public and private facilities serving the site and present and proposed uses of nearby land); and (iv) an analysis of competitive projects;

3. A review of the marketing and tenant selection plans, including their effect on the economic feasibility of the proposed development and their efficacy in carrying out the programs and policies of the authority;

4. A final review of the (i) ability, experience and financial capacity of the applicant and general contractor and (ii) the qualifications of the architect, management agent and other members of the proposed development team.

5. An analysis of the architectural and engineering plans, drawings and specifications, including the functional use and living environment for the proposed residents, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management, maintenance and energy conservation characteristics of the proposed development.

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed development, the executive director shall prepare a recommendation to the board that a commitment of the authority to enter into a contract with the applicant for the acquisition of the development by the authority and, if applicable, to make a construction loan for the development be issued to the applicant only if he determines that all of the following criteria have been satisfied:

1. Based on the data and information received or obtained pursuant to this § 6, no material adverse change has occurred with respect to compliance with the criteria set forth in § 5 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

2. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the applicant will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

3. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or other nonhousing facilities to be included in the proposed development are incidental or related to the proposed development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed development.

4. All operating expenses (including replacement and other reserves) necessary or appropriate for the operation of the proposed development are included in the proposed operating budget, and the estimated amounts of such operating expenses are reasonable, are based on valid data and information and are comparable to operating expenses experienced by similar developments.

5. Based upon the proposed rents and projected occupancy level required or approved by the executive director, the estimated income from the proposed development is reasonable. The estimated income may include (i) rental income from commercial space within the proposed development if the executive director determines that a strong, long-term market exists for such space and (ii) income from other sources relating to the operation of the proposed development if determined by the executive director to be reasonable in amount and comparable to such

income received on similar developments.

6. The estimated income from the proposed development, including any federal subsidy or assistance, is sufficient to pay when due the estimates of the debt service on the notes or bonds issued by the authority to acquire the development (plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development), the operating expenses, and replacement and other reserves required by the authority.

7. The units will be occupied by persons and families intended to be served by the proposed development and eligible under the Act, ~~the authority's~~ *these* rules and regulations, ~~and these procedures, instructions and guidelines~~ and under any applicable federal laws, rules and regulations. Such occupancy of the units will be achieved in such time and manner that the proposed development (i) will attain self-sufficiency (i.e., the rental and other income from the development is sufficient to pay all operating expenses, replacement and other reserves required by the authority, and debt service on the notes or bonds issued by the authority to acquire the development, plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development) within the usual and customary time for a development for its size, nature, location and type and (ii) will continue to be self-sufficient for the full term of such notes or bonds.

8. The estimated utility expenses and other costs to be paid by the residents are reasonable, are based upon valid data and information and are comparable to such expenses experienced by similar developments, and the estimated amounts of such utility expenses and costs will not have a materially adverse effect on the occupancy of the units in accordance with [ ~~the~~ ] paragraph 7 above.

9. The architectural drawings, plans and specifications shall demonstrate that: (i) the proposed development as a whole and the individual units therein shall provide safe, habitable, and pleasant living accommodations and environment for the contemplated residents; (ii) the dwelling units of the proposed housing development and the individual rooms therein shall be furnishable with the usual and customary furniture, appliances and other furnishings consistent with their intended use and occupancy; and (iii) the proposed housing development shall make use of measures promoting environmental protection, energy conservation and maintenance and operating efficiency to the extent economically feasible and consistent with the other requirements of this § 6.

10. The proposed development includes such appliances, equipment, facilities and amenities as are customarily used or enjoyed by the contemplated residents in similar developments.

11. The marketing and tenant selection plans submitted by the applicant shall comply with ~~the authority's~~ *these* rules and regulations and shall provide for actions to be taken prior to acquisition of the development by the authority such that (i) the dwelling units in the proposed development will be occupied in accordance with ~~the~~ paragraph 7 above and any applicable federal laws, rules and regulations by those eligible persons and families who are expected to be served by the proposed development, (ii) the residents will be selected without regard to race, color, religion, creed, sex or national origin and (iii) units intended for occupancy by handicapped and disabled persons will be adequately and properly marketed to such persons and such persons will be given priority in the selection of residents for such units. The tenant selection plan shall describe the requirements and procedures (including any occupancy criteria and priorities established pursuant to § 11 of these ~~procedures, instructions and guidelines~~ *rules and regulations* ) to be applied by the owner in order to select those residents who are intended to be served by the proposed development and who are best able to fulfill their obligation and responsibilities as residents of the proposed development.

12. In the case of any development to be subject to mortgage insurance or otherwise to be assisted or aided by the federal government, the proposed development will comply in all respects with any applicable federal laws, rules and regulations, and adequate federal insurance, subsidy, or assistance is available for the development and will be expected to remain available in the due course of processing with the applicable federal agency, authority or instrumentality.

13. The proposed development will comply with: (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued or to be issued by the authority to finance the acquisition and, if applicable, the construction of the proposed development and (ii) all requirements set forth in the resolutions pursuant to which such notes or bonds are issued or to be issued.

14. The prerequisites necessary for the members of the applicant's development team to construct and, prior to the acquisition thereof by the authority, to operate and manage the proposed development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining: (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and

use of the proposed development, (v) licenses and other legal authorizations necessary to permit each member to perform his or its duties and responsibilities in the Commonwealth of Virginia, (vi) building permits, and (vii) fee simple ownership of the site, a sales contract or option giving the applicant the right to purchase the site for the proposed development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the construction or the authority's ownership or operation of the proposed development).

15. The proposed development will comply with all applicable state and local laws, ordinances, regulations and requirements.

16. The proposed development will provide valid and sound security for the authority's notes or bonds and will contribute to the fulfillment of the public purposes of the authority as set forth in its Act.

17. Subject to a final determination by the board, the acquisition and financing of the proposed development will meet the requirements set forth in §§ 36-55.33:2 and 36-55.39 of the Code of Virginia, as applicable.

If the executive director determines that the foregoing criteria are satisfied and that he will recommend approval of the application and issuance of a commitment to acquire the development and, if applicable, to finance the construction of the development, he shall present his analysis and recommendations to the board. If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion recommend to the board that the application be approved and that a commitment be issued subject to the satisfaction of such criteria in such manner and within such time perior as he shall deem appropriate.

The board shall review and consider the analysis and recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize the issuance of a commitment to acquire the development and, if applicable, to finance the construction thereof, subject to such terms and conditions as the board shall require in such resolution.

If the development is to be acquired by a successor entity formed by the authority as described in § 9 hereof, the ~~commitment~~ *resolution* shall authorize (i) the assignment to such successor entity of the authority's interest in the contract to acquire the development and (ii), if applicable, the making of ~~an authority mortgage~~ *a permanent* loan to such successor entity in an amount *set forth therein* ~~equal~~ to *finance* the acquisition cost of the development *and such other costs relating to the acquisition and ownership of the development and to the financing thereof as the authority shall deem necessary or appropriate* .

~~The resolution and commitment issued pursuant to this § 6 shall in all respects conform to the requirements of the Act and the authority's rules and regulations.~~

*The purchase price for the development, the term and principal amount of any construction loan, the terms and conditions applicable to any equity contribution by the applicant for any construction loan, any assurances of successful completion of the development, and other terms and conditions of the acquisition and construction loan shall be set forth in the board's resolution or in the commitment issued pursuant to the resolution. The resolution or commitment shall also include such terms and conditions as the authority considers appropriate with respect to the development and construction, if applicable, and the acquisition of the proposed development, the disbursement and repayment of the construction loan, if applicable, and other matters related to the development and construction, if applicable, and, prior to the acquisition thereof by the authority, the ownership, operation, marketing and occupancy (including any income limits or occupancy restrictions other than those set forth in these rules and regulations) of the proposed development. Such resolution or commitment may include a financial analysis of the proposed development, setting forth the initial schedule of rents, the approved initial budget for operation of the development and a schedule of the estimated housing development costs.*

*If the development is to be acquired by a successor entity which is a for-profit housing sponsor, the board may in its resolution prescribe, in accordance with the authority's rules and regulations for multi-family housing developments, the maximum annual rate at which distributions may be made.*

*Neither an acquisition by the authority of a development nor a construction or permanent loan for such development pursuant to these rules and regulations shall be authorized unless the board by resolution shall make the applicable findings required by §§ 36-55.33:2 and 35-55.39, as applicable, of the Code of Virginia; provided, however, that the board may in its discretion authorize the acquisition or the construction or permanent loan in advance of the issuance of the commitment therefor in accordance herewith* without making the finding, if applicable, required by subsection A of § 36-55.33:2 and subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the board prior to the authority's acquisition of the development and, if applicable, the financing of the construction or permanent loan for such development.

If the executive director determines not to recommend approval of an application and issuance of a commitment, he shall so notify the applicant. If any application is not

so recommended for approval, the executive director may select for processing one or more applications in its place.

§ 7. Initial closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "initial closing documents") required by the commitment within the time period specified. When the initial closing documents have been submitted and approved by the authority staff and all other requirements in the commitment have been satisfied, the authority shall execute and deliver to the applicant a contract to acquire the development; provided, however, that in the case of the acquisition of any existing development, the applicant shall convey the development to the authority at the initial closing, and the authority shall pay the purchase price therefor to the applicant, all in accordance with the terms of the commitment. Also at the initial closing, the initial closing documents (including, in the case of an existing development, a housing management agreement between the authority and the management agent proposed by the authority or, in the case of a development to be constructed, an agreement between the authority and such agent to enter into a housing management agreement at final closing) shall be, where required, executed and recorded, and the applicant will make any initial equity investment required by the commitment and the initial closing documents and will fund such other deposits, escrows and reserves as required by the commitment. If the authority is to provide construction financing for the development, the closing of the construction loan shall also be held at this time, the financing fee of 1.0% of the construction loan amount shall be paid to the authority, and the initial disbursement of construction loan proceeds will be made by the authority, if appropriate under the commitment and the initial closing documents. The actual interest rate on the construction loan shall be established by the executive director at initial closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of the deed of trust note.

If a successor entity as described in § 9 hereof is to acquire an existing development, the sale and conveyance of such development and the making of any permanent mortgage loan to such entity by the authority, all as set forth in § 9 hereof, shall be consummated at the initial closing.

The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction and, prior to acquisition by the authority, completion, occupancy and operation of the development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of credit and latent construction defect escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

§ 8. Construction.

The construction of the development shall be performed in accordance with the initial closing documents. The authority shall have the right to inspect the development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the initial closing documents and to ascertain the propriety and validity of any construction loan disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. If the authority is providing construction financing, a disbursement of construction loan proceeds may only be made upon a determination by the authority that the terms and conditions of the initial closing documents with respect to any such disbursement have been satisfied; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement by the authority shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

§ 9. Completion of construction and final closing.

The initial closing documents shall specify those requirements and conditions that must be satisfied in order for the development to be deemed to have attained final completion.

Prior to or concurrently with final closing, the applicant, the owner, the general contractor, the management agent and other members of the development team shall perform all acts and submit all contracts and documents required by the initial closing documents (including the contract to acquire the development) in order to attain final completion, obtain any federal insurance, subsidy or assistance and otherwise consummate the acquisition and the final closing. The owner shall deliver to the authority a fully executed deed conveying to the authority fee simple title to the development in accordance with the contract and shall execute and deliver such other final closing documents as the authority may prescribe. The authority shall pay to the owner the purchase price specified in the contract to acquire the development. The management agreement shall be executed by the authority and the management agent at the final closing. If the authority had provided the construction loan, such loan shall be repaid in full at final closing.

Prior to or concurrently with final closing, the executive director shall, if authorized by the ~~commitment~~ *resolution* , assign its interest in the contract to acquire the development to ~~an~~ *a successor* entity ~~(the "successor entity")~~ formed by the authority, on its own behalf or in

conjunction with other parties, pursuant to the Act. Any reference to the authority in these ~~procedures, instructions and guidelines~~ *rules and regulations* with respect to the conveyance to or the acquisition, ownership or operation by the authority of a development shall be deemed to refer also to any such successor entity of the authority. Such successor entity shall purchase the development at final closing and otherwise perform the obligations of the authority as purchaser under the contract. The applicant shall convey title to the development to such successor entity and shall perform all of its other obligations as seller under such contract. Furthermore, if authorized by the ~~commitment~~ *resolution* , the authority shall at final closing provide to such successor entity a permanent mortgage loan secured by a first lien on the development ~~in an amount equal to the acquisition cost of the development paid by the successor entity in accordance with the contract or such other amount as the authority may approve consistent with the Act, the authority's rules and regulations and these procedures, instructions and guidelines~~ *to finance the acquisition and ownership thereof* . The making of such permanent mortgage loan shall take place at final closing upon the execution, delivery and recordation of such documents *as the executive director shall require* . Such permanent loan shall bear such interest rate and shall be subject to such terms and conditions as the executive director shall prescribe pursuant to and in accordance with the commitment. *For the purpose of determining any maximum annual dividend distributions by any such successor entity and the maximum principal amount of the permanent mortgage loan to such successor entity permissible under the Act, the total development costs shall be the cost of the acquisition as determined by the authority and such other costs relating to such acquisition, the financing of the permanent mortgage loan and the ownership and operation of the development as the authority shall determine to be reasonable and necessary. The equity investment of any such successor entity shall be the difference between such total development costs and the principal amount of the permanent mortgage loan.*

At the final closing, the authority shall determine in accordance with the initial closing documents any funds due the authority, the applicant, the owner, general contractor, the architect or other parties that the authority requires to be disbursed or paid as part of the final closing.

§ 10. Construction loan and purchase price increases.

Prior to initial closing, the purchase price or the principal amount of any construction loan or both may be increased, if such an increase is justified by an increase in the estimated costs of the proposed development, is necessary or desirable to effect the successful construction of the proposed development, will not have a material adverse effect on the financial feasibility or proper operation and maintenance of the development or on the security of the authority's construction loan or ownership interest in the development, can be funded from available proceeds of the authority's notes or bonds, and will not result in noncompliance with the provisions of the Act or ~~the authority's~~ *these* rules and regulations ~~or any of the provisions of these procedures, instructions and guidelines~~ (including, without limitation, the criteria set forth in § 6 hereof). Any such increase shall be subject to such terms and conditions as the authority shall require.

Subsequent to initial closing, the authority will consider and, where appropriate, approve an increase in the purchase price or principal amount of the construction loan or both in the following instances:

1. Cost increases are incurred as the direct result of (i) changes in work required or requested by the authority or (ii) betterments to the development approved by the authority which will improve the quality or value of the development or will reduce the costs of operating or maintaining the development;

2. An increase is determined by the authority, in its sole and absolute discretion, to be in the best interests of the authority in protecting its security for the construction loan or its ownership interest to be acquired in the development; or

3. The authority has entered into an agreement with the mortgagor prior to initial closing to provide an increase if certain cost overruns occur, but only to the extent set forth in such agreement.

Any such increase in the construction loan or purchase price subsequent to initial closing may be subject to such terms and conditions as the authority shall require, including (but not limited to) one or more of the following, as applicable:

1. The ability of the authority to sell bonds to finance the increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only to an increase to be financed from the proceeds of the authority's notes or bonds).

2. The obtaining by the owner of additional federal subsidy (if the development is to receive such subsidy) in amounts necessary to fund the additional debt service on the authority's notes and bonds to be paid as a result of any such increase in the purchase price, plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development. The provision of such additional subsidy shall be made subject to and in accordance with all applicable federal regulations.

3. A determination by the authority that the increase in the purchase price will have no material adverse effect on the financial feasibility or proper operation and maintenance of the development or on the security of the authority's ownership interest to be acquired in the development.

4. A determination by the authority that the construction loan, as increased, does not exceed such percentage of the estimated total development cost as is established in the resolution authorizing the construction loan, as applicable, in accordance with § 3 of these ~~procedures, instructions and guidelines~~ *rules and regulations* .

5. Such terms and conditions as the authority shall require in order to protect the security of its interest in the construction loan and its ownership interest to be acquired in the development, to comply with covenants and agreements with the holders of its bonds, if any, issued to finance the construction loan or the acquisition of the development, to comply with the Act and ~~the authority's~~ *these* rules and regulations, and to carry out its public purpose.

*In the event of any increase in the purchase price pursuant hereto, the authority may also increase the principal amount of any permanent mortgage loan to be provided to any successor entity.*

The executive director may, without further action by the board, increase the purchase price ~~or~~ , the principal amount of the construction loan *or the principal amount of the permanent loan* at any time by an amount not to exceed 2.0% ~~of the purchase price or the principal amount of the construction loan, respectively, as set forth in the commitment~~ *thereof* , provided that such increase is consistent with the Act and ~~the authority's~~ *these* rules and regulations ~~and the provisions of these procedures, instructions and guidelines~~ . Any increase in excess of such 2.0% shall require the approval of the board.

Nothing contained in this § 10 shall impose any duty or obligation on the authority to increase any purchase price or the principal amount of any construction loan *or permanent loan* , as the decision as to whether to grant a purchase price ~~or~~ , construction loan *or permanent loan* increase shall be within the sole and absolute discription of the authority.

§ 11. Operation, management and marketing.

The authority shall establish the rents to be charged for dwelling units in the development. Units in the development shall only be leased to persons and families who are eligible for occupancy thereof as described in § 2 of these ~~procedures, instructions and guidelines~~ *rules and regulations* . The authority (or any successor entity acquiring the development pursuant to § 9 hereof) shall examine and determine the income and eligibility of applicants for their initial occupancy of the dwelling units of the development and shall reexamine and redetermine the income and eligibility of all occupants of such dwelling units every two years following such initial occupancy or at more frequent intervals ~~at the option of the authority in accordance with § 8.3 of the authority's rules and regulations~~ *if required by the executive director. It shall be the responsibility of each applicant for occupancy of such a dwelling unit, and of each occupant thereof, to report accurately and completely his adjusted family's income, family composition and such other information relating to eligiblity for occupancy as the executive director may require and to provide the authority (or any such successor entity) with verification thereof at the times of examination and reexamination of income and eligibility as aforesaid .*

*With respect to a person or family occupying a multi-family dwelling unit, if a periodic reexamination and redetermination of the adjusted family's income and eligibility as provided in this section establishes that such person's or family's adjusted family income then exceeds the maximum limit for occupancy of such dwelling unit applicable at the time of such reexamination and redetermination, such person or family shall be permitted to continue to occupy such dwelling unit; provided, however, that during the period that such person's or family's adjusted family income exceeds such maximum limit, such person or family may be required by the executive director to pay such rent, carrying charges or surcharge as determined by the executive director in accordance with a schedule prescribed or approved by him. If such person's or family's adjusted family income shall exceed such maximum limit for a period of six months or more, the authority (or any such successor entity) may terminate the tenancy or interest by giving written notice of termination to such person or family specifying the reason for such termination and giving such person or family not less than 90 days (or such longer period of time as the authority shall determine to be necessary to find suitable alternative housing) within which to vacate such dwelling unit.*

~~The provisions of § 8.3 of the authority's rules and regulations shall govern any person or family occupying a dwelling unit of a development whose family's adjusted family income as determined by a periodic examination and redetermination as aforesaid then exceeds the maximum limit for occupancy of such dwelling unit applicable at the time of such reexamination and redetermination.~~

In addition to the eligibility requirements of the authority, the executive director may establish occupancy criteria and priorities based on the following:

1. The age, family size, financial status, health conditions (including, without limitation, any handicaps or disabilities) and other circumstances of the applicants for the dwelling units;

2. The status and physical conditon of the housing then occupied by such applicants; and

3. Any other factors or matters which the executive director deems relevant to the effectuation of the public purposes of the authority.

The authority (or any successor entity as described in §

9 hereof) shall develop a tenant selection plan for tenants eligible to occupy the development. *Such tenant selection plan shall include, among other information that the executive director may require from time to time, the following: (i) the proposed rent structure; (ii) the utilization of any subsidy or other assistance from the federal government or any other source, (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the authority or such successor entity for tenant [ ~~referals~~ referrals ]* or relocations from federal, state or local governmental agencies of community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priority among eligible tenant applicants for occupancy of the proposed development. In selecting eligible residents, the authority (or any such successor entity) shall comply with such occupancy criteria and priorities and with the tenant selection plan.

The executive director is authorized to prepare and from time to time revise a housing management handbook which shall set forth the authority's procedures and requirements with respect to the management of developments by management agents. Copies of the housing management handbook shall be available upon request.

The management of the development shall also be subject to a management agreement by and between the management agent and the authority (or any successor entity). Such management agreement shall govern the policies, practices and procedures relating to the management, marketing and operation of the development. The term of the management agreement shall be as prescribed by the executive director, and upon the expiration of such term the authority may renew or extend such management agreement or may contract with a different management agent on such terms and conditions as the executive director shall require. The development shall be managed in accordance with the Act, ~~the authority's~~ *these* rules and regulations, the management agreement and the authority's housing management handbook, if applicable.

If any successor entity formed pursuant to § 9 hereof is not within the exclusive control of the authority, the executive director may require that such entity and the development owned by and mortgage loan made to such entity be subject to such of the provisions of the authority's ~~procedures, instructions and guidelines~~ *rules and regulations* for multi-family housing developments as he shall require to protect its security for the mortgage loan, to protect its interest in such entity and to fulfill its public purpose under the Act.

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Title of Regulation: **VR 400-02-0015. Rules and Regulations for the Virginia Senior Home Equity Account Program (Formerly: Procedures, Instructions and Guidelines for the Virginia Senior Home Equity Account).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 1989

VR 400-02-0015. Rules and Regulations for the Virginia Senior Home Equity Account.

NOTICE: As provided in § 9-6.14:22, this regulation is not being republished. It was adopted as it was proposed in 5:16 VA.R. 2344 May 22, 1989

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **VR 460-04-8.2. Home and Community Based Services for Elderly and Disabled Individuals.**

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

Effective Date: September 1, 1989

Summary:

*These final regulations for personal care, adult day health care, and respite care establish available services and their limitations, provider requirements and patient eligibility requirements for these waiver services.*

VR 460-04-8.2. Home and Community Based Services for Elderly and Disabled Individuals.

*§ 1. Definitions.*

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

*"Activities of daily living" means assistance with personal care tasks (i.e., bathing, dressing, toileting, etc.).*

*"Adult day health care centers" means a participating provider which offers a community-based day program providing a variety of health, therapeutic and social services designed to meet the specialized needs of those elderly and physically disabled individuals at risk of placement in an intermediate or skilled care nursing home.*

*"Adult day health care services" means services designed to prevent institutionalization by providing participants with health, maintenance, and rehabilitation services in a congregate daytime setting.*

*"Current functional status" means the individual's degree of dependency in performing activities of daily living.*

*"DMAS" means the Department of Medical Assistance Services.*

*"DSS" means the Department of Social Services.*

*"Episodic respite care" means relief of the caregiver for a nonroutine, short-term period of time for a specified reason (i.e., respite care offered for seven days, 24 hours a day while the caregiver takes a vacation).*

*"Home and community-based care" means a variety of in-home services reimbursed by DMAS (personal care, adult day health care and respite care) designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service(s) to avoid nursing home placement. An individual may only receive home and community-based long-term care services up to the amount for which the costs to Medicaid are equal to or less than nursing home care. The Nursing Home Preadmission Screening Team or Department of Medical Assistance Services [ ~~must~~ shall ] give prior authorization for any Medicaid-reimbursed home and community-based care.*

*"Nursing home preadmission screening" means the process to: (i) evaluate the medical, nursing, and social needs of individuals referred for preadmission screening, (ii) analyze what specific services the individuals need, (iii) evaluate whether a service or a combination of existing community services is available to meet the individuals' needs, and (iv) authorize Medicaid funded nursing home or community-based care for those individuals who meet nursing facility level of care and require that level of care.*

*"Nursing Home Preadmission Screening Committee/Team" means the entity contracted with the DMAS which is responsible for performing nursing home preadmission screening. For individuals in the community, this entity is a committee comprised of staff from the local health department and local DSS. For individuals in an acute care facility who require screening, the entity is a team of nursing and social work staff. A physician must be a member of both the local committee or acute care team.*

*"Participating provider" means an institution, facility, agency, partnership, corporation, or association that meets the standards and requirements set forth by DMAS, and has a current, signed contract with DMAS.*

*"Personal care agency" means a participating provider which renders services designed to prevent or reduce inappropriate institutional care by providing eligible individuals with personal care aides who provide personal care services.*

*"Personal care services" means long-term maintenance or support services necessary to enable the individual to remain at or return home rather than enter an intermediate or skilled nursing care facility. Personal care services include assistance with personal hygiene, nutritional support, and the environmental maintenance necessary for recipients to remain in their homes.*

*"Plan of Care" means the written plan of services certified by the screening team physician as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.*

*"Professional staff" means the director, activities director, registered nurse, or therapist of an adult day health care center.*

*"Respite care" means services specifically designed to provide a temporary but periodic or routine relief to the primary caregiver of an individual who is incapacitated or dependent due to frailty or physical disability. Respite care services include assistance with personal hygiene, nutritional support and environmental maintenance authorized as either episodic, temporary relief or as a routine periodic relief of the caregiver.*

*"Respite care agencies" means a participating provider which renders services designed to prevent or reduce inappropriate institutional care by providing eligible individuals with respite care aides who provide respite care services.*

*"Routine respite care" means relief of the caregiver on a periodic basis over an extended period of time to allow the caregiver a routine break from continuous care (i.e., respite care offered one day a week for six hours).*

*"Staff" means professional and aide staff of an adult day health care center.*

*"State Plan for Medical Assistance" or "the Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.*

*§ 2. General coverage and requirements for all home and community-based care services.*

*A. Coverage statement.*

*1. Coverage shall be provided under the administration of the Department of Medical Assistance Services for elderly and disabled individuals who would otherwise require the intermediate or skilled level of nursing care.*

*2. These services [ ~~must~~ shall ] be medically appropriate, cost effective and necessary to maintain these individuals in the community.*

*B. Patient qualification and eligibility requirements.*

*1. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR*

435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

a. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. The medically needy individuals participating in the waiver will also be considered as if they were institutionalized for the purpose of applying the institutional deeming rules.

b. Virginia will treat the income of an eligible individual who receives home and community-based care services under 42 CFR 435.217 using the methodology in 42 CFR 435.735 to reduce the agency's payment for home and community-based services. The following amounts from the individual's total income (including amounts disregarded in determining eligibility) will be deducted:

(1) For the individual's maintenance needs, the current Supplemental Security Income (SSI) payment standard for one individual (the categorically needy income standard for one).*

* Although Virginia has elected to apply more restrictive eligibility requirements than SSI, Virginia does not apply a more restrictive income standard.

(2) For an individual with a spouse living in the home, an additional amount for the maintenance needs of the spouse based upon a reasonable assessment of need but not to exceed the current Supplemental Security Income payment for one individual (the categorically needy income standard for one).

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family based upon a reasonable assessment of need but not to exceed the medically needy income standard for a family of the same size.

(4) Amounts for incurred expenses for Medicare and other health insurance premiums, deductibles, or coinsurance charges.

(5) Amounts for incurred expenses for necessary medical or remedial care not subject to payment by a third party recognized under state law but not covered under the state's Medicaid Plan within the same reasonable limits established under the State Plan for institutionalized individuals.

C. Assessment and authorization of home and community-based care services.

1. To ensure that Virginia's home and community-based care waiver programs serve only individuals who would otherwise be placed in a nursing home, home and community-based care services [ ~~can~~ shall ] be considered only for individuals who are seeking nursing home admission or for individuals who are at imminent risk of nursing home admission. Home and community-based care services [ ~~must~~ shall ] be the critical service that enables the individual to remain at home rather than being placed in a nursing home.

2. The individual's status as an individual in need of home and community-based care services [ ~~is~~ shall be ] determined by the Nursing Home Preadmission Screening Team after completion of a thorough assessment of the individual's needs and available support. Screening and preauthorization of home and community-based care services by the Nursing Home Preadmission Screening Committee/Team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based care services.

3. An essential part of the Nursing Home Preadmission Screening Team's assessment process is determining the level of care required by applying existing criteria for skilled and intermediate nursing home care according to established Nursing Home Preadmission Screening process.

4. The team [ ~~explores~~ shall explore ] alternative settings and services to provide the care needed by the individual. If nursing home placement or a combination of other services is determined to be appropriate, the screening team [ ~~initiates~~ shall initiate ] referrals for service. If Medicaid-funded home and community-based care services are determined to be the critical service to delay or avoid nursing home placement, the screening team [ ~~is responsible for developing~~ shall develop ] an appropriate plan of care, [ ~~computing~~ compute ] cost effectiveness and [ ~~initiating~~ initiate ] referrals for service.

5. To ensure that Virginia's home and community-based care services continue to be a cost-effective alternative to institutionalization, home and community-based care services [ ~~can~~ shall ] be considered only for individuals for whom the cost of Medicaid-reimbursed home and community-based care would not exceed the Medicaid cost of institutional care.

6. Home and community-based care services shall not be offered to any individual who resides in an intermediate or skilled nursing facility, an intermediate facility for the mentally retarded, a hospital, or an adult home licensed by the DSS.

7. Medicaid will not pay for any home and community-based care services delivered prior to the

*authorization date approved by the Nursing Home Preadmission Screening Committee/Team.*

*8. Any authorization and Plan of Care for home and community-based care services will be subject to the approval of the DMAS prior to Medicaid reimbursement for waiver services.*

*§ 3. General conditions and requirements for all home and community-based care participating providers.*

*A. General requirements.*

*Providers approved for participation shall, at a minimum, perform the following activities:*

*1. Immediately notify DMAS, in writing, of any change in the information which the provider previously submitted to DMAS.*

*2. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the service(s) required and participating in the Medicaid Program at the time the service was performed.*

*3. Assure the recipient's freedom to reject medical care and treatment.*

*4. Accept referrals for services only when staff is available to initiate services.*

*5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin [ and of Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of a handicap ].*

*6. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.*

*7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.*

*8. Accept Medicaid payment from the first day of eligibility.*

*9. Accept as payment in full the amount established by the DMAS.*

*10. Use Program-designated billing forms for submission of charges.*

*11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.*

*a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. [ ~~An exception would be~~ ] If an audit is initiated within the required retention period, the records [ ~~must~~ shall ] be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.*

*b. Policies regarding retention of records shall apply even if the agency discontinues operation. DMAS shall be notified in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee [ ~~should~~ shall ] be within the Commonwealth of Virginia.*

*12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.*

*13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.*

*14. Hold confidential and use for authorized DMAS purposes only all medical assistance information regarding recipients.*

*15. Change of ownership. When ownership of the provider agency changes, DMAS [ ~~must~~ shall ] be notified within 15 calendar days.*

*B. Requests for participation.*

*Requests will be screened to determine whether the provider applicant meets the basic requirements for participation.*

*C. Provider participation standards.*

*For DMAS to approve contracts with home and community-based care providers the following [ ~~must~~ standards shall ] be met:*

*1. Staffing requirements,*

*2. Financial solvency,*

*3. Disclosure of ownership, and*

*4. Assurance of comparability of services.*

*D. Adherence to provider contract and special participation conditions.*

*In addition to [ compliance with ] the general conditions and requirements, all providers enrolled by the Department of Medical Assistance Services shall adhere to the conditions of participation outlined in their individual provider contracts.*

*E. Recipient choice of provider agencies.*

*If there is more than one approved provider agency in the community, the individual will have the option of selecting the provider agency of their choice.*

*F. Termination of provider participation.*

*DMAS may administratively terminate a provider from participation upon 60 days' written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided recipients subsequent to the date specified in the termination notice.*

*G. Reconsideration of adverse actions.*

*The following procedures will be available to all providers when DMAS takes adverse action which includes termination or suspension of the provider agreement.*

*1. The reconsideration process [ ~~will~~ shall ] consist of three phases:*

*a. A written response and reconsideration to the preliminary findings,*

*b. The informal conference, and*

*c. The formal evidentiary hearing.*

*2. The provider [ ~~will~~ shall ] have 30 days to submit information for written reconsideration, 15 days from the date of the notice to request the informal conference, and 15 days to request the formal evidentiary hearing.*

*3. An appeal of adverse actions shall be heard in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and that the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia. Court review of [ the ] final agency determination shall be made in accordance with the Administrative Process Act.*

*H. Participating provider agency's responsibility for the recipient information form (DMAS-122).*

*It is the responsibility of the provider agency to notify DMAS and the DSS, in writing, when any of the following circumstances occur:*

*1. Home and community-based care services are implemented,*

*2. A recipient dies,*

*3. A recipient is discharged or terminated from services, or*

*4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.*

*I. Changes or termination of care.*

*1. Decreases in amount of authorized care by the provider agency.*

*a. The provider agency may decrease the amount of authorized care only if the recipient and the participating provider both agree that a decrease in care is needed and that the amount of care in the revised plan of care is appropriate.*

*b. The participating provider is responsible for devising the new Plan of Care and calculating the new hours of service delivery.*

*c. The individual responsible for supervising the recipient's care shall discuss the decrease in care with the recipient or family, or both, document the conversation in the recipient's record, and [ shall ] notify the recipient or family of the change by letter.*

*d. If the recipient disagrees with the decrease proposed, the DMAS [ ~~must~~ shall ] be notified to conduct a special review of the recipient's service needs.*

*2. Increases in amount of authorized care. If a change in the recipient's condition (physical, mental, or social) necessitates an [ ~~immediate~~ ~~emergency~~ ] increase in care, the participating provider [ ~~must~~ shall ] contact the DMAS utilization review analyst assigned to the provider[ who will assess the need for increase and, if appropriate, authorize the increase ]. [ If the increase is needed immediately for an emergency situation, ] a begin and an end date will be provided by DMAS for the temporary emergency increase.*

*3. Nonemergency termination of home and community-based care services by the participating provider. The participating provider [ ~~must~~ shall ] give the recipient or family, or both, five days' written notification of the intent to terminate services. The letter [ ~~must~~ shall ] provide the reasons for and effective date of the termination. The effective date of services termination [ ~~must~~ shall ] be at least five days from the date of the termination notification letter.*

*4. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered [ ; the DMAS must be notified prior to termination. ] The five-day [ written ] notification period [ ~~is~~ shall ] not [ be ] required.*

*5. DMAS termination of home and community-based care services. The effective date of termination will be at least 10 days from the date of the termination notification letter. DMAS has the responsibility and the authority to terminate home and community-based care services to the recipient for any of these reasons:*

*a. The home and community-based care service is not the critical alternative to prevent or delay institutional placement.*

*b. The recipient no longer meets the level-of-care criteria.*

*c. The recipient's environment does not provide for [ ~~their~~ his ] health, safety, and welfare.*

*d. An appropriate and cost-effective plan of care cannot be developed.*

*J. Suspected abuse or neglect.*

*Pursuant to § 63.1-55.3 of the Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation shall report this to the local DSS.*

*§ 4. Adult day health care services.*

*The following are specific requirements governing the provision of adult day health care:*

*A. General.*

*Adult day health care services may be offered to individuals in a congregate daytime setting as an alternative to more costly institutional care. Adult day health care may be offered either as the sole home and community-based care service that avoids institutionalization or in conjunction with personal care or respite care, or both. When the individual referred for adult day health care is already receiving another home and community-based care service, the DMAS utilization review staff [ ~~must~~ shall ] assess the need for the additional home and community-based care service and authorize the service if it is deemed necessary to avoid institutionalization.*

*B. Special provider participation conditions.*

*In order to be a participating provider, the adult day health care center [ ~~must~~ shall ]:*

*1. Be an adult day care center licensed by DSS. A copy of the current license shall be available to the DMAS for verification purposes prior to the applicant's enrollment as a Medicaid provider and shall be available for DMAS review prior to yearly contract renewal.*

*2. Adhere to the DSS adult day care center standards. The DMAS special participation conditions included here are standards imposed in addition to DSS standards which [ ~~must~~ shall ] be met in order to provide Medicaid adult day health care services.*

*3. Be open and provide services for a minimum of 10 hours a day Monday through Friday. [ The participant may attend the center all or a portion of that day according to the Plan of Care developed for that individual ]. The center [ ~~must~~ shall ] be able to provide a separate room or area equipped with one bed or cot for every six Medicaid adult day health care participants.*

*4. Employ sufficient interdisciplinary staff to adequately meet the health, maintenance, and safety needs of each participant. The following staff are required by DMAS:*

*a. The adult day health care center shall maintain a minimum staff-participant ratio of one staff member to every six participants (Medicaid and other participants).*

*b. There shall be at least two staff persons at the center at all times when there are Medicaid participants in attendance.*

*c. In the absence of the director, a professional staff member shall be designated to supervise the program.*

*d. Volunteers shall be included in the staff ratio only when they conform to the same standards and requirements as paid staff and meet the job description standards of the organization.*

*e. Any center that is collocated with another facility shall count only its own separate identifiable staff in the center's staff/participant ratio.*

*f. The adult day health care center shall employ the following:*

*(1) A director who shall be responsible for overall management of the center's programs. This individual [ ~~is~~ shall be ] the provider contact person for DMAS staff and [ ~~is~~ shall be ] responsible for contracting, and receipt and response to communication from DMAS. The director [ ~~is~~ shall be ] responsible for assuring the initial development*

of the Plan of Care for adult day health care participants. [ ~~However,~~ ] The [ ~~center~~ ] director has ultimate responsibility for directing the center program and supervision of its employees. [ The director can serve as activities director also if those qualifications are met. ]

(2) An activities director who shall be responsible for directing recreational and social activities for the adult day health care participants.

(3) Program aides who shall be responsible for overall assistance with care and maintenance of the participant (assistance with activities of daily living, recreational activities and other health and therapeutic related activities).

g. The adult day health care center shall employ or subcontract with a registered nurse who shall be responsible for administering and monitoring the health needs of the adult day health care participants. The nurse shall be responsible for the planning, organization, and management of a treatment plan involving multiple services where specialized health care knowledge shall be applied. The nurse [ ~~must~~ shall ] be present a minimum of two hours each day at the adult day health care center to render direct services to Medicaid adult day health care participants. The DMAS may require the nurse's presence at the adult day health care center for more than two hours each day depending on the number of participants in attendance and according to the medical and nursing needs of the participants. Although the DMAS does not require that the nurse be a full-time staff position, there [ ~~must~~ shall ] be a nurse available, either in person or by telephone at a minimum, to the center's participants during all times the center is in operation.

h. The director shall assign a professional staff member to act as adult day health care coordinator for each participant and shall document in the participant's file the identity of the care coordinator. The adult day health care coordinator shall be responsible for management of the participant's plan of care and for its review with the program aides.

C. Minimum qualifications of adult day health care staff.

Documentation of all staffs' credentials shall be maintained in the provider agency's personnel file for review by DMAS staff.

1. Program aide. Each program aide hired by the provider agency shall be screened to ensure compliance with minimum qualifications as required by DMAS. The aide [ ~~must~~ shall ] , at a minimum, have the following qualifications:

a. Be able to read and write.

b. Be physically able to do the work.

c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse [ ~~or~~ ] neglect [ or exploitation ] of [ ~~incompetent~~ ~~or~~ ] incapacitated [ ~~individuals~~ or older adults and children ].

d. Have satisfactorily completed an educational curriculum related to the needs of the elderly and disabled. Acceptable curriculum are offered by educational institutions, nursing homes, and hospitals. Curriculum titles include: Nurses Aide, Geriatric Nursing Assistant, and Home Health Aide. Documentation of successful completion shall be maintained in the aide's personnel file and be available for review by the DMAS staff. Training consistent with DMAS training guidelines may also be given by the center's professional staff. The content of the training [ ~~must~~ shall ] be approved by DMAS prior to assignment of the aide to a Medicaid participant.

2. Registered nurse. The registered nurse [ ~~must~~ shall ]:

a. Be registered and licensed to practice nursing in the Commonwealth of Virginia.

b. Have two years of related clinical experience (which may include work in an acute care hospital, rehabilitation hospital, or nursing home).

c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse or neglect of incompetent or incapacitated individuals.

3. Activities director. The activities director [ ~~must~~ shall ]:

a. Have a minimum of a Bachelors degree from an accredited college or university with a major in recreational therapy, occupational therapy, or a related field such as art, music, or physical education.

b. Have one year of related clinical experience which may include work in an acute care hospital, rehabilitation hospital, nursing home, or have completed a course of study including any prescribed internship in occupational, physical, and recreational therapy or music, dance, art therapy, or physical education.

c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse [ ~~or~~ , ] neglect [ or exploitation ] of [ ~~incompetent~~ ] incapacitated [ ~~individuals~~ or older adults and children ].

*4. Director. The director [ ~~must~~ shall ] meet the qualifications specified in the DSS standards for adult day care [ for directors ].*

*D. Responsibilities of the adult day health care center are:*

*1. Aide responsibilities. The aide [ ~~is~~ shall be ] responsible for assisting with activities of daily living, supervising the participant, and assisting with the management of the participant's Plan of Care.*

*2. Nursing responsibilities. These services shall include:*

*a. Periodic evaluation of the nursing needs of each participant,*

*b. Provision of the indicated nursing care and treatment, and*

*c. Monitoring, recording, and administering of prescribed medications or supervising the individual in self-administered medication.*

*3. Rehabilitation services coordination responsibilities. These services are designed to ensure the participant receives all rehabilitative services deemed necessary to improve or maintain independent functioning, to include the coordination and implementation of physical therapy, occupational therapy, and [ ~~speech~~ speech-language ] therapy. [ Rendering of the specific Rehabilitative Therapy is not included in the ADHC center's fee for service but must be rendered as a separate service by a DMAS approved rehabilitative provider. ]*

*4. Transportation responsibilities. Every DMAS approved adult day health care center [ ~~must~~ shall ] provide transportation when needed in emergency situations (i.e., primary caregiver has an accident and cannot transport the participant home) for all Medicaid participants to and from their homes. Any adult day health care center which is able to provide participants with transportation routinely to and from the center can be reimbursed by DMAS based on a per trip (to and from the participant's residence) fee. This reimbursement for transportation [ ~~must~~ shall ] be preauthorized by either the Nursing Home Preadmission Screening Team or DMAS utilization review staff.*

*5. Nutrition responsibilities. The adult day health care center shall provide one meal per day which supplies one-third of the daily nutritional requirements. Special diets and counseling shall be provided to Medicaid participants as necessary.*

*6. Adult day health care coordination. The designated adult day health care coordinator [ ~~is responsible for coordinating~~ shall coordinate ] the delivery of the activities as prescribed in the participants' Plans of Care and [ ~~keeping~~ keep ] it updated, [ ~~recording~~ record ] 30-day progress notes, and [ ~~reviewing~~ review ] the participants' daily logs each week.*

*7. Recreation and social activities responsibilities. The adult day health care center shall provide planned recreational and social activities suited to the participants' needs and designed to encourage physical exercise, prevent deterioration, and stimulate social interaction.*

*E. Documentation required.*

*The adult day health care center shall maintain all records of each Medicaid participant. These records shall be reviewed periodically by DMAS staff. At a minimum, these records shall contain:*

*1. Long-term care Information Assessment Instrument, the Nursing Home Preadmission Screening Authorization, and the Screening Team Plan of Care.*

*2. Interdisciplinary Plan of Care developed by adult day health care center professional staff [ and the participant and relevant support persons ].*

*3. Documentation of interdisciplinary staff meetings which [ ~~are to~~ shall ] be held at least every three months to reassess each participant and evaluate the adequacy of the adult day health care Plan of Care and make any necessary revisions.*

*4. At a minimum, 30-day goal oriented progress notes recorded by the individual designated as the adult day health care coordinator. If a participant's condition and treatment plan changes more often, progress notes [ ~~must~~ shall ] be written more frequently than every 30 days.*

*5. The adult day health care center [ ~~will~~ shall ] obtain a rehabilitative progress report and updated treatment plan from all professional disciplines involved in the participant's care every 30 days (physical therapy, speech therapy, occupational therapy, home health and others).*

*6. Daily log of service provided. The daily log shall contain the specific services delivered by adult day health care center staff. The log shall also contain the arrival and departure time of the participant and be signed weekly by the participant and an adult day health care center professional staff member. The daily log [ ~~is to~~ shall ] be completed on a daily basis, neither before nor after the date of service delivery. At least once a week, a staff member shall chart significant comments regarding care given to the participant. If the staff member writing comments is different from the staff signing the weekly log, that staff member [ ~~must~~ shall ] sign the weekly comments.*

*7. All correspondence to the participant and to DMAS.*

8. All DMAS utilization review forms and plans of care.

§ 5. Personal care services.

The following [ ~~specific~~ ] requirements govern the provision of personal care services:

A. General.

Personal care services may be offered to individuals in their homes as an alternative to more costly institutional care. Personal care may be offered either as the sole home and community-based care service that avoids institutionalization or in conjunction with adult day health care or respite care, or both. When the individual referred for personal care is already receiving another home and community-based care service, the DMAS utilization review staff [ ~~must~~ shall ] assess the need for the additional home and community-based care service and authorize the service if it is deemed necessary to avoid institutionalization.

B. Special provider participation conditions.

The personal care provider shall:

1. Demonstrate a prior successful health care delivery.

2. Operate from a business office.

3. Employ (or subcontract with) and directly supervise a registered nurse (RN) who will provide ongoing supervision of all personal care aides.

a. The RN [ ~~must~~ shall ] be currently licensed to practice in the Commonwealth of Virginia and have at least two years of related clinical nursing experience (which may include work in an acute care hospital, public health clinic, home health agency, or nursing home).

b. The RN supervisor shall make an initial assessment [ home ] visit prior to the start of care for all new recipients admitted to personal care.

c. The RN shall make supervisory visits as often as needed to ensure both quality and appropriateness of services. A minimum frequency of these visits is every 30 days.

d. During visits to the recipient's home, the RN shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the recipient's current functioning status, medical, and social needs. The personal care aide's record shall be reviewed and the recipient's (or family's) satisfaction with the type and amount of service discussed. The RN summary shall note:

(1) Whether personal care services continue to be appropriate, (2) Whether the plan is adequate to meet the need or changes are indicated in the plan,

(3) Any special tasks performed by the aide and the aide's qualifications to perform these tasks,

(4) Recipient's satisfaction with the service,

(5) Hospitalization or change in medical condition or functioning status,

(6) Other services received and their amount, and

(7) The presence or absence of the aide in the home during the RN's visit.

e. The registered nurse [ ~~must~~ shall ] be available to the personal care aide for conference pertaining to individuals being served by the aide and [ ~~must~~ shall ] be available to aides by telephone at all times that the aide is providing services to personal care recipients. Any change in the identity of the RN providing coverage shall be reported immediately to DMAS.

f. The RN supervisor shall evaluate the aides' performance and the recipient's individual needs to identify any gaps in the aides' abilities to function competently and shall provide training as indicated.

4. Employ and directly supervise personal care aides who will provide direct care to personal care recipients. Each aide hired by the provider agency [ ~~must~~ shall ] be evaluated by the provider agency to ensure compliance with minimum qualifications as required by DMAS. Each aide shall:

a. Be able to read and write.

b. Complete 40 hours of training consistent with DMAS standards. Prior to assigning an aide to a recipient, the provider agency [ ~~must~~ shall ] ensure that the aide has satisfactorily completed a training program consistent with DMAS standards.

c. Be physically able to do the work.

d. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse [ ~~or~~ , ] neglect [ or exploitation ] of [ ~~incompetent or~~ ] incapacitated [ ~~individuals~~ or older adults and children ].

e. Not be a member of the recipient's family (e.g., family is defined as parents, spouses, children, siblings, grandparents, and grandchildren).

C. Provider inability to render services and substitution of aides.

1. When a personal care aide is absent and the

agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients. The agency may either obtain a substitute aide from another agency, if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient to another agency. If no other provider agency is available, the provider agency [ ~~must~~ shall ] notify the recipient or family [ ~~to~~ so they may ] contact the local health department to request a Nursing Home Preadmission Screening if nursing home placement is desired.

2. During temporary, short-term lapses in coverage (not to exceed two weeks in duration), the following procedure [ ~~applies~~ shall apply ]:

a. The personal care agency having recipient responsibility shall provide the registered nurse supervision for the substitute aide.

b. The agency providing the substitute aide shall send to the personal care agency having recipient care responsibility a copy of the aide's signed daily records signed by the recipient.

c. The provider agency having recipient responsibility shall bill DMAS for services rendered by the substitute aide.

3. If a provider agency secures a substitute aide, the provider agency shall be responsible [ ~~to ensure~~ for ensuring ] that all DMAS requirements continue to be met, including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS requirements.

D. Required documentation in recipients' records.

The provider agency shall maintain all records of each personal care recipient. At a minimum these records shall contain:

1. Long-Term Care Assessment Instrument, the Preadmission Screening Authorization, the Screening Team Plan of Care, all provider agency plans of care, and all DMAS-122's.

2. All DMAS utilization review forms and plans of care.

3. Initial assessment by the RN supervisory nurse completed prior to or on the date services are initiated.

4. Nurses' notes recorded and dated during any contacts with the personal care aide and during supervisory visits to the recipient's home.

5. All correspondence to the recipient and to DMAS.

6. Reassessments made during the provision of services.

7. Contacts made with family, physicians, DMAS, [ formal, informal service providers ] and all professionals concerning the recipient.

8. All personal care aide records. The personal care aide record shall contain:

a. The specific services delivered to the recipient by the aide and the recipient's responses,

b. The aide's arrival and departure times,

c. The aide's weekly comments or observations about the recipient to include observations of the recipient's physical and emotional condition, daily activities, and responses to services rendered,

d. The aide's and recipient's weekly signatures to verify that personal care services during that week have been rendered, and

Signatures, times and dates [ ~~must~~ shall ] not be placed on the aide record prior to the last date of the week that the services are delivered.

§ 6. Respite care services.

These [ ~~are specific~~ ] requirements [ ~~governing~~ govern ] the provision of respite care services.

A. General.

Respite care services may be offered to individuals in their homes as an alternative to more costly institutional care. Respite care is distinguished from other services in the continuum of long-term care because it is specifically designed to focus on the need of the caregiver for temporary relief. Respite care may only be offered to individuals who have a primary caregiver living in the home who requires a temporary relief to avoid institutionalization of the individual. The authorization of respite care is limited to 30 24-hour days over a 12-month period. Reimbursement [ ~~is~~ shall be ] made on an hourly basis for any amount authorized up to eight hours. Any amount over an eight-hour day will be reimbursed on a per diem basis. The option of respite care may be offered either as a secondary home and community-based care service to those individuals who receive either personal care or adult day health care or as the sole home and community-based care service received in lieu of nursing home placement.

B. Special provider participation conditions.

To be approved for respite care contracts with DMAS, the respite care provider [ ~~must~~ shall ]:

1. Demonstrate a prior successful health care delivery.

2. Operate from a business office.

3. Employ (or subcontract with) and directly supervise a registered nurse (RN) who will provide ongoing supervision of all respite care aides.

a. The RN [ ~~must~~ shall ] be currently licensed to practice in the Commonwealth and have at least two years of related clinical nursing experience (which may include work in an acute care hospital, public health clinic, home health agency, or nursing home).

b. Based on continuing evaluations of the aides' performance and the recipients' individual needs, the RN supervisor shall identify any gaps in the aides' abilities to function competently and shall provide training as indicated.

c. The RN supervisor shall make an initial assessment visit prior to the start of care for any recipient admitted to respite care.

d. The RN shall make supervisory visits as often as needed to ensure both quality and appropriateness of services.

(1) When respite care services are received on a routine basis, the minimum acceptable frequency of these visits [ ~~is~~ shall be ] every 30 days.

(2) When respite care services are not received on a routine basis, but are episodic in nature (i.e., respite care offered for one full week during a six-month period), the RN [ ~~is~~ shall ] not [ be ] required to conduct a supervisory visit every 30 days. Instead, the nurse supervisor shall conduct the initial [ home ] visit with the respite care aide immediately preceding the start of care and make a [ ~~concluding~~ second home ] visit within [ ~~two weeks~~ ] after the respite care period has concluded.

(3) When respite care services are routine in nature and offered in conjunction with personal care, the 30-day supervisory visit conducted for personal care may serve as the RN visit for respite care. However, the RN supervisor shall document supervision of respite care separately. [ ~~(~~ For this purpose, ] the same recipient record can be used with a separate section for respite care documentation [ ~~)~~ ].

e. During visits to the recipient's home, the RN shall observe, evaluate, and document the adequacy and appropriateness of respite care services with regard to the recipient's current functioning status, medical, and social needs. The respite care aide's record shall be reviewed and the recipient's (or family's) satisfaction with the type and amount of service discussed. The RN shall document in a summary note:

(1) Whether respite care services continue to be appropriate,

(2) Whether the plan of care is adequate to meet the recipient's needs or if changes need to be made in it,

(3) The recipient's satisfaction with the service,

(4) Any hospitalization or change in medical condition or functioning status,

(5) Other services received and their amount, and

(6) The presence or absence of the aide in the home during the visit.

f. In all cases, the RN [ ~~must~~ shall ] be available to the respite care aide for conference pertaining to recipient's being served by the aide.

g. The RN providing supervision to respite care aides [ ~~must~~ shall ] be available to them by telephone at all times that services are being provided to respite care recipients. Any lapse in RN coverage shall be reported immediately to DMAS.

4. Employ and directly supervise respite care aides who provide direct care to respite care recipients. Each aide hired by the provider agency [ ~~must~~ shall ] be evaluated by the provider agency to ensure compliance with minimum qualifications as required by DMAS. Each aide must:

a. Be able to read and write.

b. Have completed 40 hours of training consistent with DMAS standards. Prior to assigning an aide to a recipient, the provider agency [ ~~must~~ shall ] ensure that the aide has satisfactorily completed a training program consistent with DMAS standards.

c. Be evaluated in [ ~~their~~ his ] job performance by the RN supervisor.

d. Have the physical ability to do the work.

e. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse or neglect of incompetent or incapacitated individuals.

f. Not be a member of a recipient's family (e.g., family is defined as parents, spouses, siblings, grandparents, and grandchildren).

5. [ ~~In certain circumstances it may be warranted to designate a licensed practical nurse (LPN) to deliver respite care services. These circumstances are:~~ The Respite Care Agency may employ a licensed practice nurse to deliver respite care services which shall be

*reimbursed by DMAS under the following circumstances:* ]

*a. The individual receiving care has a need for routine skilled care which cannot be provided by unlicensed personnel. These individuals would typically require a skilled level of care if in a nursing home (i.e., recipients on a ventilator, recipients requiring nasogastric, or gastrostomy feedings, etc.).*

*b. No other individual in the recipient's support system is able to supply the skilled component of the recipient's care during the caregiver's absence.*

*c. The recipient is unable to receive skilled nursing visits from any other source which could provide the skilled care usually given by the caregiver.*

[ *d. The agency can document the circumstances which require the provision of services by an LPN.* ]

[ ~~*The respite care agency may employ an LPN currently licensed to practice in the Commonwealth as long as the agency can document circumstances which require the provision of services by an LPN. DMAS will reimburse for licensed practical nursing respite care only those recipients requiring skilled level of care with no other support system other than the primary caregiver, who is the recipient of respite care.*~~ ]

*C. Inability to provide services and substitution of aides.*

*When a respite care aide is absent and the respite care provider agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients.*

*1. If a provider agency cannot supply a respite care aide to render authorized services, the agency may either obtain a substitute aide from another agency, if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient's care to another agency.*

*2. If no other provider agency is available who can supply an aide, the provider agency* [ ~~*must*~~ *shall* ] *notify the recipient or family* [ ~~*to*~~ *so that they may* ] *contact the local health department to request a Nursing Home Preadmission Screening if nursing home placement is desired.*

*3. During temporary, short-term lapses in coverage* [ ~~*(*~~ *, which shall* ] *not* [ ~~*to*~~ ] *exceed two weeks in duration* [ ~~*)*~~ ] *, a substitute aide may be secured from another respite care provider agency or other home care agency.* [ *Under these circumstances,* ] *the following procedures apply:*

*a. The respite care agency having recipient responsibility* [ ~~*is*~~ *shall be* ] *responsible for providing the RN supervision for the substitute aide;*

*b. The agency providing the substitute aide shall send to the respite care agency having recipient care responsibility a copy of the aide's daily records signed by the recipient and the substitute aide. All documentation of services rendered by the substitute aide shall be in the recipient's record. The documentation of the substitute aide's qualifications shall also be obtained and recorded in the personnel files of the agency having recipient care responsibility.*

*c. The provider agency having recipient responsibility shall bill DMAS for services rendered by the substitute aide. (The two agencies involved shall negotiate the financial arrangements of paying the substitute aide.)*

*4. Substitute aides obtained from other agencies may be used only in cases where no other arrangements can be made for recipient respite care services coverage and may be used only on a temporary basis. If a substitute aide is needed for more than two weeks, the case* [ ~~*must*~~ *shall* ] *be transferred to another respite care provider agency that has the aide capability to serve the recipient(s).*

*5. If a provider agency secures a substitute aide it is the responsibility of the provider agency having recipient care responsibility to ensure that all DMAS requirements continue to be met, including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS requirements.*

*D. Required documentation for recipients records.*

*The provider agency shall maintain all records of each respite care recipient. These records shall be separated from those of other non-home and community-based care services, such as companion services or home health. These records shall be reviewed periodically by the DMAS staff. At a minimum these records shall contain:*

*1. Long-Term Care Assessment Instrument, the Nursing Home Preadmission Screening Authorization, all Respite Care Assessment and Plans of Care, and all DMAS-122's.*

*2. All DMAS utilization review forms and plans of care.*

*3. Initial assessment by the RN supervisory nurse completed prior to or on the date services are initiated.*

*4. Registered nurse's notes recorded and dated during significant contacts with the respite care aide and*

*during supervisory visits to the recipient's home.*

*5. All correspondence to the recipient and to DMAS.*

*6. Reassessments made during the provision of services.*

*7. Significant contacts made with family, physicians, DMAS, and all professionals concerning the recipient.*

*8. Respite care aide record of services rendered and recipient's responses. The aide record shall contain:*

*a. The specific services delivered to the recipient by the respite care aide or LPN, and the recipient's response,*

*b. The arrival and departure time of the aide for respite care services only,*

*c. Comments or observations recorded weekly about the recipient. Aide comments shall include but not be limited to observation of the recipient's physical and emotional condition, daily activities, and the recipient's response to services rendered,*

*d. The signature by the aide or LPN, and the recipient once each week to verify that respite care services have been rendered.*

*Signature, times, and dates [ ~~must~~ shall ] not be placed on the aide record prior to the last date of the week that the services are delivered*

*9. Copies of all aide records [ ~~are~~ shall be ] subject to review by state and federal Medicaid representatives.*

*10. If a respite care recipient is also receiving any other service (meals on wheels, companion, home health services, etc.) the respite care record [ ~~must~~ shall ] indicate that these services are also being received by the recipient.*

*E. Authorization of combined services.*

*Respite care, when offered in conjunction with another home and community-based care service, [ ~~would be~~ is ] considered [ by DMAS ] a secondary home and community-based care service necessary for the recipients' continued maintenance in the community. Respite care is only available to caregivers as an adjunct to another primary home and community-based care service under the following conditions:*

*1. The individual has been authorized to receive a primary home and community-based care service by the Nursing Home Preadmission Screening Team and such care has been initiated.*

*2. The primary home and community-based care services offered to the individual [ ~~is~~ are ] determined to be insufficient to prevent the breakdown of the caregiver due to the physical burden and emotional stress of providing continuous support and care to the dependent individual.*

*3. The amount of respite care needed, when added to the cost of other home and community-based care services, still maintains overall individual cost effectiveness on an annual basis.*

*F. Provider responsibility.*

*The provider of the primary home and community-based care service shall contact the DMAS utilization review staff when the need for respite care as a secondary home and community-based care service has been identified according to the criteria above. DMAS [ ~~will~~ shall ] conduct an assessment of the individual caregiver's need for respite care and, if appropriate, authorize respite care.*

* * * * * * * *

Title of Regulation: ~~VR 460-04-8.3. Lock-In/Lock-Out Regulations.~~ *VR 460-04-8.4. Client Medical Management Program.*

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

Effective Date: September 1, 1989

Summary:

*The purpose of the Client Medical Management final regulations is to promote improved and cost-efficient medical management of essential health care through utilization control of recipient and provider activity. Recipients in the Lock-In Program receive education and counseling to assist them with modifying their medical services utilization behaviors. Physicians in the Client Medical Management Program are precluded from caring for recipients in the Management Program.*

~~VR 460-04-8.3. Lock-In/Lock-Out Regulations.~~ *VR 460-04-8.4. Client Medical Management Program.*

*§ 1. Definitions.*

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

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

*"Abuse" means a pattern of practice by a provider or a pattern of health care utilization by a recipient which is inconsistent with sound fiscal, business, or medical practices and results in unnecessary costs to the Virginia Medicaid program, or in reimbursement for services that*

are not medically necessary or that fail to meet professionally recognized standards for health care. [ ~~It also includes recipient practices that result in unnecessary costs to the Medicaid program.~~ ]

"Card-sharing" means the intentional sharing of a recipient eligibility card for use by someone other than the recipient for whom it was issued, or a pattern of repeated unauthorized use of a recipient eligibility card by one or more persons other than the recipient for whom it was issued due to the failure of the recipient to safeguard the card.

"Code of Federal Regulations" or "CFR" means that codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

"DMAS" means the Department of Medical Assistance Services.

"Designated provider" means the provider who agrees to be the primary health care provider or designated pharmacy from whom the restricted recipient must first attempt to seek health care services.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.

"Health Care Financing Administration (HCFA)" means that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

[ ~~"Lock-In"~~"Client Medical Management Program" for recipients ] means the recipients' utilization control program designed to promote improved and cost-efficient medical management of essential health care for noninstitutionalized recipients [ through restriction to one primary care provider and one pharmacy ].

[ ~~"Lock-Out"~~ Client Medical Management Program" for providers ] means the providers' utilization control program designed to complement the recipient [ ~~Lock-In~~ utilization control ] program in promoting improved and cost-efficient medical management of essential health care. [ ~~Locked out providers are restricted from being designated providers for recipients in the Lock-In Program.~~ Restricted providers may not serve as designated providers for restricted recipients. ]

"Medical emergency" means a situation in which a delay in obtaining treatment may cause death or lasting injury or harm to the recipient.

"Medically necessary" means necessary for the maintenance, improvement, or protection of health, or lessening of illness, disability, or pain.

"Medicare" means the Health Insurance for the Aged and Disabled enacted by Congress in 1965 as Title XVIII of the Social Security Act.

"Pattern" means an identifiable series of events or activities.

"Provider" means the individual or facility registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Recipient" means the individual who is eligible, under Title XIX of the Social Security Act, to receive Medicaid covered services.

"Recipient eligibility card" means the document issued to each Medicaid family unit, listing names and Medicaid numbers of all eligible individuals within the family unit.

"Restriction" means an administrative action imposed on a recipient which limits access to specific types of medical care and services through a designated primary provider(s) or an administrative action imposed on a provider to prohibit participation as a designated provider [ ~~in the Lock-In Program~~ for restricted recipients ].

"Social Security Act" means the the Act, enacted by the 74th Congress on August 14, 1935, which provides for the general welfare by establishing a system of federal old age benefits, and by enabling the several states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws.

"State Plan for Medical Assistance" or "the Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Surveillance and Utilization Review Subsystem (SURS) " means a computer subsystem of the Medicaid Management Information System (MMIS) which collects claims data and computes statistical profiles of recipient and provider activity and compares them with that of their particular peer group.

"Utilization control" means the control of covered services to assure the use of medically necessary and appropriate services.

§ 2. Authority.

A. Federal regulations at 42 CFR 456.3 require the Medicaid agency to implement a statewide surveillance and utilization control program.

B. Federal regulations at 42 CFR 431.54 (e) allow states to restrict recipients to designated providers when the recipients have utilized services at a frequency or amount that is not medically necessary in accordance with utilization guidelines established by the state.

C. Federal regulations at 42 CFR 431.54 (f) allow states to restrict providers from participating in the Medicaid program if the agency finds that the provider of items or services under the State Plan has provided items or services at a frequency or amount not medically necessary in accordance with utilization guidelines established by the state, or has provided items or services of a quality that do not meet professionally recognized standards of health care.

D. DMAS shall not impose restrictions which would result in denying recipients reasonable access to Medicaid services of adequate quality, including emergency services (42 CFR 431.54 (f)(4)).

§ 3. Identification of [ ~~lock-in/lock-out~~ Client Medical Management Program ] participants.

A. DMAS identifies recipients for review from computerized exception reports (Recipient SURS) or by referrals from agencies, health care professionals, or other individuals for suspected utilization of unnecessary or inappropriate medical services.

B. DMAS identifies providers for review through computerized exception reports (Provider SURS) or by referrals from agencies, health care professionals, or other individuals for suspected provision of unnecessary or inappropriate medical services.

§ 4. Participant evaluation for [ ~~lock-in/lock-out~~ restriction ].

A. DMAS shall review recipients and providers to determine if services are being utilized or provided at a frequency or amount that is not medically necessary. Evaluation of utilization patterns for both recipients and providers can include but is not limited to review of diagnoses, physician visits, drugs/prescriptions, outpatient and emergency room visits, lab and diagnostic procedures, hospital admissions, referrals, and procedures not usually performed by primary health care providers.

B. DMAS shall recommend recipients for [ ~~lock-in~~ restriction ] if a pattern of one or more of the following conditions is identified:

1. Duplicative or excessive utilization of medications, medical supplies, or appliances for the time period specified.

2. Duplicative or excessive utilization of medical visits, procedures, or diagnostic tests for the time period specified.

3. Emergency room use for [ ~~apparent~~ ] nonemergency care.

4. Use of preauthorized transportation services with no corresponding medical services.

5. One or more documented occurrences of recipient use of recipient eligibility card to purchase or attempt to purchase drugs on a forged or altered prescription.

6. One or more documented occurrences of card-sharing.

7. One or more documented occurrences of alteration of the recipient eligibility card.

C. DMAS shall recommend providers for [ ~~lock-out~~ restriction ] if a pattern for one or more of the following conditions is identified:

1. Visits billed at a frequency or level exceeding that which is medically necessary;

2. Diagnostic tests billed in excess of what is medically necessary;

3. Billed diagnostic tests which are unrelated to the diagnosis;

4. Medications and prescriptions in excess of recommended dosages;

5. Medications and prescriptions unrelated to the diagnosis;

[ ~~6. The provider's license to practice has been revoked or suspended in Virginia by the appropriate licensing board;~~ ]

[ D. DMAS shall recommend providers for restriction if the provider's license to practice has been revoked or suspended in Virginia by the appropriate licensing board. ]

[ ~~D.~~ E. ] The Director of the Medical Support Section or his designee shall review and approve or disapprove the recommendations for recipient or provider restriction.

[ ~~E.~~ F. ] DMAS shall implement [ ~~lock-in~~ restriction ] without medical review when:

1. Recipients have misused their recipient eligibility cards by alteration or card sharing, or both, or

2. Recipients have obtained drugs under false pretenses.

§ 5. [ ~~Lock-in~~ Recipient ] restriction procedures.

A. DMAS shall advise affected recipients by written notice of the proposed restriction under the [ ~~Lock-In~~ Client Medical Management ] Program. Written notice shall

include an explanation of [ ~~lock-in~~ restriction ] procedures and the recipient's right to appeal the proposed action.

B. The recipient shall have 30 calendar days to select designated [ ~~provider(s)~~ providers ]. If a recipient fails to respond by the date specified in the [ ~~lock-in~~ restriction ] notice, DMAS shall select designated [ ~~provider(s)~~ providers ].

C. The recipient shall have 30 calendar days from the date of the notification to appeal the proposed [ ~~lock-in~~ restriction ]. DMAS shall not implement [ ~~lock-in~~ restriction ] if a timely appeal is noted. (See § 13.)

D. DMAS shall restrict recipients to their designated [ ~~provider(s)~~ providers ] for 18 months [ ~~when lock-in is being implemented for the first time. Any additional restrictions shall be implemented for 24 months~~ ].

§ 6. Eligible providers.

A. A designated health care provider must be a physician enrolled as an individual practitioner unrestricted by the Department of Medical Assistance Services.

B. A designated pharmacy provider must be a pharmacy enrolled as a community pharmacy unrestricted by the Department of Medical Assistance Services.

C. [ ~~Recipients on lock-in~~ Restricted recipients ] shall have reasonable access to all essential medical services. Other provider types such as clinics or ambulatory care centers may be established as designated providers as needed but only with the approval of DMAS.

§ 7. Provider reimbursement for covered services.

A. DMAS shall reimburse for covered outpatient medical, pharmaceutical, and physician services only when they are provided by the designated providers, or by physicians seen on referral from the primary health care provider, or in a medical emergency. Prescriptions may be filled by a nondesignated pharmacy only in emergency situations when the designated pharmacy is closed, or when the designated pharmacy does not stock or is unable to obtain the drug.

B. DMAS shall require a written referral from the primary health care provider for payment of covered outpatient services by nondesignated practitioners unless there is a medical emergency requiring immediate treatment.

§ 8. Recipient eligibility cards.

DMAS shall provide an individual recipient eligibility card listing the recipient's designated primary care providers for each [ ~~recipient subject to the Lock-In Program~~ restricted recipient ].

§ 9. Changes in designated providers.

A. DMAS must give prior authorization to all changes of designated providers.

B. The recipient or the designated provider may initiate requests for change for the following reasons:

1. Relocation of the recipient or provider.

2. Inability of the provider to meet the routine health needs of the recipient.

3. Breakdown of the recipient/provider relationship.

C. If the designated provider initiates the request and the recipient does not select a new provider by established deadlines, DMAS shall select a provider, subject to concurrence from the provider.

D. If DMAS denies the recipient's request, the recipient is notified in writing and given the right to appeal the decision. (See § 13.)

§ 10. Review of [ ~~lock-in~~ ] recipient [ restriction ] status.

A. DMAS shall review a recipient's utilization prior to the end of the [ ~~lock-in~~ restriction ] period to determine [ ~~lock-in~~ restriction ] termination or continuation. (See § 4.) DMAS shall extend [ ~~lock-in~~ utilization control ] restrictions for [ ~~24~~ 18 ] months if a pattern for one or more of the following conditions is identified:

1. The recipient's utilization patterns include one or more conditions listed in § 4 B.

2. The recipient has not complied with [ ~~lock-in~~ Client Medical Management Program ] procedures resulting in services or medications received from one or more nondesignated providers without a written referral or in the absence of a medical emergency.

3. One or more of the designated providers recommends continued [ ~~lock-in~~ restriction ] status because the recipient has demonstrated noncompliant behavior which is being controlled by [ ~~lock-in~~ Client Medical Management Program ] restrictions.

B. DMAS shall notify the recipient and designated provider(s) in writing of the review decision. If [ ~~lock-in~~ ] restrictions are continued, written notice shall include the recipient's right to appeal the proposed action. (See § 13.)

C. DMAS shall not implement the continued [ ~~lock-in action~~ recipient restriction ] if a timely appeal is noted.

§ 11. [ ~~Lock-out~~ Provider ] restriction procedures.

A. DMAS shall advise affected providers by written notice of the proposed restriction under the [ ~~Lock-Out~~ Client Medical Management ] Program. Written notice shall

include an explanation of the basis for the decision, request for additional documentation, if any, and notification of the provider's right to appeal the proposed action.

B. The provider shall have 30 calendar days from the date of notification to appeal the proposed [ ~~lock-out~~ restriction ]. Appeals shall be held in accordance with § 9-6.14:11 et seq. of the Code of Virginia (Virginia Administrative Process Act).

C. DMAS shall restrict providers from being the designated provider for recipients in the [ ~~Lock-In~~ Client Medical Management ] Program for 18 months.

D. DMAS shall not implement [ ~~lock-out~~ provider restriction ] if a timely appeal is noted.

§ 12. Review of [ ~~lock-out participant~~ Provider Restriction ] status.

A. DMAS shall review a [ ~~locked-out~~ restricted ] provider's claims history record prior to the end of the [ ~~lock-out~~ restriction ] period to determine [ ~~lock-out~~ restriction ] termination or continuation (see § 4). DMAS shall extend [ ~~lock-out~~ provider ] restriction for 18 months in one or more of the following situations:

1. Where new abusive practices are identified.

2. Where the practices which led to [ ~~lock-out~~ restriction ] continue.

B. [ ~~In cases where the provider has submitted no claims during the lock-out period, DMAS shall continue lock-out until a six-months claims history is available for evaluation.~~ In cases where the provider has submitted an insufficient number of claims during the restriction period to enable DMAS to conduct a claims history review, DMAS shall continue restriction until a reviewable six-months claims history is available for evaluation. ]

C. If DMAS renews [ ~~lock-out~~ restriction ] following the review, the provider shall be notified of the agency's proposed action, the basis for the action, and appeal rights. (See § 13.)

D. If the provider continues a pattern of medically unnecessary services, DMAS may make a referral to the appropriate peer review group or regulatory agency for recommendation or action, or both.

§ 13. Appeals.

A. Restricted providers and recipients shall have the right to appeal the application of the utilization control criteria used to determine their restriction.

B. Provider appeals shall be held pursuant to the provisions of § 9-6.14:11 et seq. of the Code of Virginia (Administrative Process Act).

C. Recipient appeals shall be held pursuant to the provisions of 42 CFR 431.200ff and the State Plan for Medical Assistance.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

CLIENT MEDICAL MANAGEMENT PROGRAM

PRACTITIONER REFERRAL FORM

Recipient's Name: _____ DMAS#: _____

Referred to: _____ Date: _____

_____ Physician covering in absence of primary health care provider

_____ One time only

_____ See as needed for treatment (This form must be renewed every ninety (90) days)

Purpose of Referral: _____

_____

This recipient is restricted to me as his/her primary health care provider. Please refer to the billing chapter in your Medicaid Provider Manual for billing information. This form must be part of your medical record. For reimbursement, a copy must be attached to every claim submitted on behalf of this recipient.

If you wish to refer this patient to another source who will bill Medicaid, you must obtain another referral form for that physician from me.

These referral provisions do not apply while the recipient is an inpatient in a hospital.

_____
Signature of Primary Health Care Provider

_____
Name of Primary Health Care Provider

Provider ID#: _____

Address: _____

_____

_____

Telephone #: (  ) _____

April, 1989

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

RECIPIENT/PRIMARY PROVIDER AGREEMENT

INSTRUCTIONS

1. You must sign the form in Section I. If the form is for a child, the parent or guardian must sign.

2. The physician you select must be enrolled as an individual physician with Medicaid and bill on a Practitioner Invoice using his/her own Medicaid provider number. The pharmacy you select must be a Medicaid provider that bills on the Daily Drug Claim Ledger. The physician and pharmacist can tell you if these requirements are met. Any questions can be directed to the Recipient Monitoring Unit in Richmond, (804) 786-6548.

3. If the physician and pharmacist agree to be your primary care providers, ask them to sign and date the form and write in their Medicaid provider numbers in the appropriate Sections (II and III).

4. Be sure their names and addresses are PRINTED clearly in the appropriate section.

5. When Sections I, II, and III are complete, return the form to our office in the enclosed postage paid envelope.

PLEASE RETURN THE FORM TO:

RECIPIENT MONITORING UNIT
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
600 EAST BROAD STREET
SUITE 1300
RICHMOND, VIRGINIA 23219

October, 1987

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

RECIPIENT/PRIMARY PROVIDER AGREEMENT

DATE: _____

RECIPIENT NAME: _____ DMAS#: _____

I. My choices for primary physician and pharmacy are given below. I understand that Medicaid will pay for covered outpatient physician and pharmacy services provide by the providers listed below. Other physicians will be paid only when a primary physician makes a medical referral or is unable to provide services in medical emergency requiring immediate treatment. Other pharmacies will be pai only when my designated pharmacy does not stock or cannot supply medications in medical emergency requiring immediate treatment.

RECIPIENT SIGNATURE: _____ DATE: _____

TELEPHONE NUMBER: (____) _____

II. PRINT NAME AND ADDRESS OF PRIMARY PHYSICIAN: _____

_____

I agree to undertake primary health care and make appropriate referrals to specialist for the recipient named above.

PHYSICIAN'S SIGNATURE: _____ DATE: _____

PHYSICIAN'S MEDICAID ID#: _____ TELEPHONE NUMBER: (____) _____
(Use number preprinted on the invoice)

III. PRINT NAME AND ADDRESS OF PHARMACY: _____

_____

I agree to monitor the drug utilization and provide all outpatient pharmaceutical nee for the recipient named above.

PHARMACY REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

PHARMACY'S MEDICAID ID#: _____ TELEPHONE NUMBER: (____) _____
(Use number preprinted on the invoice)

MAIL TO:

RECIPIENT MONITORING UNIT
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
600 EAST BROAD STREET
SUITE 1300
RICHMOND, VIRGINIA 23219

INSTRUCTIONS ON REVERSE SIDE

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

RECIPIENT/PRIMARY PROVIDER AGREEMENT

PROVIDER CHANGES

DATE: _____

RECIPIENT NAME: _____ DMAS#: _____

I. My choices for primary physician and pharmacy are given below. I understand tha Medicaid will pay for covered outpatient physician and pharmacy services provid by the providers listed below. Other physicians will be paid only when a primary physician makes a medical referral or is unable to provide services in medical emergency requiring immediate treatment. Other pharmacies will be pa only when my designated pharmacy does not stock or cannot supply medications in medical emergency requiring immediate treatment.

RECIPIENT SIGNATURE: _____ DATE: _____

TELEPHONE NUMBER: (____) _____

II. PRINT NAME AND ADDRESS OF PRIMARY PHYSICIAN: _____

_____

I agree to undertake primary health care and make appropriate referrals to specialis for the recipient named above.

PHYSICIAN'S SIGNATURE: _____ DATE: _____

PHYSICIAN'S MEDICAID ID#: _____ TELEPHONE NUMBER: (____) _____
(Use number preprinted on the invoice)

III. PRINT NAME AND ADDRESS OF PHARMACY: _____

_____

I agree to monitor the drug utilization and provide all outpatient pharmaceutical nee for the recipient named above.

PHARMACY REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

PHARMACY'S MEDICAID ID#: _____ TELEPHONE NUMBER: (____) _____
(Use number preprinted on the invoice)

MAIL TO:

RECIPIENT MONITORING UNIT
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
600 EAST BROAD STREET
SUITE 1300
RICHMOND, VIRGINIA 23219

INSTRUCTIONS ON REVERSE SIDE

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

RECIPIENT/PRIMARY PROVIDER AGREEMENT

PROVIDER CHANGES

INSTRUCTIONS

1. You must sign the form in Section I. If the form is for a child, the parent or guardian must sign.

2. The physician you select must be enrolled as an individual physician with Medicaid and bill on a Practitioner Invoice using his/her own Medicaid provider number. Th pharmacy you select must be a Medicaid provider that bills on the Daily Drug Clai Ledger. The physician and pharmacist can tell you if these requirements are met Any questions can be directed to the Recipient Monitoring Unit in Richmond, (804 786-6548.

3. If they agree to be your primary care providers, ask them to sign and date the form and write in their Medicaid provider numbers in the appropriate Sections (I and III). The changes will be effective on the date(s) the form was signed.]

4. Be sure their names and addresses are PRINTED clearly in the appropriate section.

5. When Sections I, II, and III are complete, return the form to our office in the enclosed postage paid envelope.

PLEASE RETURN THE FORM TO:

RECIPIENT MONITORING UNIT
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
600 EAST BROAD STREET
SUITE 1300
RICHMOND, VIRGINIA 23219

October, 1987

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

RECIPIENT/PRIMARY PROVIDER AGREEMENT

PHYSICIAN

DATE: _____

RECIPIENT NAME: _____ DMAS#: _____

I. My choice for primary physician is given below. I understand that Medicaid will pay for covered outpatient physician services provided by my primary physician Other physicians will be paid only when my primary physician makes a medica referral or is unable to provide services in a medical emergency requirin immediate treatment.

RECIPIENT SIGNATURE: _____ DATE: _____

TELEPHONE NUMBER: (____) _____

II. PRINT NAME AND ADDRESS OF PHYSICIAN: _____

_____

I agree to undertake primary health care and make appropriate referrals to specialist for the recipient named above.

PHYSICIAN'S SIGNATURE: _____ DATE: _____

PHYSICIAN'S MEDICAID ID#: _____ TELEPHONE NUMBER: (___) _____
(Use number preprinted on the invoice)

MAIL TO:

RECIPIENT MONITORING UNIT
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
600 EAST BROAD STREET
SUITE 1300
RICHMOND, VIRGINIA 23219

INSTRUCTIONS

1. You must sign the form in Section I. If the form is for a child, the parent or guardian must sign.

2. The physician you select must be a enrolled as an individual physician with Medicaid and bill on a Practitioner Invoice using his/her own Medicaid provid number. The physician can tell you if these requirements are met. Any questio can be directed to the Recipient Monitoring Unit in Richmond, (804) 786-6548.

3. If the physician agrees to be your primary physician, ask him/her to sign and date the form and write in the Medicaid provider number.

4. Be sure the physician's name and the office address are PRINTED clearly in Section II.

5. When Sections I and II are completed, return the form to our office in the enclosed postage paid envelope.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

RECIPIENT/PRIMARY PROVIDER AGREEMENT

PHYSICIAN CHANGE

DATE: _____

RECIPIENT NAME: _____ DMAS#: _____

I. My choice for primary physician is given below. I understand that Medicaid will pay for covered outpatient physician services provided by my primary physician. Other physicians will be paid only when my primary physician makes a medica referral or is unable to provide services in a medical emergency requirin immediate treatment.

RECIPIENT SIGNATURE: _____ DATE: _____

TELEPHONE NUMBER: (  ) _____

II. PRINT NAME AND ADDRESS OF PHYSICIAN: _____

_____

I agree to undertake primary health care and make appropriate referrals to specialist for the recipient named above.

PHYSICIAN'S SIGNATURE: _____ DATE: _____

PHYSICIAN'S MEDICAID ID#: _____ TELEPHONE NUMBER: (  ) _____
(Use number preprinted on the invoice)

MAIL TO:

RECIPIENT MONITORING UNIT
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
600 EAST BROAD STREET
SUITE 1300
RICHMOND, VIRGINIA 23219

INSTRUCTIONS

1. You must sign the form in Section I. If the form is for a child, the parent or guardian must sign.

2. The physician you select must be a enrolled as an individual physician with Medicaid and bill on a Practitioner Invoice using his/her own Medicaid provide number. The physician can tell you if these requirements are met. Any questio can be directed to the Recipient Monitoring Unit in Richmond, (804) 786-6548.

3. If the physician agrees to be your primary physician, ask him/her to sign and date the form and write in the Medicaid provider number. The change will t effective on the date the form is signed.

4. Be sure the physician's name and the office address are PRINTED clearly in Section II.

5. When Sections I and II are completed, return the form to our office in the enclosed postage paid envelope.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

RECIPIENT/PRIMARY PROVIDER AGREEMENT

PHARMACY

DATE: _____

RECIPIENT NAME: _____ DMAS#: _____

I. My choice for designated pharmacy is given below. I understand that Medicaid will pay for covered outpatient pharmacy services from my designated pharmacy. Othe pharmacies will be paid only when my designated pharmacy does not stock or cannc supply medications in a medical emergency requiring immediate treatment.

RECIPIENT SIGNATURE: _____ DATE: _____

TELEPHONE NUMBER: (  ) _____

II. PRINT NAME AND ADDRESS OF PHARMACY: _____

_____

I agree to monitor the drug utilization and provide all outpatient pharmaceutical need for the recipient named above.

PHARMACY REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

PHARMACY'S MEDICAID ID#: _____ TELEPHONE NUMBER: (  ) _____
(Use number preprinted on the invoice)

MAIL TO:

RECIPIENT MONITORING UNIT
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
600 EAST BROAD STREET
SUITE 1300
RICHMOND, VIRGINIA 23219

INSTRUCTIONS

1. You must sign the form in Section I. If the form is for a child, the parent or guardian must sign.

2. The pharmacy you select must be a Medicaid provider that bills on the Daily Drug Claim Ledger. The pharmacist can tell you if the pharmacy meets the requirements. Any questions can be directed to the Recipient Monitoring Unit Richmond, (804) 786-6548.

3. If the pharmacist agrees to be your designated provider, ask him/her to sign and date the form and write in the pharmacy's Medicaid provider number.

4. Be sure the name and address of the pharmacy is PRINTED clearly in Section II.

5. When Sections I and II are completed, return the form to our office in the enclosed postage paid envelope.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

RECIPIENT/PRIMARY PROVIDER AGREEMENT

PHARMACY CHANGE

DATE: _____

RECIPIENT NAME: _____ DMAS#: _____

I. My choice for designated pharmacy is given below. I understand that Medicaid will pay for covered outpatient pharmacy services from my designated pharmacy. Other pharmacies will be paid only when my designated pharmacy does not stock or cannot supply medications in a medical emergency requiring immediate treatment.

RECIPIENT SIGNATURE: _____ DATE: _____

TELEPHONE NUMBER: ( ) _____

II. PRINT NAME AND ADDRESS OF PHARMACY: _____

_____

I agree to monitor the drug utilization and provide all outpatient pharmaceutical needs for the recipient named above.

PHARMACY REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

PHARMACY'S MEDICAID ID#: _____ TELEPHONE NUMBER: ( ) _____
(Use number preprinted on the invoice)

MAIL TO:

RECIPIENT MONITORING UNIT
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
600 EAST BROAD STREET
SUITE 1300
RICHMOND, VIRGINIA 23219

INSTRUCTIONS

1. You must sign the form in Section I. If the form is for a child, the parent or guardian must sign.
2. The pharmacy you select must be a Medicaid provider that bills on the Daily Drug Claim Ledger. The pharmacist can tell you if the pharmacy meets the requirements. Any questions can be directed to the Recipient Monitoring Unit Richmond, (804) 786-6548.
3. If the pharmacist agrees to be your designated provider, ask him/her to sign and date the form and write in the pharmacy's Medicaid provider number. The change will be effective on the date the form is signed.
4. Be sure the name and address of the pharmacy is PRINTED clearly in Section II.
5. When Sections I and II are completed, return the form to our office in the enclosed postage paid envelope.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

PRIMARY HEALTH CARE PROVIDER'S REVIEW FORM

REVIEW PERIOD: _____

RECIPIENT: _____ DMAS#: _____

I. Please list the maintenance drugs and any controlled substances, giving the prescription order and related diagnosis, OR submit copies of your medical record for the review period.

| | MEDICATION (including prescription order) | and | RELATED DIAGNOSIS |
|---|---|---|---|
| 1. | _____ | | |
| 2. | _____ | | |
| 3. | _____ | | |
| 4. | _____ | | |
| 5. | _____ | | |
| 6. | _____ | | |
| 7. | _____ | | |
| 8. | _____ | | |

II. If a drug chart giving weekly quantities for each medication covered by the Department is enclosed for your review, are you aware of the total drug utilization? _____ yes _____ no

Have you had to implement strict controls of medications due to drug seeking behaviors during the last 12 months? (ex: requesting early refills)
_____ yes _____ no

Has the recipient demonstrated non-compliance in taking maintenance drugs during the last 12 months? (ex: asthmatic patient not using prescribed bronchial dilators) _____ yes _____ no

Comments:

III. Have you referred this patient to any other physician(s)? (NOTE: othe physicians treating this recipient for non-emergency medical problems will on be paid with a referral from the primary health care provider.)
_____ yes _____ no

If yes, please list physician(s) name, date(s) of referral and related diagnosis.

_____

_____

_____

Has the recipient requested unnecessary medical services (referrals or procedures during the last 12 months? _____ yes _____ no

IV. A Medicaid recipient's use of an emergency room for routine medical care i considered abuse of the Department of Medical Assistance Services. We hav requested copies of this recipient's visits on _____ to determine the basis for the utilization.

Are you aware of these visits? _____ yes _____ no

If you referred the recipient to the Emergency Room, please specify dates:

_____

_____

V. Do you recommend renewing this recipient's restriction status?
_____ yes _____ no

Comments:

PLEASE RETURN TO:

Recipient Monitoring Unit
Department of Medical Assistance Services
600 East Broad Street
Suite 1300
Richmond, Virginia 23219

_____
PHYSICIAN'S SIGNATURE

_____
PHYSICIAN'S NAME

_____
DATE

Rev 4/89

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

PROFILE OF RECIPIENT'S UTILIZATION

RECIPIENT NAME: _____ DMAS#: _____

During the review period of _____, we found that the recipient:

(SEE ITEMS THAT ARE CHECKED)

_____ 1. Used _____ physicians/groups of physicians.

_____ Used _____ physicians/physician groups for routine care.

_____ Used more than one physician of the same provider type:
_____.

_____ 2. Used _____ pharmacies.

_____ Used multiple pharmacies consistently.

_____ Used one pharmacy primarily (_____) and other pharmacies occasionally.

_____ 3. Received medical services of the same type from two or more physicians and/or pharmacies within seven days.

_____ Treatment by _____ physicians for same diagnosis.

_____ Duplicative medical visits, lab/diagnostic procedures.

_____ Used more than one pharmacy on the same day or within seven days to receive drugs of same drug classification.

_____ 4. Excessively used medications.

_____ Received large quantities of specific drugs from one or more prescribers. Drug Classifications: _____

_____ Different prescribers writing for same types of drugs are unaware of total drug utilization. Drug classifications: _____

_____ Obtained prescriptions at a frequency or amount that does not comply with prescribers's directions. (ex: refilling prescriptions early). Drug classifications: _____

_____ Physician reports that strict controls for prescribing medications are necessary due to recipient requesting specific medications.

(SEE REVERSE SIDE)

____ **PLEASE EXPLAIN TO THE RECIPIENT why using multiple physicians and pharmacies is not in the recipient's best interest. Mixing prescriptio from a a number of prescribers can be detrimental to the recipient's heal and serves no therapeutic purpose. Using one primary physician allows t physician to follow the recipient's medical progress and provides continui of care. Using one pharmacy allows the pharmacist to monitor the recipient drug regimen and work with the physician if complications should develop.

_____ 5. Used emergency room(s) for non-emergency care which could have been provided in physician's office.

_____ Made _____ visits to _____ hospital(s) of which _____ are considered non-emergency.

_____ Evenings _____ Weekends _____ Weekdays during office hours

_____ Using ER for all medical care; no family physician listed.

_____ No office visits

_____ Did not follow instructions given by ER physician to follow up wit family physician or specialist.

_____ Non-compliance with primary doctor's prescribed drug or medical regimen resulting in emergency situation.

____ **PLEASE EXPLAIN TO THE RECIPIENT that a hospital emergency room is to be used only when an actual emergency exists. The recipient is expected to make an appointment with the primary physician for routine, non-emergency care. If the primary physician is not available, the recipient is expected to see the physician who is covering, usually an associate sharing the office.

_____ 6. Use of pre-authorized transportation services on dates for which no corresponding medical services can be verified.

____ **PLEASE EXPLAIN TO THE RECIPIENT that Medicaid transportation can be used only for services covered by Medicaid.

ADDITIONAL COMMENTS:

If you have any questions regarding this information, please call _____, Recipient Monitoring Uni Department of Medical Assistance Services, at (804) 786-6548.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

QUESTIONNAIRE

NAME: _____ DMAS#: _____

TELEPHONE # WHERE RECIPIENT CAN BE REACHED: (____)_____

1. What does the recipient indicate are specific medical problems?

2. What drugs is the recipient currently taking, and why?

3. Explain why the recipient is using more than one physician.

4. Explain why the recipient is using more than one pharmacy.

5. Explain why the recipient is using the emergency room.

(SEE REVERSE SIDE)

6. Does the recipient appear to understand the Client Medical Management Program?

7. Which pharmacy and physician does the recipient plan to designate? (The primary physician is usually a General Practitioner or Internist who provides routine medical care and refers to specialists as needed. Instruct the recipient to return the Recipient/Primary Provider Agreement with the required signatures).

8. What is your general impression of the home situation?

9. Is there someone in or outside the home who assists the recipient with daily living skills?

10. Can the recipient read and write?

11. Is this an active service case?

12. Please list names and Medicaid numbers for other recipients residing at the same address.

_____
Interviewer's Name

(___) _____
Telephone

_____
Agency

_____
Date

4/89

**Please return form to:**

RECIPIENT MONITORING UNIT
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
600 EAST BROAD STREET
SUITE 1300
RICHMOND, VIRGINIA 23219

DRUG UTILIZATION REVIEW REPLY

REVIEW PERIOD: _____

RECIPIENT: _____ DMAS#: _____

I. Are you aware of the total medication utilization by this patient as indicated on the enclosed drug chart? _____ yes _____ no

II. Please list the medications prescribed by you, giving the prescription order and related diagnosis, OR submit copies of your medical records for the review period.

MEDICATION (including prescription order) and RELATED DIAGNOSIS

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

III. Have you referred this patient to any other physician? _____ yes _____ no
If yes, please list: _____

_____

_____

IV. Additional Comments:

PLEASE RETURN THE FORM TO:

RECIPIENT MONITORING UNIT
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
600 EAST BROAD STREET
SUITE 1300
RICHMOND, VIRGINIA 23219

_____
PRESCRIBER'S SIGNATURE

_____
DATE

_____
PRESCRIBER'S NAME

4/89

**DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)**

Title of Regulation: **VR 615-01-15. Aid to Dependent Children - Unemployed Parent Demonstration (ADC-UP Demo) Project.**

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

Effective Date: August 16, 1989

Summary:

*The proposed regulation permits continuation of the Aid to Dependent Children-Unemployed Parent Demonstration (ADC-UP Demo) Project through June 30, 1990, or until the $2.5 million appropriated for the biennium has been expended, whichever occurs first. This demonstration project provides financial assistance and employment services to needy two-parent unemployed families residing in the most economically depressed areas of Virginia who are ineligible to receive aid under the Commonwealth's Aid to Dependent Children (ADC) Program due to the presence of both parents in the home. The ADC-UP Demo Project's eligibility criteria are based upon the federal requirements of the Aid to Families with Dependent Children-Unemployed Parent (AFDC-UP) Program found at 45 CFR 233.100. However, several requirements have been modified to make the project more responsive to unemployed families in Virginia. The final regulation is identical to proposed regulation VR 615-01-15 published March 27, 1989, in Volume 5, Issue 13 of the Virginia Register of Regulations.*

VR 615-01-15. Aid to Dependent Children - Unemployed Parent Demonstration (ADC-UP Demo) Project.

*PART I.*
*DEFINITIONS.*

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

*"Exempt resources" means the home in which the assistance unit lives and its contents; one motor vehicle with an equity value of $1,500 or less; income producing farm and business equipment; cash and other assets, the total of which does not exceed the established resource maximum of $1,000; one burial plot per assistance unit member; and burial funds or funeral arrangements, or both, with an equity value of $1,500 or less per assistance unit member.*

*"Principal wage earner" means the parent in the home who earned the greater amount of income in the 24-month period, the last month of which immediately precedes the month in which an application is filed for assistance.*

*"Resource" means real and personal property, both liquid and nonliquid, including cash, bank accounts, the cash value of bank accounts, the cash value of life insurance, trust funds, stocks, bonds, mutual funds, or any other financial instruments, which the assistance unit has the right, authority, or power to liquidate.*

*"Sibling" means two or more children with at least one natural parent in common.*

*"Standard of assistance" means the dollar amount, based on the family size, which has been established to cover predetermined monthly maintenance needs. The standard of assistance represents payment levels at 90% of the standard of need.*

*"Unemployed" means gross wages from employment do not exceed 185% of the state's standard of need.*

*PART II.*
*HOUSEHOLD COMPOSITION.*

*§ 2.1. Aid to Dependent Children - Unemployed Parent Demonstration (ADC-UP Demo) Project is limited to those families with a child under 18, or under 19 if enrolled in a full-time secondary, vocational, or technical school and is expected to graduate before reaching the age of 19, who would be eligible for assistance through the Aid to Dependent Children Program except that he is not deprived due to the continued absence, death, or incapacity of at least one parent, as long as the principal wage earner:*

*1. Has been unemployed for 30 days prior to receipt of assistance; and*

*2. Has not without good cause, within such 30-day period prior to receipt of assistance, refused a bona fide offer of employment or training; and*

*3. Has an attachment to the work force as evidenced by six or more quarters of work within any 28-calendar-quarter period ending within one year prior to application for assistance, or within such one-year period, received unemployment compensation under an unemployment compensation law of a state or of the United States or would have "qualified" for unemployment compensation under the state's unemployment compensation law if he had filed application for same, or he performed work not covered by such law, which if it had been covered, would (together with any covered work he had performed) have made him eligible to receive such benefits upon filing an application; or*

*4. Is the head of a young family with an insufficient work history or an individual who has been unable to accumulate the required number of work quarters due to illness.*

*§ 2.2. Any sibling of a child who is deprived based on the unemployment of a parent, who is himself deprived based*

*on the continued absence or death of a parent and who is financially ineligible for assistance through the Aid to Dependent Children (ADC) Program, will be included in the ADC-UP Demo Project assistance unit.*

*PART III.*
*FINANCIAL ELIGIBILITY.*

*§ 3.1. The family's total income must be below the Aid to Dependent Children Program's Standard of Assistance for the appropriate family size. Income disregards used in the Aid to Dependent Children (ADC) Program are also applicable.*

*PART IV.*
*EMPLOYMENT SERVICES.*

*§ 4.1. In order for the family to be eligible for assistance, the principal wage earner must participate in a program of employment services which will consist of the following components:*

*1. Job search.*

*2. Work experience.*

*3. Education/training.*

*PART V.*
*RESOURCES.*

*§ 5.1. The total nonexempt resources of the family cannot exceed $1,000.*

*§ 5.2. The family will be ineligible for assistance if they improperly transfer or improperly dispose of their legal or equitable interest in nonexempt resources within two years from the date of application.*

*PART VI.*
*APPLICATION PROCESS.*

*§ 6.1. The application must be acted upon as quickly as possible; however, in all instances a determination regarding eligibility must be made within 45 days from the date the signed application is received in the agency.*

*PART VII.*
*ENTITLEMENT.*

*§ 7.1. Entitlement to assistance is limited to twelve months during the period beginning July 1, 1988, and ending June 30, 1990, unless the principal wage earner is participating in an education or training activity in conjunction with the family's participation in a program of employment services. Such families will have their eligibility extended for the duration of their education or training or until the expiration of the ADC-UP Demo Project, whichever occurs first .*

*PART VIII.*
*MEDICAL ASSISTANCE.*

*§ 8.1. Recipients of assistance through the Aid to Dependent Children - Unemployed Parent Demonstration (ADC-UP Demo) Project will not automatically be eligible for medical assistance through the Medicaid Program.*

*PART IX.*
*LOCAL PARTICIPATION.*

*§ 9.1. Participation in the project will be limited to the 11 localities which were experiencing double-digit unemployment in 1987 based on Virginia Employment Commission "Preliminary County/City Annual Average Unemployment Rates - 1987."*

* * * * * * * *

Title of Regulation: **VR 615-27-02. Minimum Standards for Licensed Private Child Placing Agencies.**

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

Effective Date: August 16, 1989

Summary:

*These regulations address standards with respect to organization and administration, personnel, foster care services, adoption services, reports, and case record requirements.*

*The final standards include provisions concerning independent living arrangements, tests for tuberculosis in a communicable form, Division of Motor Vehicle checks, eligibility of children with special needs for federal subsidy, requirements for explanation of agency fees to adoptive applicants, requirement for report on mental health information on adoptive applicants, inquiry about adoptive applicants' attitudes toward open adoption, adoptive parents rights to full facts about a child except for identifying information and agency option to participate in direct parental placement services as provided for in legislation of the 1989 General Assembly.*

VR 615-27-02. Minimum Standards for Licensed Private Child Placing Agencies.

*PART I.*
*INTRODUCTION.*

*§ 1.1. Definitions.*

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

*"Adoptive home" means any family home selected and approved by a parent, local board of public welfare or social services, or a licensed child placing agency for the*

placement of a child with the intent of adoption.

"Casework" means both direct treatment with an individual or several individuals, and intervention in the situation on the client's behalf. The objectives of casework include: meeting the client's needs, helping the client deal with the problem with which he is confronted, strengthening the client's capacity to function productively, lessening distress, and enhancing opportunities and capacities for fulfillment.

"Child-placing agency" means any individual or agency licensed to place children in foster homes, adoptive homes [ ~~or~~ ] child-caring institutions [ or independent living arrangements. Local departments of social services are child-placing agencies also ].

[ ~~Local boards of public welfare or social services, hereinafter referred to as local departments of social services, may also provide these services; however, they do not have to be licensed.~~ ]

[ ~~An agency may be licensed to provide both foster care and adoption services or foster care services only.~~ ]

"Commissioner" means the Commissioner [ ~~of Social Services, also known as the Director~~ ] of the Virginia Department of Social Services.

"Complaint" means an accusation received either orally or in writing that:

A licensed child placing agency is not in compliance with one or more of these standards or one or more statutory requirements; or

An agency foster or adoptive home is not in compliance with one or more applicable requirements of these standards; or

A child placed in a home or institution by a child-placing agency is being abused or neglected.

"Corporal punishment" means the inflicting of pain or discomfort. Prohibited actions include but are not limited to hitting with any part of the body or with an implement, pinching, pulling, shaking, binding a child, forcing him to assume an uncomfortable position, or locking him in a room or closet.

The prohibition is in effect whether punishment is spontaneous or a deliberate technique for effecting behavioral change or part of a behavior management program.

"Department" means the Virginia Department of Social Services.

[ ~~"Department"~~"Licensing ] representative" means an employee or officially designated agent of the Department of Social Services, acting as the authorized agent of the Commissioner in carrying out the responsibilities and duties specified in Title 63.1, Chapter 10 of the Code of Virginia.

"Foster care" means the provision of substitute care and supervision, for a child committed or entrusted to a child welfare agency or one for whom the agency has accepted supervision. [ The child may be placed in a foster or adoptive home, group home, residential facility, institution or independent living arrangement. ]

"Foster home" means the place of residence of any individual(s) in which any child, other than a child by birth or adoption, resides as a member of the household.

[ "Independent living arrangement" means the placing of a youth at least 16 years of age, whose custody is held by the child-placing agency or a local department of social services, in a living arrangement in which there is no daily parental supervision. ]

"Licensee" means any individual, association, partnership or corporation to whom the license is issued.

"Permanent foster care" means the placement of a child [ ~~by court order, pursuant to § 63.1-206.1 of the Code of Virginia. The agreement between the agency and the foster parent(s) is that the child will remain in the placement until he reaches the age of majority unless the agreement is modified by court order or the child removed pursuant to § 16.1-251 or § 63.1-248.9 the the Code of Virginia~~ in a foster home where he is expected to stay until he is aged 18. Both the placement and a removal, if any, must be approved by the court. Under certain circumstances, the youth may stay in permanent foster care beyond age 18 but not beyond age 21 ].

[ ~~"Placement" means any activity which assists a parent or guardian in effecting the move of a child to a foster or adoptive home, or child-caring institution, residential facility or group home. Such term shall not include the counseling of any person with respect to the options available and the procedures that are followed in placing a child for adoption or adopting a child.~~

~~A child may be placed for foster care or adoption only by:~~

~~The child's natural parent or legal guardian;~~

~~A local department of social services, or~~

~~A licensed child placing agency.~~ ]

"Interstate placement" means the placing of a child outside the Commonwealth by a Virginia agency or the placing of a child in Virginia by an individual or agency outside the Commonwealth [ ~~:~~ pursuant to ] (Chapter 10.1 (§ 63.1-219 et. seq.) of the Code of Virginia) [ ~~:~~ ] "Interstate Compact on the Placement of Children" and §§ 63.1-207 and 63.1-207.1 [ . ]

"State Board" means the State Board of Social Services.

§ 1.2. Legal base.

Title 63.1, Chapter 10 [ , §§ 63.1-196 and 63.1-202 ] of the Code of Virginia [ ~~sets~~ set ] forth the responsibility of the Department of Social Services for licensure of child-placing agencies [ ; ~~including~~ . It includes ] the authority and responsibility of the State Board of Social Services for the development of standards and requirements for the activities, services and facilities of the agency regarding children or other persons within its custody or control.

It is a misdemeanor to operate a child-placing agency without a license.

PART II.
ORGANIZATION AND ADMINISTRATION.

§ 2.1. Sponsorship.

Each agency shall have a clearly identified sponsor. An individual, partnership, association, or corporation, may operate a child placing agency.

1. When an agency is sponsored by an individual, the individual is the licensee.

2. When an agency is sponsored by a partnership, the partnership shall serve as the licensee and have a written agreement (articles of partnership) which allows operation and maintenance of a child-placing agency.

3. When an agency is sponsored by an unincorporated association, the association shall have:

a. A governing board which serves as a licensee, and

b. A written constitution or bylaws which includes the operation and maintenance of a child-placing agency.

4. When an agency is sponsored by a corporation, it shall have:

a. A governing board which serves as the licensee;

b. A certificate of corporate status issued by the State Corporation Commission or [ , ] for corporations based out-of-state, a certificate of authority to transact business in the Commonwealth; and

c. A charter which specifies that the purpose of the corporation includes the operation of a child-placing agency.

§ 2.2. The licensee shall be responsible for meeting and maintaining these standards and for complying with other relevant federal, state and local laws and regulations.

§ 2.3. The applicant for a license shall have a plan of financing which provides evidence of income and other financial resources that will ensure operation in compliance with these standards for a period of 12 months.

§ 2.4. The plan of financing shall be provided to the [ ~~department's~~ Licensing ] Representative with the initial application and with each renewal.

[ ~~§ 2.5. The plan of financing shall include:~~

~~1. The projected budget detailing the expected income and expenses for the year;~~

~~2. A balance sheet showing current assets and liabilities; and~~

~~3. With renewal applications, the financial statement for the current year, showing actual income and expenditures to date.~~ ]

[ A. Initial applications shall include:

1. A balance sheet showing current assets and liabilities; and

2. The agency's projected budget detailing the expected income and expenses for the year.

B. Renewal applications shall include:

1. A statement for the last complete fiscal year showing actual income and expenditures;

2. A balance sheet showing current assets and liabilities;

3. A budget detailing income and expenses

a. for the current fiscal year if the agency is less than six months into its current year; or

b. for the next fiscal year if the agency is more than six months into its current year.

Note: If the agency is more than three months into its current fiscal year, the latest quarterly statement of income and expenditures is requested. This applies to both 3 a and 3 b. ]

[ ~~§ 2.6.~~ § 2.5. ] The agency shall maintain a ratio of assets to liabilities of at least one.

[ ~~§ 2.7.~~ § 2.6. ] Financial records shall be audited annually by a certified public accountant not associated with the agency.

[ ~~§ 2.8.~~ § 2.7. ] A copy of the most recent auditor's report shall accompany the application for license renewal.

[ ~~§ 2.9.~~ § 2.8. ] Agency setting.

The agency shall maintain an office within Virginia from which the child placing activities are carried out.

[ ~~§ 2.10.~~ § 2.9. ] The agency shall provide office space, equipment and supplies to ensure:

1. Confidentiality and safekeeping of records;

2. Privacy for interviewing and conferences; and

3. Availability of visiting rooms for families and children.

NOTE: Rooms and offices may serve multiple functions.

[ ~~§ 2.11.~~ § 2.10. ] The current license shall be posted in a conspicuous place near the entrance of the agency.

If the agency has branch offices, copies of the license shall be posted in the same manner in each location.

[ ~~§ 2.12.~~ § 2.11. ] Caseload numbers and licensed capacity.

A. Total agency capacity shall be the sum of the following:

1. [ ~~An average~~ A maximum ] of [ ~~20~~ 25 ] children for a full-time child-placing staff person;

2. A maximum of 10 children for a beginning trainee;

[ ~~Trainee caseloads may be gradually increased to a maximum of 15 by the end of one year if the agency has a training program for trainees. The program shall:~~

~~a. Be written;~~

~~b. Be separate from regular supervisory conferences; and~~

~~c. Be given at least quarterly throughout the year.~~ ]

[ This may be increased to 15 by the ed of the first year and 20 by the end of the second year by which time he will qualify as a caseworker.

The agency shall have a training program for trainees during the two years. It shall have its own list of topics to be covered. ]

3. A maximum of five children for each student intern.

B. Children to be counted in the agency caseload are:

1. Children in agency custody including children for whom an interlocutory order has been entered who are still awaiting a final order, and

2. Children not in the custody of the agency, but who are being supervised in a foster or adoptive home [ , group home, institution, or independent living arrangement ] for another agency or individual.

[ ~~§ 2.13.~~ § 2.12. ] Conflict of interest.

A. No applicant for or recipient of adoptive services shall serve as an agency board member before the final order for the adoption is entered.

B. No biological parent of a child currently placed by the agency may serve as a board member of the agency.

C. No foster home applicant shall serve as a board member of the child-placing agency.

D. No board member who is a foster parent for the agency shall vote on a foster care policy issue.

E. Staff members of an agency may not receive services as foster parents of the agency for which they work.

F. Board members and agency staff who wish to apply to adopt shall be referred to another child-placing agency.

[ ~~§ 2.14.~~ § 2.13. ] Deceptive representation of advertisement.

No child-placing agency shall disseminate, or cause directly or indirectly to be disseminated, statements regarding services which are untrue, deceptive or misleading.

[ ~~§ 2.15.~~ § 2.14. ] Corporal punishment.

Staff members of an agency may not use corporal punishment with children in agency care nor give permission to others to do so.

## PART III.
## PERSONNEL.

§ 3.1. Job description.

A. The agency shall have a written description of the duties and responsibilities for each staff classification in its program.

B. A copy of each description shall be given to the [ ~~department's~~ ] Licensing Representative at the time of the initial application and when descriptions are changed.

§ 3.2. Personnel records.

A separate personnel record shall be maintained for each employee. The record shall contain:

1. The application for employment or resume;

2. A list of educational credentials and relevant work experience, giving dates, places and details substantiating qualifications required by these standards;

3. At least two written references or record of interviews with references;

4. Annual performance evaluations;

5. Copies of professional licensure, when licensure is required by law; and

6. The criminal record certificate as required by § 63.1-198.1 of the Code of Virginia.

§ 3.3. Staff composition and qualifications.

A. A staff member shall be designated to perform each function described in these standards. This does not limit the agency to the use of the job titles in these standards.

B. When a staff person serves multiple functions within the agency, he shall meet the qualifications for each position held.

C. Executive director.

1. The licensee shall appoint an executive director to whom responsibility for the administration of the agency has been delegated in writing. An individual licensee may be the executive director.

2. The executive director is responsible to the licensee for the administration of the agency, including implementation of all agency policies, procedures, and financial management.

3. The executive director shall have a doctor's or master's degree plus three years of experience in a social service agency or program including one year in an administrative, supervisory or consultative capacity.

4. The executive director shall appoint a staff member to serve in his absence. He shall provide the department with a written statement of the duties and authority of his designated substitute at the time of application and renewal.

5. When the executive director does not have a doctor's or master's degree in social work from a college or university accredited by the Council on Social Work Education, he shall employ a director/supervisor of social services.

D. Director/supervisor of social services.

1. The director/supervisor of social services shall:

a. Supervise directly or through others all child-placing staff and activities; and

b. Assist the executive director and governing body in the formulation and implementation of the agency's policies and programs related to child-placing.

2. The director/supervisor of social services shall have a doctor's or master's degree in social work from a college or university accredited by the Council on Social Work Education, plus three years of experience in providing casework services to children and their families including one year as an administrator or supervisor of casework services.

E. Child-placing supervisor.

1. When an agency employs six or more child-placing staff persons, the agency shall employ a child-placing supervisor.

2. The supervisor shall:

a. Be responsible for direct supervision of child-placing staff, but

b. May not supervise more than eight child placing staff members.

3. The supervisor shall have:

a. A doctor's or master's degree in social work from a college or university accredited by the Council on Social Work Education plus two years of experience in providing casework services to children and families; or

b. A baccalaureate degree plus four years of experience in providing casework services to children and families.

F. Case worker.

1. Responsibilities of case worker include:

a. Interviewing children and families;

b. Conducting home studies;

c. Preparing and carrying out social plans with children and families;

d. Preparatory counseling with children and families for placement or discharge, or both;

e. Supervising [ ~~the care of~~ ] children [ ~~through visits to them~~ ] in foster [ ~~and~~ or ] adoptive homes [ ; , group homes, institutions or independent living arrangements; ] and

*f. Preparing and maintaining case [ ~~files~~ records ].*

*2. The case worker shall have:*

*a. A doctor's or master's degree in social work from a college or university accredited by the Council on Social Work Education or a field related to social work such as sociology, psychology, education or counseling, with a student placement in providing casework services to children and families. One year of experience in providing casework services to children and families may be substituted for a student placement; or*

*b. A baccalaureate degree in social work or a field related to social work including sociology, psychology, education or counseling and one year of experience in providing casework services to children and families; or*

*c. A baccalaureate degree in any field plus two years experience in providing casework services to children and families.*

*3. Case worker trainee.*

*When an agency employs a casework trainee, all of the following conditions shall be met:*

*a. The trainee shall have a baccalaureate degree;*

*b. The director/supervisor of social services or a supervisor of child-placing shall directly supervise the trainee; and*

*c. Placement decisions made by the trainee shall be approved by the supervisor.*

*G. Consultants.*

*All consultants engaged to provide services to the agency or to families and children served by the agency shall be qualified according to the requirements of the Code of Virginia governing professions.*

*H. Volunteers.*

*1. The agency shall, if it makes use of volunteers, have a written plan for their selection, orientation, training and assignment.*

*2. When a volunteer is used to perform any staff function or responsibility, the volunteer shall meet the qualifications for the position.*

*3. The agency shall not be wholly dependent upon the use of volunteers to ensure the provision of services.*

*4. Staff who usually supervise or perform the assigned tasks shall supervise volunteers.*

*I. Students/interns receiving professional training.*

*1. If an agency provides professional training to undergraduate or graduate students/interns, it shall have a written plan for their selection, orientation, training, assignment and evaluation.*

*2. An individual with a doctor's degree or a master's degree in social work from a college or university accredited by the Council on Social Work Education shall supervise students/interns who perform child-placing activities. That supervisor shall approve all placement decisions made by the student/intern.*

*3. The agency shall not be dependent upon the use of students/interns to provide required services.*

*PART IV.*
*FOSTER CARE SERVICES.*

*The standards in this section [ ~~must~~ shall ] be met to obtain a license to provide foster care services in Virginia.*

*NOTE: Individuals or agencies in or out of state, or out of the country may obtain these services legally only from a licensed child-placing agency or local department of social services.*

*§ 4.1. Program statement.*

*A. Child-placing agencies shall have a statement describing their services including:*

*1. The purpose of the foster care program;*

*2. An open admissions policy if federal [ or local social service agency ] funds are involved.*

*It shall state that their program is open to all children without regard to race, color, national origin or sex. It shall say also that children with handicapping conditions will be accepted if their needs can be reasonably accommodated.*

*The statement shall describe the population the agency is prepared to serve.*

*3. A list of the agency's preadmission requirements, [ an explanation of the fee system, if any, and ] decision-making procedures for acceptance, placement and termination of care;*

*4. A description of the services provided to children, biological families and foster families;*

*5. A statement of eligibility requirements for foster families;*

*6. A description of the agency's procedures for foster family study and approval including a description of any orientation and training;*

[ 7. A description of agency policy and procedures for independent living arrangements, if offered; and ]

[ ~~7.~~ 8. ] A description of division of responsibilities and workload of the child-placing staff.

B. Either the full statement or a summary shall be given to agencies and individuals who inquire about the services provided.

C. The program statement shall be updated when changes are made in the program, and a copy provided to the Licensing Representative.

4.2. Intake.

A child-placing agency may receive a child through court commitment or from an individual or agency having legal custody.

A. Authority to place.

Before placing a child in foster care, the agency shall have the authority to place based on one of the following:

1. Court commitment;

2. Permanent entrustment by the parent(s), or other person having legal custody; or

[ NOTE: If it appears that a child may need subsidy in the future, the agency should try to have the child enter care through court committment. Few chrildren who enter care through permanent entrustment are eligible for IV-E Adoption Assistance (federal subsidy). See § 5.2 B 2 b, Note. ]

3. Temporary entrustment by the parent(s) or other person having legal custody, or a placement agreement from an agency with legal custody.

The agency shall petition the court for approval of a temporary entrustment within 30 days unless the entrustment is for less than 90 days.

EXCEPTION: An agency licensed as a child-placing agency and certified as a proprietary school for the handicapped by the Department of Education shall not be required to take custody of a child placed in its special education program but shall enter into a placement agreement with the parent or other individual holding custody.

B. Intake assessment.

1. The assessment shall include items listed in subdivisions 1a through 1d. However, the agency shall collect the information for items listed in subdivisions 1a and 1b before accepting the child for placement. The required items are:

a. The reason the placement is requested;

b. Current information on the child's

(1) Health,

(2) Behavior in the home or other living situation, and

(3) Grade level and adjustment to school, if of school age; or adjustment to day care or nursery school, if any, for preschool children;

c. The dates and persons involved in placement visits and staffings;

d. The reason(s) the child was accepted and the date the decision was made.

2. The assessment shall be written within 30 days of placement.

C. [ ~~Placement study.~~ Social History. ]

The purpose of the [ ~~placement study~~ history ] is to assist in determining the appropriate goal for the child and identify the services needed to reach the goal.

1. The study shall be completed within 30 days of placement and include the date it was completed.

2. Information shall be collected on the items listed below. If information on an item is not available, the explanation shall be recorded.

3. The study shall cover:

a. Family structure, relationships and involvement with the child;

b. The child's previous placement history, if any;

c. The child's developmental and medical history;

d. A description of the child's appearance;

e. Any emotional/psychological problems of the child including strengths and needs;

[ f. The child's school history; ]

[ ~~f.~~ g. ] The education and occupation of parents [ ~~, aunts, uncles and grandparents,~~ ; ] and

[ ~~g.~~ h. ] Family medical history as it relates to the suitability of the child for placement.

4. The worker shall [ ~~make a recommendation as to the type of home best suited to the child. Siblings shall be placed together whenever possible and when it is in their best interest.~~ : ]

[ a. Recommend long-term goals and intermediate

*objectives;*

*b. Identify services needed to meet the objectives and goals; and*

*c. Make a recommendation as to the type of home best suited to the child. Siblings shall be placed together whenever possible unless it is clearly not in their best interest.* ]

*5. When a home is selected, the worker shall explain why it was chosen.*

*D. Physical/Dental examinations.*

*1. A child shall have an examination by or under the direction of a licensed physician within the 90 days before placement. The discharge summary from a hospital shall be acceptable for a newborn.*

*EXCEPTION: The 90-day requirement may be waived if:*

*a. A report of an examination no more than a year old is available; together with*

*b. A report of all medical treatment provided in the interim, and*

*c. The child has been in the continuous placement of a public or private agency.*

*2. When a child, accepted in an emergency, has not had an examination within 90 days before placement, he shall have one within 30 days after placement.*

*3. Each child over three years shall have had a dental examination within 12 months before placement or within 60 days after placement.*

*E. School enrollment.*

*The agency shall contact school authorities within five days of placement to arrange for the enrollment of each school age child.*

*F. Acceptance of a child from another agency.*

*When a child is accepted for placement from another child-placing agency which is retaining custody:*

*1. The receiving agency shall obtain a placement agreement before placing the child. It shall cover the financial and other responsibilities of each agency including the services each agency agrees to provide for the child, the biological family and foster family.*

*2. The agreement shall be signed by a person from each agency who has the authority to commit the agency to the provisions.*

*3. [ ~~As the referring agency retains custody, it shall comply with §§ 16.1-281 and 16.1-282 of the Code of Virginia. These sections require an agency to send the court service plan(s) for each child in its custody.~~ The referring agency which retains custody is required by §§ 16.1-281 and 16.1-282 of the Code of Virginia to send te court service plans for each child in its custody. ]*

*The receiving agency shall obtain a copy of the service [ ~~plans~~ plan ] sent to the court [ ~~and~~ or document its efforts to obtain one. It shall ] develop service plan(s) compatible with the goal(s) in the plan sent to the court.*

*G. Acceptance of a child from parent(s) or other individual.*

*When accepting a child for placement from a parent or other individual holding custody, the agency shall:*

*1. Obtain an entrustment (Exception: See § 4.2 A 3 of this regulation);*

*2. Explain the agency's foster care program;*

*3. Collect information for the intake assessment and [ ~~placement study~~ social history ] which shall be recorded only under those headings:*

*4. Explain service plan, covering:*

*a. Long-term goals;*

*b. Steps for their accomplishment;*

*c. The case worker's responsibilities;*

*d. The parent or other individual's responsibilities; and*

*e. Date setting for intermediate and long-term goals.*

*NOTE: Only the client's reactions should be recorded here; elements of the plan should be with the service plan itself.*

*H. Service plans in foster care.*

*An agency shall prepare a service plan for each child in its care. The parents shall be consulted unless parental rights have been terminated. [ Prior custodians or foster parents shall be consulted when appropriate. ]*

*1. Service plan requirement when the agency holds custody.*

*a. The plan shall be filed with the court within 60 days after the agency receives custody unless:*

*(1) The court grants an additional 60 days, or*

(2) The child is returned home or placed for adoption within 60 days.

b. The goal is to provide services that will lead to the child's placement in a permanent situation. Goals in order of priority are:

(1) Return to parents or prior custodians;

(2) Placement with relatives with planned transfer of custody;

(3) Adoptive placement;

(4) Permanent foster care; and

(5) Continued foster care or placement with relatives without transfer of custody.

c. [ ~~The~~ ] Reports to the court are in two parts: [ ~~Part~~ ] A and [ ~~Part~~ ] B.

(1) Part A, only [ , ] shall be used if the goal is to return to the parents or prior custodians. It shall include:

(a) The services to be offered to the child and parents;

(b) The participation to be sought from the parent(s) or prior custodian(s);

(c) Visitation between the child and parent(s) or prior custodian(s);

(e) A projected date for the return of the child to the parent or custodian.

(2) If the agency determines that it is not likely that the child can be returned to the parent(s) or custodian within a reasonable period of time, both Parts A and B shall be used.

Part B shall include:

(a) The reasons the child cannot be returned to the parents or prior custodians;

(b) The goal selected;

It must be the highest [ ~~possible~~ feasible ] goal. The reasons a higher goal was not selected must be explained.

(c) A plan for attainment of the selected goal; and

(d) A projected date for attainment of the goal.

d. Procedures in the Service Programs Manual, Volume VII, Section III, Chapter B, "Preparing the Service Plan" shall be followed. These procedures are incorporated by reference and made a part of these regulations.

2. Service plan requirements when agency does not hold custody.

a. The plan shall include:

(1) The goal for the child;

(2) The services to be offered to the child and parents or prior custodians;

(3) The participation to be sought from the parents or prior custodians;

(4) The type of placement recommended for the child and how it relates to the goal; and

(5) The target date for achievement of the goal.

b. The plan shall be completed within 60 days of placement.

§ 4.3. Ongoing services.

A. Visitation.

1. There shall be a face-to-face contact between the child-placing staff and the child every 30 days during the first year of placement in a foster home.

2. Contacts every 60 days shall be in the placement setting.

3. If the child is in the same home after one year, the number of required contacts is still 12 per year but there may be 45 days between any two visits. Alternate required visits shall still be in the placement setting.

EXCEPTIONS:

a. At least one face-to-face contact shall be made each quarter with a child in a group care facility.

b. Visits to children in permanent foster care shall be made at least every six months in accordance with [ ~~State Board policy for local departments of social services.~~ ( ] Service Programs Manual, Volume VII, Section III, Chapter B, "Permanent Foster Care Placement." [ ) ]

c. Youth who cannot meet the requirements for court-approved permanent foster care becuase they are over 18 but meet all other requirements and have been in a stable placement for a year, shall be visited at least every six months.

d. Visits to children in out-of-state placements shall be the responsibility of the agency supervising the

*placement.*

*B. Medical care.*

*1. Frequency of examinations.*

*a. The physician's recommendations for children under one year shall be followed.*

*b. Examinations for children over one year shall be no more than 13 months apart.*

*If the examining physician recommends it, examinations may be every two years for youths over 18.*

*2. Reports shall be signed by the physician, his designee or an official of the local health department.*

*3. All reports except the discharge summary on a newborn shall include the following [ ~~as~~ when, at the discretion of the physician, ] they become appropriate to the child's age.*

*a. Immunizations given in the past 13 months or since the last examination;*

*b. Current physicial condition, including growth and development, visual and auditory acuity, nutritional status, evidence of freedom from tuberculosis in a communicable form, allergies, chronic conditions and handicaps.*

*4. The agency shall arrange for the child to receive recommended follow-up care as well as care for illnesses or injuries.*

*5. The School Entrance Physical Examination of the Department of Health or equivalent may be used to meet the requirements for a medical examination.*

*C. Dental care.*

*1. Each child over three years shall have a dental examination within 13 months of the last examination and every 13 months thereafter.*

*2. The findings shall be signed by a licensed dentist or his designee.*

*3. The agency shall arrange for the child to receive the recommended follow-up care as well as care for [ ~~symptoms or~~ ] injuries [ or other conditions requiring attention between examinations ].*

*D. Psychological and psychiatric care.*

*The agency shall arrange for a child to receive psychiatric or psychological services if the need for them has been recommended or identified.*

*EXCEPTION: If the agency does not follow a recommendation, it shall explain in the record why following the recommendation would not be in the child's best interest.*

*E. Clothing.*

*The agency shall see that each child in care has his own supply of clothing for indoor and outdoor wear, suitable to the season.*

*F. Spending money.*

*[ ~~The agency shall provide opportunities for each school age child in keeping with his age and developmental level to experience the use and value of money.~~ School-age children shall have an allowance. ]*

*§ 4.4. Narratives, quarterly summaries and service plans in the child's record.*

*A. Narratives shall be in chronological order and current within 30 days. Entries may be in narrative form or recorded on a contact sheet. They shall cover:*

*1. Casework treatment and services provided;*

*2. Contacts with the child, parent(s), the person(s) or agency holding custody if other than the parent, and collaterals; and*

*3. Other significant events, if any.*

*B. Summaries and service plans shall be made quarterly. The date of the initial service plan is the beginning date of the first quarter.*

*1. The summary for the quarter shall evaluate the progress made in reaching the goal including:*

*a. Problems met and problems still existing or arising; and*

*b. An evaluation of:*

*(1) The services provided the child;*

*(2) The participation of the services offered the biological parents, if any;*

*(3) The participation of the foster parents; and*

*(4) The continued suitability of the goal and termination date.*

*2. The service plan for the next quarter shall cover:*

*a. Any changes recommended in the goal and termination date;*

*b. Services needed for the child and their*

availability;

c. Contacts planned with the foster parents, school, biological parent(s) and other relatives; and

d. Progress anticipated during the coming quarter.

3. The fourth quarterly report shall also address subdivision 2 b, c and d for the next 12 months.

For recording in biological and foster family records, see § 4.9 of this regulation.

§ 4.5. Termination of care.

[ A. ] The closing narrative shall be completed within 30 days of termination and include:

1. The reason(s) for the termination;

2. The name(s) of persons with whom the child has been placed or to whom he was discharged;

3. Follow-up services, if any, to be provided the child and family or guardian; and

4. A brief statement of what was accomplished [ : while the child was in care; and

5. Recommendations for services if the child is discharged to another agency.

B. A copy of medical ad school records, and birth certificate if the agency holds custody, shall be given to the parents or receiving agency. Information shall be released, to a child who has reached 18 in accordance with § 63.1-209 of the Code of Virginia. ]

[ § 4.6. Permanent foster care.

A child-placing agency may place a child in permanent foster care in accordance with § 63.1-206.1 of the Code of Virginia. Agencies shall follow procedures in the Service Programs Manual, Volume VII, Section III, Chapter B, "Permanent Foster Care Placement." ]

[ § 4.7. Independent living arrangment.

Any agency may place a child in an independent living arrangement. Procedures in the Service Programs Manual, Volume VII, Section III, Chapter B, "Placing the Child in an Independent Living Arrangement" must be followed. ]

[ ~~§ 4.6.~~ § 4.8. ] The foster family.

A. The foster home study.

Information on the items listed below shall be gathered in order to assess whether or not it would be a suitable foster home, and, if so, what types of children would fit into the home.

1. The foster parent(s) shall be at least 18 years old.

[ 2. Workers shall see marriage licenses for couples applying to be foster parents. If there have been previous marriages, the worker shall ascertain that divorces from the former spouses are final. ]

[ ~~2.~~ 3. ] Health.

a. Each permanent member of the household shall obtain a [ ~~statement~~ report ] signed by a physician, his designee or an official of the local health department [ ~~covering~~ containing ]:

(1) [ An evaluation of ] the current health of the individual;

(2) [ ~~Documentation of freedom from~~ A statement that the individual does not have ] tuberculosis in a communicable form including the date and type(s) of test(s) and the results; [ ~~and~~ ]

[ If the test is positive or no test is done, there shall be a written explanation by the physician. ]

(3) An opinion as to whether or not the health of the household member will affect the care of foster children.

b. Additional tests are not required unless:

(1) The individual comes in contact with a known case of tuberculosis; or

(2) Develops chronic respiratory symptoms.

For either of these symptoms, he must be evaluated according to subdivisions 2 a(2) and 2 a(3) of this subsection.

c. At the request of the agency or the licensing representative, an examination shall be obtained when there are indications that the safety of the children in care may be jeopardized by the physical or mental health of a household member.

The agency shall plan for the immediate removal of the child or children if the examination [ ~~revealed~~ reveals ] that their safety might be in jeopardy.

[ ~~3.~~ 4. ] Income.

Income and financial resources of the foster family shall be sufficient to assure continuing maintenance of the foster family. If there is an amount in the agency's monthly payment above that required for the needs of the child, it may be counted as income.

[ ~~4.~~ 5. ] Child care if parents are employed.

When a single foster parent or both parents are

employed, there shall be plans approved by the agency for the care of the child during their [ ~~absences~~ absence ].

[ ~~5.~~ 6. ] CPSIS [ and Division of Motor Vehicles ] checks.

[ a. ] Persons applying to be foster parents and other adult members of the household shall consent to a search of the Child Protective Services Central Registry (CPSIS).

[ ~~a.~~ (1) ] The agency shall use the form provided by the Registry and follow the instructions thereon.

[ ~~b.~~ (2) ] A search must be done for the initial approval and may be repeated if the child-placing staff believes it necessary.

[ ~~c.~~ (3) ] The home shall not be used if an adult in the household has a founded or unfounded reason to suspect child abuse or neglect record.

[ NOTE: The Central Registry name is to be changed from CPSIS to CANIS (Child Abuse and Neglect Information System) in the early fall of 1989. The method of judging injury to children is to be changed. Agencies will be sent information on the changes when they occur. ]

[ b. Persons applying to be foster parents shall consent to a check of Division of Motor Vehicles records if the agency thinks it is needed. The agency may require consent to a check after a home is in use if it appears to be needed. ]

[ ~~6.~~ 7. ] Residence and surrounding area.

a. The home shall have:

(1) A working telephone;

(2) Screens on all doors and windows used for ventilation;

(3) Some method of ventilation for the rooms where children sleep;

(4) Closet [ ~~and~~ or ] drawer space [ or both ] for clothing and personal possessions of children over two years;

(5) Separate beds for each foster child except that two siblings of the same sex may share a double bed;

[ ~~(6) If the family possesses firearms and ammunition, they shall be stored in a locked cabinet or locked area that is not accessible to children.~~ ]

[ ~~(7)~~ (6) ] A written plan for evacuation of the home in case of fire.

(a) The worker shall review the plan during the initial home study and at the time of the reevaluation if the family has moved.

(b) The foster parents shall review the plan [ , ] with any child old enough to understand [ , ] within five days of placement. This requirement shall be in the foster home agreement or other document signed by the foster parent.

[ b. If the family possesses firearms, they shall be stored in locked cabinets or locked areas not accessible to children. Ammunition shall be stored in a locked place separate from the firarms. ]

[ ~~b.~~ c. ] There shall be an assessment of the following based on the worker's observations and discussion with the applicant(s):

(1) The availability and use of sleeping space;

(2) The availability of play/recreation areas appropriate for the ages of children to be placed;

(3) The availability of study areas if school age children are to be placed;

(4) Housekeeping standards;

(5) The neighborhood and the accessibility [ ~~to~~ ] applicable community facilities;

[ ~~7.~~ 8. ] Interviews with family members.

a. There shall be a minimum of three face-to-face interviews with each foster parent, including at least one joint interview in the home.

b. All other members of the household shall be interviewed face-to-face at least once.

c. The following areas shall be covered:

(1) Each applicant's reasons for and expectations of becoming a foster parent;

(2) Each applicant's [ parenting skills, ] understanding of type of children to be placed, prior experiences with children, attitudes toward natural parents and toward working with the agency;

(3) The abilities of all members of the household to accept a foster child including their experiences in sharing with and caring for children not related to them [ : ; ]

(4) The social and academic adjustment of the applicant's children such as peer relationships, grade placement, and school performance;

(5) Family relationships including marital;

(6) General patterns of family life; [ and ]

[ Note: The purpose of recording the patterns is to assess how a child will fit into the usual routines/activities of the household. ]

(7) The applicant's relationships with extended family and friends.

[ ~~NOTE: The purpose of recording the patterns is to assess how a child will fit into the usual routines/activities of the household.~~ ]

[ ~~8.~~ 9. ] References.

At least three references shall be obtained.

[ ~~9.~~ 10. ] Worker's recommendations.

a. The child-placing staff shall recommend approval or disapproval of the home. The date of the action shall be recorded.

b. Applicants shall be informed [ within a week ] of [ approval or [ disapproval [ ~~as well as approval~~ ].

c. [ The ] worker shall recommend the type, number, age and sex of children that can successfully be cared for in the home. Foster parent(s) preferences shall be taken into consideration.

[ ~~10.~~ 11. ] The foster home study shall be written and the home approved before a child is placed.

B. Foster home capacity.

The total number of children in the foster home shall not exceed eight including the parent's own children.

EXCEPTION: When placement of a sibling group in one home is in the best interest of the siblings, the total may exceed eight.

C. Services and requirements following approval.

1. The agency shall have a plan of orientation for each newly approved foster family.

[ ~~NOTE: A list of the courses which the agency offers foster parents may be put in each foster home record. When the foster parent(s) have completed a course, the date can be entered on the sheet.~~ ]

2. The agency shall provide the foster family with written procedures for handling emergencies during and outside the agency's regular office hours.

3. Prior to placement the family shall be assisted to make an informed decision [ ~~about~~ as to ] whether [ ~~or not~~ ] a particular child is appropriate for them.

4. The agency shall have a written foster home agreement with the family for each child in care.

a. The agreement shall be signed on or before the date the child is placed in the home.

b. The agreement shall include [ ~~but is not limited to~~ ]:

(1) The payment for foster care;

(2) Payment for other expenses;

(3) Arrangements for medical care;

(4) Arrangements for the provision of clothing;

(5) Arrangements for spending money for the child;

(6) Arrangements for visits by parents;

(7) An agreement not to use corporal punishment or give others permission to do so.

EXCEPTION: If the agency prefers, it may substitute a written policy statement containing the prohibition which foster parent(s) shall sign saying they have read [ ~~it~~ ] and will follow [ ~~it~~ ] to the best of their ability.

If a statement is substituted [ ~~for the foster home agreement~~ ] , it needs to be signed only at the time of the first placement. It shall state that it applies to any child placed by the agency.

(8) A clear statement that the agency has the right to remove the child when it considers it in the child's best interest; and

(9) [ A statement that ] the foster family has the right to [ ~~expect and~~ ] receive the support and assistance of agency staff at all times in relation to the child's [ ~~placement~~ care ] in the home.

D. Reevaluation of foster homes.

The agency shall reevaluate the foster home after one year and every two years thereafter covering the topics in the initial home study.

The reevaluation shall take place in the home. The visit shall be made when both parents can be present [ ~~; if possible. If both cannot be present, the reason shall be recorded.~~ . The reevaluation may be done at the time of one of the regular home visits. ]

NOTE: A form may be used to indicate those areas in which there has been no change. The same form may be

*used to note changes that have occurred and to cover items listed in subdivisions 1 through 5 of this subsection providing there is space for an explanation.*

*The reevaluation shall also cover:*

*1. A brief description of the adjustment of each child placed in the home since the last evaluation;*

*2. An evaluation of the performance of the foster parents addressing:*

*a. Their ability to relate to the children;*

*b. Their ability to help children reach their goals;*

*c. Skills in working with particular types of problems; and*

*d. Their ability to work with the agency in meeting the needs of a child.*

*3. The relationship between the children and the family members. Family members shall be mentioned by name but may be listed together if one statement applies to all;*

*4. The stability of the home and any problems or significant changes that have occurred in the family since the last evaluation; and*

*5. Worker's recommendations regarding continued use of the home, and age, sex, types and number of children which home can handle successfully.*

*§ 4.7. Permanent foster care.*

*A child-placing agency may place a child in permanent foster care in accordance with § 63.1-206.1 of the Code of Virginia. Such placements shall be made in accordance with state board policy established for local departments of social services. (See Service Programs Manual, Volume VII, Section III, Chapter B, "Permanent Foster Care")*

*§ 4.8. Independent living placement.*

*An agency may place a child in an independent living arrangement in accordance with requirements and procedures in the Service Programs Manual, Volume VII, Section III, Chapter B, "Placing the Child in an Independent Living Arrangement" if it meets the provisions of § 63.1-205.1 of the Code of Virginia.*

*§ 4.9. Foster care records.*

*The agency shall maintain a record for the child, the biological family and the foster family. The biological family record may be a part of the child's record.*

*A. The child's record.*

*The record shall include:*

*1. A face sheet completed within five working days of placement, with the following information:*

*a. For the child: birth date, place of birth, sex and race and source of this information;*

*b. For the biological parents: full names, address(es), telephone numbers, if available, and marital status;*

*c. For siblings: names, [ and ] addresses, if available;*

*d. [ Names, addresses and telephone numbers of ] person(s) or agency holding custody; and*

*e. [ Names and telephone numbers of ] persons to be contacted in an emergency, and*

*2. Other material pertaining to a child in foster care as required by these standards.*

*B. The biological parent's record.*

*The record shall contain:*

*1. A face sheet with the following information:*

*a. Names, addresses and marital status of the biological parents;*

*b. Members of the biological family and their whereabouts with addresses and telephone numbers when available; and*

*c. Cross-references to the child's record.*

*2. A chronological narrative or summary of contacts with and services provided to the family. It shall include visits of the parents with the child and visits, or attempts to visit, with the parents.*

*3. Material relating to biological parents as required by these standards.*

*C. The foster home record.*

*The record shall contain:*

*1. A face sheet listing all members of the household and [ ~~the~~ their ] relationship to the foster parents;*

*2. The agency application for foster parents;*

*3. A record of orientation and training provided to the foster parents;*

*NOTE: a form listing the training offered by the agency may be filed in the record. When the*

*parent(s) complete a course, the date may be entered on the form.*

*4. A narrative account of the preparation of the family for each child placed with them;*

*5. A list of the children placed including names, birth date or age, dates of placement and removal and reasons for removal;*

*6. Copies of all foster home agreements;*

*7. [ ~~Any~~ Other ] material required for foster [ ~~parents~~ home studies ] by these standards;*

*8. Reevaluation of the foster home, and*

*9. When applicable, date and reason for closure.*

*PART V.*
*ADOPTION SERVICES.*

*The standards in Part V shall be met to obtain a license to provide adoption services in Virginia.*

*NOTE: Individuals or agencies, in or out of the Commonwealth or out of the country, may obtain these services legally only from a licensed child-placing agency or local department of social services.*

*§ 5.1. Program statement.*

*A. Child-placing agencies shall have a statement describing their services including:*

*1. The purpose of the adoption program;*

*2. An open admissions policy if federal [ or local social service agency ] funds are involved.*

*It shall state that the program is open to all children without regard to race, color, national origin or sex. It shall say also that children with handicapping conditions will be accepted if their needs can be reasonably accommodated.*

*The statement shall describe the population to be served.*

*3. Qualifications for adoptive families;*

*4. A description of the study, approval and selection process for adoptive families including orientation and training offered by the agency [ and policy regarding fees ];*

*5. A list of services provided to children, biological families and adoptive families prior to the final order of adoption;*

*6. A list of services provided after the final order, either directly or by [ ~~referral~~ referrals ] to adopted children and families;*

*7. A description of services provided to adult adopted persons; and*

*8. A description of the responsibilities and workload of agency staff.*

*B. The program statement or a summary shall be given to agencies or individuals who ask about the services of the agency.*

*C. A copy shall accompany the initial application for a license.*

*D. The program statement shall be updated when changes are made and a copy sent to the [ ~~department's~~ Licensing ] Representative.*

*§ 5.2. Intake.*

*A. Services to biological parents contemplating placing their child for adoption.*

*1. While parents may have decided to place their child for adoption before coming to the agency, counseling sessions shall be offered to assure that:*

*a. The decision was not made under duress; and*

*b. The decision is firm.*

*2. Alternatives to adoptive placement shall be discussed including:*

*a. Services to help the family stay together if it is in the best interest of both the child and the family;*

*b. Temporary foster care; [ and ]*

*c. Placement with relatives.*

*3. Additional counseling sessions shall be offered as needed.*

*4. If [ either of the parents was not offered ] counseling [ ~~was not offered to the father~~ ] , the worker shall record the reason(s).*

*5. Agency adoption services shall be explained.*

*6. If the parents choose adoption, the agency shall [ ~~terminate~~ secure a termination of ] parental rights in accordance with termination procedures in The [ ~~Services Program~~ Service Programs ] Manual, Volume VII, Section III, Chapter B [ : ~~(See Table of Contents~~ , ] "Terminating Parental Rights" [ ~~)~~ ]*

*B. Authority to place.*

The agency shall have the authority to place a child either in a foster or adoptive home.

1. An agency may place a child in a foster home with:

a. A court commitment;

b. A permanent entrustment by the parent(s) or other person holding custody, or

c. A temporary entrustment by the parent(s) or other person holding custody [ ; ~~or a placement agreement by an agency.~~ ; ]

The agency shall petition the court for approval of a temporary entrustment within 30 days unless the entrustment is for less than 90 days.

2. To place a child for adoption, an agency [ ~~must~~ shall ] have:

a. A permanent commitment with termination of parental rights from the court; or

b. A permanent entrustment by the parent or other person holding custody [ ~~or transfer of custody from another agency. Agency transfer requires court approval.~~ ; ]

[ Note: A child coming into care through permanent entrustment is eligibile for federal subsidy (Title IV-E, Adoption Assistance) if:

(1) The court finds that remaining in the home would be contrary to the welfare of the child, and

(2) The child has been living with the parent(s) within six months of the initiation of court proceedings.

The agency should consult with the local departments of social services to determine whether other relatives would be acceptable.

In order to conserve state funds, agencies should do everything possible to make a child eligible for IV-E if he or she is likely to need subsidy. Permanently entrusted children who are not eligible for subsidy are, however, eligible for state subsidy. State and local funds pay for the same needs and services for the child.

or

c. Transfer of custody from another agency. Agency transfer requires court approval. ]

§ 5.3. Temporary foster care prior to adoption for children under one year.

A. The foster home.

The foster home shall be approved under the provisions of [ § ~~4.6~~ § 4.8 ] of these standards. The foster home agreement shall be signed by the agency and foster parents.

B. Intake assessment.

The agency shall collect the following information before accepting the child for placement:

1. The reason the placement is requested, and a brief report on his living situation(s) if he did not come directly from the hospital.

2. Current information on the child's health.

a. The hospital discharge summary is an acceptable admission examination for a newborn.

b. If a child has not come directly from the hospital, the hospital summary and a report of interim care, signed by the physician shall be obtained. The report shall be no more than 30 days old. The absence of abnormalities shall be noted or the presence of abnormalities noted and explained on the report.

3. In addition, the assessment shall [ cover ]:

a. [ ~~Cover~~ ] dates and persons involved in placement visits and staffing; [ and ]

b. The reason(s) the child was accepted and the date the decision was made [ ; ~~and~~ ]

[ ~~c.~~ 4. The assessment shall ] be completed within 30 days of placement.

C. [ ~~Placement study.~~ Social history. ]

[ The purpose of the history is to assist in the determination of the most suitable adoptive home for the child.

If some item of information is not available, the reason shall be recorded. ]

1. The [ ~~study~~ history ] shall cover:

a. The reasons for and the goal of the foster home placement;

b. The physical appearance of the child and of both parents if available;

c. The [ child's ] parents' nationality, race and religion;

d. The [ child's ] parent', siblings' [ aunts, uncles ]

and grandparents' medical and psychiatric history as it relates to the [ ~~suitability~~ selection [ of [ ~~the~~ a suitable home for the ] child [ ~~to placement~~ ];

e. The education and occupation of the child's parents, [ siblings ] aunts, uncles and grandparents; and

f. The expected length of placement in foster care.

2. The [ ~~placement study~~ social history ] shall be completed within 30 days after placement [ in the foster home ] and include the date it was completed.

3. The worker shall describe the type of adoptive [ ~~placement~~ home ] that appears to be best for the child [ ~~at this time~~ ].

D. Visitation.

The case worker shall have a face-to-face contact with the child every 30 days. Visits every 60 days shall be in the foster home.

E. The worker shall see that the child has an adequate supply of clothing.

F. Continuing contact with parent(s).

1. Parents shall be included in service planning, including goal setting, until or unless rights are terminated.

2. If parental rights are terminated, [ and the parents request it, ] the agency shall arrange continuing services, either directly or by referral [ , ~~when requested~~ ].

G. Service plans in foster care.

If the agency holds custody it shall file a foster care plan with the court within 60 days unless the child is returned home or placed for adoption within that time. (See § 4.2 H of this regulation)

H. For narrative, quarterly reports and termination of care, see §§ 4.4 and 4.5.

§ 5.4. Items to be considered when selecting an adoptive home.

A. Siblings shall be placed together [ ~~if possible and if it is~~ unless it clearly is not [ in the best interest of the children. [ Reasons for separation shall be explained in the record. ]

B. Consideration shall be given to placing children with families of the same racial/cultural or religious identity [ , ; however no one or all of these factors shall be determinative since the best interest of the child shall always be paramount. ]

[ C. Foster parents shall be considered a primary adoptive resource when that is considered in the best interest of the child.

Note: Section 63.1-221 of the Code of Virginia has the following provision: When a foster parent who has a child placed by an agency wishes to adopt the child and the child has been in the home at least 18 months, the foster parent may petition the court directly for permission to adopt. ]

[ ~~C.~~ D. ] The ages of the adoptive parents in relation to the age of the child shall be [ ~~within the usual age range. When this is not possible or is not in the best interest of the child, there shall be an explanation in the child's record~~ considered in determing the best interest of the child ].

[ ~~D.~~ E. ] The agency may consider the recommendations of a physician, an attorney licensed in the Commonwealth, or a clergyman who is familiar with the situation of the proposed adoptive parents only as provided in § 63.1-204 C 1 of the Code of Virginia.

§ 5.5. Direct placement in adoptive home.

A. If a child is placed in the adoptive home before he is 25 days old or before the child is legally free for adoption, a statement acknowledging this shall be signed by the prospective adoptive parents and filed in the child's record.

B. Such a placement shall be recognized as a foster home placement and a foster home agreement signed by the agency and foster parents.

C. The adoptive placement agreement [ ~~may~~ shall ] not be signed until the child is legally free.

§ 5.6. Placement of children over one year.

The provisions of Part IV are applicable when placing children over one year of age in foster care prior to adoption. When selecting an adoptive home, items in § 5.4 shall be considered. In addition, an older child's concerns about adoption shall be taken into account.

§ 5.7. Agency responsibility after child is placed in the adoptive home.

A. The agency shall ensure that supervisory visits are made in compliance with §§ 63.1-228 and 63.1-229 of the Code of Virginia, or according to the laws of the state in which the final order of adoption is issued.

The Code of Virginia stipulates that the child shall have lived in the adoptive home continuously for a period of six months before the petition for the final order is filed with the court. A minimum of three visits shall be made during a period of six months with at least 90 days between the first and last visits.

B. The agency shall maintain contact with the family until the final order is entered. If conditions warrant, it shall proceed to remove the child in accordance with the provisions of § 63.1-211.1 of the Code of Virginia.

C. The agency is legally responsible for the child until the final order is enterd.

§ 5.8. Provisions for [ ~~hard-to-place~~ ] children [ with special needs ].

A. Referral to AREVA (Adoption Resource Exchange of Virginia).

1. Special needs children who are legally free for adoption shall be registered with AREVA within the timeframes set by service programs.

2. Families willing to accept special needs children shall be registered also.

3. Agencies shall follow procedures in the Service Programs Manual, Volume VII, Section III, Chapter C, "Adoption Resource Exhange of Virginia."

B. Subsidy.

1. Subsidy payments shall be [ ~~sought~~ provided ] for a special needs child determined eligible for subsidy [ ~~in accordance with Chapter 11.1 (§ 63.1-220 et. seq.) of Title 63.1 of the Code of Virginia~~ ].

[ ~~NOTE: A child does not qualify as a special needs child if an appropriate home can be found without subsidy payments.~~ ]

[ Note: A special needs child is not eligible for subsidy until reasonable efforts have been made to find an appropriate home without subsidy. However, in some cases such as where the child has developed significant emotional ties with the prospective adoptive parents while in their care as a foster child, efforts to find another home are not required.

"Reasonable efforts" are defined in the Service Programs Manual, Volume VII, Section III, Chapter C, "Subsidized Adoption." ]

2. [ ~~Agencies shall follow the policy in the Service Programs Manual, Volume VII, Section III, Chapter C, "Subsidized Adoption" herein incorporated by reference.~~ ]

[ 3. Refer to § 5.2 B 2 b. Note: for the explanation of the effect of permanent entrustment on eligibility for subsidy. ]

C. Services for children after final order.

When an agency places a child in its custody in an adoptive home and the child has longstanding [ ~~emotional,~~ ] mental or physical problems ~~at the time of placement~~ ], the agency shall make arrangements for services after the final order [ ~~either through continued agency services, referral, subsidy or other means or some combination of these~~ ]. [ This may be through continued agency services or referral to some other resource such as another agency, a post-adoption counseling group or resources for medical or psychiatric services. ]

§ 5.9. Involuntary termination of parental rights.

When a child has been in the custody of a licensed child-placing agency for 12 months, the court may terminate parental rights if it finds that the parent or parents have been unable or unwilling to remedy the conditions that led to the placement.

A. If the agency elects to take the case to court for an adjudication [ ~~and the court terminates parental rights~~ ], the agency shall submit a plan for finding a permanent placement for the child [ ~~within six months~~ ].

B. The agency shall follow the procedures in the Service Program Manual, Volume VII, Section III, Chapter [ ~~C~~ B ], "Terminating Parental Rights."

§ 5.10. Interlocutory orders.

A. While agencies are legally responsible for a child placed in an adoptive home until the final order, an agency may issue its consent to an interlocutory order if a determination is made that:

1. The adoptive parent(s) are financially able to care for the child (subsidy funds may be counted in the assessment where appropriate);

2. The adoptive parent(s) are suitable persons to care for the child;

3. A home visit made at least 30 days after placement and any other contacts provide evidence that the child and family are making a positive adjustment to each other; and

4. The best interest of the child is served by entering an interlocutory order rather than waiting until the end of the visitation period.

B. A notarized statement shall accompany the order stating that the agency will assume legal responsibility if the placement disrupts before the final order.

C. The child shall be visited at least three times in the six months following the interlocutory order with not less than 90 days between the first and last visits.

D. The agency shall continue to count the child in determining agency caseload capacity until the final order [ is entered ].

[ *§ 5.11. Agency fees.*

*If the agency requires fees from adoptive applicants, it shall attach an explanation of agency policy to the license renewal application. The explanation shall cover the amounts charged, how the figures were arrived at, and what services are to be provided for the fees.*

*If a new agency plans to charge fees, an explanation of the proposed policy shall accompany the application for a license.*

*Fees shall be discussed with applicants before or at the start of the home study. Applicants shall be given an explanation of:*

*1. The amount they must pay and when and how payments are to be made;*

*2. How the amount is determined and what services it covers; and*

*3. The agency refund policy if any.* ]

[ *§ ~~5.11.~~ § 5.12.* ] *The adoptive home study.*

*Information on the items below shall be gathered in order to assess the applicant(s)* [ ' ] *capacities as adoptive parent(s). If the home is approved, the information is also used to determine the type of child that can successfully be placed in the home.*

*A. Interviews with family and household members.*

*1. There shall be a minimum of three face-to-face interviews with the adoptive applicant(s). At least one interview with a couple shall be joint and one shall take place in the home.*

*2. All members of the household shall be interviewed as well as children of each adoptive parent living outside the home.*

[ ~~a.~~ ] *Information may be requested by telephone or letter if the child is over 18 and lives more than 50 miles from the parents' home.*

[ ~~*b. If the agency determines that an interview with a minor child living outside the home cannot or should not be conducted, the worker shall record the reasons.*~~

~~*3. Workers shall inform potential adoptive parents that they must discuss the proposed adoption with each of their children living outside the home. The attitudes of the children shall be reported to the worker.*~~

~~*4. If minor children could not be interviewed or an adoptive parent did not discuss the proposed adoption with children living outside the home, the reasons shall be taken into consideration in the agency's assessment of the home for adoptive placement.*~~ ]

[ *3. If the required contacts with children living outside the home should not or could not be made, the reasons shall be taken into consideration in the assessment of the home.* ]

*B. Subjects to be covered in interviews* [ *with the applicants shall* ] *include:*

*1. A description of:*

*a. The home and surrounding area, and*

*b. The physical appearance of the applicant(s).*

*2. A discussion of the family covering:*

*a. The compatibility of the couple and stability of the marriage in relation to its length;*

*b. The relationships with other household members and children in the home, if any;*

[ *c. Physical and mental health history;* ]

[ ~~*c.*~~ *d.* ] *The interests and activities of family members, including a judgment as to whether or not the general patterns of family life will accommodate a child;*

[ ~~*d.*~~ *e.* ] *Extended family, social and community relationships;*

[ ~~*e.*~~ *f.* ] *Childhood/family life experiences of adoptive applicant(s);*

[ ~~*f.*~~ *g.* ] *The place of religion in family life; and*

[ ~~*g.*~~ *h.* ] *Income and financial resources in relation to expenses.*

*3. The family in relation to adoptions:*

*a. The applicant(s)* [ ' ] *motivation for and expectations of adoption;*

*b. Experiences of the applicant(s) with children;*

*c. Attitudes and opinions about discipline of children;*

*d. Attitudes toward biological parents;*

[ *e. Attitudes about periodic contact with parent/s or prior custodians for older children (open adoption);* ]

[ ~~*e.*~~ *f.* ] *The age and type of child desired and the age(s) of the applicant(s) in relation to the child; and*

[ ~~f.~~ g. ] The attitude toward adoption of family and extended family members [ , especially natural children living outside the home ].

4. A discussion of agency services before and after adoption if family is interested in a special needs [ ~~/high risk~~ ] child.

[ ~~5. An explanation of agency fees.~~

~~Fees shall be discussed at the beginning of the home study. The applicant shall be given an explanation of:~~

~~a. The amount they must pay;~~

~~b. The services that the payment covers;~~

~~c. How the amount is determined;~~

~~d. When and how payments are to be made; and~~

~~e. The refund policy if the agency has such a policy.~~ ]

C. Information from other sources.

1. A minimum of three references [ for the family ] shall be obtained.

2. A report of a recent medical examination of all members of the household shall be obtained. It shall report on [ ~~the current state of~~ both mental and physical ] health [ ~~and any expected difficulties~~ ] and be signed by the [ ~~examining~~ ] physician. [ If difficulties are noted, specialists in the appropriate field shall be consulted. ]

3. Adoptive applicants shall consent to a search of the Child Protective Services Central Registry (CPSIS).

a. The agency shall use the form provided by the registry and follow the instructions thereon.

b. The home shall not be used if an applicant has a founded or unfounded/reason to suspect child abuse or neglect record.

[ Note: The Central Registry name is to be changed from CPSIS to CANIS (Child Abuse and Neglect Information System) in the early fall of 1989. The method of judging injury to children is to be changed. Agencies will be sent information on the changes when they occur.

4. If an agency believes it is needed, it may, in addition, require consent to check Division of Motor Vehicle records. ]

[ ~~4.~~ 5. ] The worker shall see the marriage license for couples. [ If there has been a previous marriage, the worker shall ascertain that the divorce is final to make sure there is a valid marriage. ]

[ 6. ] If a single adoptive applicant is divorced, the worker shall ascertain that the divorce is final to avoid legal difficulties with the adoption.

[ ~~6.~~ 7. ] Employment shall be verified by pay stub or other written evidence, personal knowledge of [ ~~a~~ an agency ] staff member or interview with the employer.

D. Approval or disapproval.

1. The worker shall recommend approval or disapproval.

2. If approval is recommended, the worker shall recommend the age, sex, special characteristics and number of children that could successfully be nurtured.

The adoptive parent(s)' preferences shall be considered in reaching the recommendations.

3. The applicant(s) shall be informed [ ~~about the recommendation for~~ in writing within a week of the ] approval or disapproval and offered an interview to have the agency's decision explained to them.

E. The selection of the child for the adoptive family shall be in the best interests of the child and is the responsibility of the agency. The reasons for selecting the specific home for the child shall be stated.

[ The adoptive parents have the right to full factual information about the child and the child's birth family except for identifying information. ]

The prospective family shall, however, be permitted to decide whether or not a child is suitable for them. Refusal of a child shall not be the sole basis for excluding a family from consideration for another child.

F. The adoptive placement agreement.

The agreement shall include [ ~~but is not limited to~~ ]:

1. The agency's responsibilities until final order [ is entered ];

2. The adoptive family's responsibilities until final order [ is entered ];

[ ~~3. The terms of the subsidy, if any;~~ ]

[ ~~4.~~ 3. ] The statement that the agency is legally responsible for the child until the final order and may, with the sanction of the court, remove the child if it is necessary for the child's well being; and

[ ~~5.~~ 4. ] [ ~~Provision for services~~ A statement of services to be provided ] after the final order, if any [

have been agreed upon ].

G. Corporal punishment.

The agency shall have a written statement prohibiting corporal punishment which the adoptive parent(s) shall sign saying they have read [ ~~it~~ ] and will follow to the best of their ability.

H. Reevaluations.

1. When 12 months have elapsed after completion of the original home study and the agency is contemplating placing a child, a reevaluation shall be made which includes:

a. A visit to the home;

b. Face-to-face interviews with all members of the household; and

c. Updated medical reports.

2. When subsequent adoptive placements are considered, the agency shall reevaluate the home covering all areas of the original study.

Concrete areas such as house or neighborhood which have not changed may be noted on a form.

At least one home visit shall be made with all household members present except for members out-of-the-home for extended periods.

[ § 5.13. If an agency chooses to provide direct parental placement services, it shall do so in accordance wit §§ 63.1-220.3 through 63.1-220.5 and 63.1-238.01 and 63.1-238.02 of the Code of Virginia. ]

[ § ~~5.12.~~ § 5.14. ] Adoption records.

The agency shall maintain a case record for each child, the biological family and the adoptive family. The biological family record may be a part of the child's record.

A. The child's record.

The record shall include:

1. Identifying information including birthdate, place of birth, sex, race, height, weight, hair color, eye color and identifying marks;

2. [ The ] legal documents required for adoption;

3. A record in the narrative dictation of the child's and family's preparation for the placement; and

4. [ Such ] Other information [ ~~as~~ ~~is~~ ] required in these standards.

B. The biological family's record.

The record shall include:

1. Identifying information including, names, addresses, telephone numbers and marital status of the parents.

2. A narrative of contacts; and

3. Other information [ ~~as~~ ] required by these standards.

C. The adoptive family record.

The record shall contain:

1. The agency application;

2. A copy of any written information given to the adoptive parent(s) concerning the child;

3. Summaries of supervisory visits and closing summary; and

4. Other information required by these standards.

PART VI.
INTERSTATE PLACEMENTS.

§ 6.1. A child-placing agency shall comply with the Interstate Compact on the Placement of Children before sending a child out of state or receiving a child into the Commonwealth for foster care or adoption. [ ~~(Chapter 10.1 (§ 63.1-210.1 et. seq.) of Title 63.1 of the Code of Virginia)~~ ]

The procedures to be followed are in the Service Programs Manual, Volume VII, Section III, Chapter E.

§ 6.2. If an agency does an adoptive home study before a child has been identified, the Interstate Compact Office is not involved. However, the agency shall:

1. Inform the potential adoptive parent(s) that the placement of an out-of-state child must go through the Compact Office, and

2. Attach a statement to the home study explaining the requirement.

§ 6.3. [ ~~If an out-of-state child is placed without the knowledge of a Virginia agency which is subsequently asked to do a home study or supervise the placement, it shall inform the placing agency that notification of compact approval must be received before it can act on the request.~~ If a Virginia agency is asked to supervise the placement of an out-of-state child, it must have notification of Compact approval of the placement before proceeding. The placing agency is responsible for obtaining Compact approval. ]

PART VII.
REPORTS.

Agencies shall keep records and make reports as required by the Department of Social Services pursuant to § 63.1-203 of the Code of Virginia. [ Reports include: ]

§ 7.1. Death of a child.

The agency shall:

1. Notify the parent(s) or guardian of the child immediately; and

2. Notify the [ ~~department's~~ ] Licensing Representative within 48 hours.

A written report of the circumstances shall be made to the [ ~~department's~~ Licensing ] Representative within seven days of the death.

§ 7.2. Abuse or neglect, or both.

The agency shall:

1. Immediately notify the appropriate local department of social services of all complaints or suspected cases of abuse and neglect of a child;

2. Cooperate with the local department [ ~~of social services~~ ] in its investigation of the complaint;

3. Make its own investigation of each complaint to determine whether or not its policies and procedures have been violated; and

4. Report the results of its investigation to the [ ~~department's~~ ] Licensing Representative within 90 days of receipt of the complaint.

PART VIII.
CASE RECORD REQUIREMENTS.

§ 8.1. The agency shall provide [ ~~department~~ Licensing ] Representatives reasonable opportunity to inspect all facilities, books and records related to the child-placing program.

§ 8.2. Active and closed case records shall be kept in locked, metal files. They shall be systematically filed.

§ 8.3. Case records are confidential.

[ ~~§ 8.4. Narratives shall be current within 30 days.~~ ]

[ ~~§ 8.5.~~ § 8.4. ] Entries in case records.

A. All entries shall be dated. They shall indicate who performed the service and be signed or initialled.

B. If an agency has [ ~~more than one office~~ offices in more than one state ] , the record shall identify the office which provided the service.

[ ~~§ 8.6.~~ § 8.5. ] Evidence of compliance.

To be in compliance with a standard:

1. There [ ~~must~~ shall ] be written evidence that the requirement has been met;

2. It [ ~~must~~ shall ] be completed by the required date if a time limit is specified in the standard; and

3. It must be filed in the appropriate record within 30 days unless otherwise specified in these standards.

[ Note: ] Whenever possible, information [ ~~should~~ shall ] be recorded in the appropriate place and not repeated elsewhere.

[ ~~§ 8.7.~~ § 8.6. ] Retention of records.

A. Upon entry of a final order of adoption or other final disposition of a matter involving adoption, all reports and collateral information shall be forwarded to the commissioner.

[ B. The agency shall retain a copy of the child's subsidy record as long as the child receives a subsidy. ]

[ ~~B.~~ C. ] If a child has been united with his biological family before reaching majority, case records shall be retained until one year after his 21st birthday.

[ ~~C.~~ D. ] Records shall be retained permanently for any children who have not been adopted nor reunited with their families.

[ ~~D.~~ E. ] When an agency ceases to operate, it shall inform the department in writing of the location for the retention of its records.

[ ~~§ 8.8.~~ § 8.7. ] Disclosure of information.

A. If a child has reached his majority without being adopted, information shall be revealed to him according to the provisions of § 63.1-209 of the Code of Virginia.

B. Information concerning children who have been legally adopted shall be revealed to them only according to the provisions of § 63.1-236 of the Code of Virginia.

DIVISION OF LICENSING PROGRAMS
DEPARTMENT OF SOCIAL SERVICES

APPLICATION FOR LICENSE FOR
PRIVATE CHILD PLACING AGENCIES

date:_____ _____new _____renewal

AGENCY _____ tel:(___)_____

address _____

mailing address if different _____

executive director _____

SPONSORSHIP (check one):

_____corporation _____unincorporated association _____ partnership _____ individual

LICENSE REQUESTED FOR:

_____ number of children (to be served at any one time)

_____ boys and girls _____ boys only _____ girls only

_____ minimum age accepted _____ maximum age accepted

_____ foster care only _____ foster care and adoption

STAFF: list executive, supervisory, and child-placing staff, including trainees and students.

| name | position | hours and days of work per week | date of employment |
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**STAFF:** list executive, supervisory, and child-placing staff, including trainees and students.

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DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **VR 460-05-1000.000. State/Local Hospitalization.**

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

Effective Dates: July 1, 1989 through August 30, 1990

DECISION BRIEF FOR: The Honorable Gerald L. Baliles, Governor

SUBJECT: Emergency Regulation For State/Local Hospitalization

SUMMARY

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled State/Local Hospitalization (SLH). This State/Local Hospitalization policy will establish the Department's administrative requirements for the SLH program.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action concerning State/Local Hospitalization. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski, Director
Date: June 5, 1989

3. CONCURRENCES:

Concur
/s/ Eva S. Teig
Secretary of Health and Human Resources
Date: June 7, 1989

4. GOVERNOR'S ACTION:

Approve
/s/ Gerald L. Baliles
Governor
Date: June 14, 1989

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 15, 1989

DISCUSSION

6. BACKGROUND: The State/Local Hospitalization (SLH) Program was established by the General Assembly in 1946 to encourage and assist counties and cities to provide hospitalization for indigent and medically indigent persons. Indigent generally refers to those whose incomes place them at or below the poverty level. Medically indigent generally refers to people who become impoverished due to the medical expenses they have incurred. During its 41 years of operation, SLH has been locally administered under limited supervision by the Department of Social Services (DSS).

Responsibility for local operation has rested with the governing bodies which designated the administering agencies. Each locality determined its own criteria for eligibility for covered services. Each locality determined the amount, duration, and scope of services to be provided. The DSS distributed funds to participating localities on the basis of population, with the state/local shares at 75% and 25% respectively.

The Joint Legislative Audit and Review Commission (JLARC) was directed to review the SLH funding formulas in Senate Joint Resolution 87 (1986). JLARC's report, Senate Document No. 17, contained the staff findings and recommendations for revising the SLH funding formula. JLARC identified several limitations in the SLH funding formula: (1) allocating funds based on population does not reflect need for the program; (2) some localities chose not to participate in the program; (3) some localities did not fully match their State allocation for the program's services; (4) localities were required to expend local funds before requesting reimbursement from the program reserve fund; (5) reserve funds were used to meet routine demand for reimbursed program services.

In its 1987-1988 statistical report on SLH, the DSS reported that 96 localities participated in providing inpatient services. Sixty-five localities were reported as providing outpatient, clinical, and emergency room services. Professional services were provided by the service staffs of participating hospitals at no charge to the SLH program. Choice of hospitals rested with the participating localities which negotiated agreements on the basis of all-inclusive per diem rates within reimbursable maximums determined by the Board of Social Services.

The JLARC study found several problems which hampered the achievement of equal access to needed services. For the most part these problems arose from the non-binding nature of the program guidelines issued by DSS, and the lack of service plans by localities participating in SLH.

Not all participating localities have offered the full range of available services (inpatient, outpatient surgical, and nonsurgical outpatient and emergency room services). SLH reimbursement of inpatient days has also varied among localities. Local programs exercised their discretion to eliminate or cover certain services from year to year.

To compound problems resulting from the varying covered services, localities selected the eligibility

criteria to be applied locally. The localities also determined how much of a prospective client's resources would be considered during the eligibility determination process.

This diverse use of income standards and covered services resulted in differing treatments of clients who had similar medical needs. The JLARC study reported a survey which identified 71 of 101 localities using the income scale established for the program. The remaining localities used modified SLH scales, modified Medicaid scales, various definitions of current poverty level, Virginia Department of Health scales, and other miscellaneous scales. Under the previous system, it was possible for one locality to deny coverage to individuals or cover services to a lesser degree because they did not meet certain criteria, while the adjacent locality would provide complete service coverage.

As a result of the JLARC study cited above, the General Assembly decided to alter the nature of the SLH program. Due to its similarities to the Medicaid Program, House Bill 1858 and Senate Bill 759 transferred administration of the SLH program to Department of Medical Assistance Services (DMAS). This legislation also required mandatory local participation, standard eligibility criteria and services, and a new funding formula based on the 1987 JLARC report cited above.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-333 grants to the Director of the Department Medical Assistance Services the authority to administer and amend the State/Local Hospitalization Program. The 1989 General Assembly approved HB 1858 and SB 759 to transfer this program's administrative responsibilities to DMAS. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's adoption of emergency regulations subject to the Governor's approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the Code requires this agency to initiate the public notice and comment process as contained in Article 2 of the APA.

   Without an emergency regulation, this administrative rule cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the July 1, 1989 effective date established by the General Assembly for this program's new administration.

8. FISCAL/BUDGETARY IMPACT: The Appropriations Act contained a General Fund appropriation of $11,499,340 to DMAS to accommodate the administrative transfer as well as to provide for equal program access and localities' unmet demands for SLH funding. Reorganization and expansion of local programs address the lack of three key elements. They are uniform eligibility criteria, similar service guidelines in every locality, and statewide participation in the program. The State's overall funding share was also increased from 75% to an average of nearly 80% with each locality's share determined by its ability to pay. The appropriation included $300,000 for DMAS' administrative costs associated with program execution. The use of these administrative dollars shall be subject to the Governor's approval of the DMAS' SLH operating plan. The plan's goal is to ensure effective program supervision and policy development.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective on July 1, 1989. From its effective date, this regulation is to remain inforce for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department would lack the authority to administer the State/Local Hospitalization Program.

10. APPROVAL SOUGHT FOR VR460-05-1000.0000.

    Approval of the Governor is sought for an emergency establishment of the SLH administrative rules in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the attached regulation.

§ VR 460-05-1000.0000. State/Local Hospitalization Program.

*Article 1.*

*§ 1.1. Definitions.*

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

*"SLHP" means the State/Local Hospitalization Program.*

*"Locality" means any city or county which is required by law to participate in the SLHP.*

*"MAP" means the Medical Assistance Program, also known as "Medicaid".*

*"State Plan" means the State Plan for Medical Assistance for the Commonwealth of Virginia.*

*"Department" means the Department of Medical Assistance Services.*

*Article 2.*
*Services Covered.*

*§ 2.1. Amount, duration, and scope of services covered.*

*The amount, duration, and scope of services covered by the SLHP shall be comparable to the amount, duration,*

*and scope of the same services covered by the MAP pursuant to the State Plan.*

*§ 2.2. Changes is amount, duration, and scope of services covered.*

*Changes in the amount, duration, and scope of services covered by the MAP shall, unless modified by the Board of Medical Assistance Services pursuant to § 32.1-335A, automatically change the amount, duration, and scope of services covered by the SLHP.*

*§ 2.3. Health department clinic reimbursement.*

*Reimbursement to health department clinics and outpatient hospital clinics shall be an all inclusive fee per visit and at the rate prescribed in the statute for outpatient hospital services.*

*§ 2.4. Emergency services reimbursement.*

*Reimbursement for hospital emergency room services shall be an all inclusive fee per visit and shall be reimbursed at the rate prescribed in the statute.*

*Article 3.*
*Eligibility.*

*§ 3.1. Eligibility criteria.*

*An individual is eligible to receive SLHP services if he:*

*A. has filed an application with the locality where he resides within thirty days of discharge, in the case of inpatient services, or within thirty days of the date of service, in the case of outpatient services;*

*B. is a bona fide resident of the locality to which he has applied;*

*C. has a net countable income, using the current budget methodology of the Virginia Aid to Dependent Children Program, equal to or less than 100% of the federal poverty income guidelines as published for the then current year in the Code of Federal Regulations, except that localities which in fiscal year 1989 used a higher income level may continue to use the same income level; and*

*D. has net countable resources, using the current budget methodology of the Virginia Aid to Dependent Children Program, equal to or less than the then current resource standards of the federal Supplemental Security Income Program.*

## DEPARTMENT OF MOTOR VEHICLES

Title of Regulation: **VR 485-60-8901. Motor Vehicle Dealer Advertising Practices and Enforcement Regulations.**

Statutory Authority: §§46.1-26, 46.1-520 and 46.1-550.5:41 of the Code of Virginia.

Effective Dates: July 1, 1989 through June 30, 1990

PREFACE

*A. The Commissioner of the Department of Motor Vehicles of the Commonwealth of Virginia, pursuant to Virginia Code Sections 46.1-26, 46.1-520 and 46.1-550.5:41, hereby adopts the following regulations relating to the enforcement of Article 7 of Chapter 7 of Title 46.1 (§46.1-515 et seq.) of the Code of Virginia relating to Motor Vehicle Dealer Advertising.*

*B. Further, the Commissioner of the Department of Motor Vehicles finds that an emergency situation exists necessitating the immediate promulgation of the following regulations. Such emergency precludes promulgation by the usual procedures of Article 2 of the Virginia Administrative Process Act (APA) (Virginia Code § 9-6.14:1 et seq.). Accordingly, these regulations are excluded from the operation of Article 2 of the APA and are promulgated pursuant to Virginia Code § 9-6.14:4.1.C.5.*

*The nature of the emergency and the necessity for emergency regulations is that the effective date of the legislation which established the Motor Vehicle Dealer Advertising Article (Chapter 308 of the 1989 Acts of Assembly) is July 1, 1989, and § 46.1-520 of the Virginia Motor Vehicle Dealer Licensing Act provides in part that a copy of the regulations shall be mailed to each motor vehicle dealer licensee thirty days prior to the effective date of the regulations. Because Chapter 308 was not approved until March 22, 1989, and because the normal procedure for adoption of regulations pursuant to the APA requires a minimum of 210 days, it would be impossible to have regulations in place by the effective date of Chapter 308 except by the adoption of emergency regulations.*

*These emergency regulations shall be in effect as of July 1, 1989, and shall remain in effect until June 30, 1990 unless sooner superseded by permanent regulations pursuant to Article 2 of the APA.*

*Action to promulgate permanent regulations, including public comment, shall be initiated as soon as possible after July 1, 1989 and should be completed by March 31, 1990. Such permanent regulations shall be as herein contained except for changes deemed necessary or desirable in light of public comment, and except that paragraphs B. and C. of the preface shall be eliminated.*

*The Department of Motor Vehicles will receive, consider and respond to any petitions to reconsider or revise these emergency regulations which are filed by any interested person prior to the expiration of those emergency regulations.*

/s/ Donald E. Williams
Commissioner
Department of Motor Vehicles
Commonwealth of Virginia
Date: June 22, 1989

*PART I.*
*GENERAL PROVISIONS.*

*§ 1.1. Intent.*

*In the 1989 Acts of the Virginia General Assembly it was found that it is in the interest of the consuming public and legitimate motor vehicle dealers to insure that the advertising of motor vehicles is honest, fair, and clear and that deceptive or misleading advertising of the retail sales of motor vehicles as described in Motor Vehicle Dealer Advertising, Article 7, (§ 46.1-550.5:39 et seq.) should be prohibited. Therefore, the following regulations are promulgated to administer the administrative and civil penalties necessary for enforcement of prohibited advertising practices.*

*§ 1.2. Definitions.*

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

*"Act" means Chapter 7 of Title 46.1 of the Code of Virginia.*

*"Administrative penalties" means the denial, suspension or revocation of a license as allowed in § 46.1-550.5:35 of the Act and based on one or more of the grounds specified in § 46.1-550.5:34 of the Act.*

*"Advertiser" means same as licensee.*

*"Civil penalty" means the monetary assessment imposed by the Commissioner against a licensee not to exceed one thousand dollars for any single violation of § 46.1-550.5:40:*

*"Commissioner" means the Commisioner of the Department of Motor Vehicles of this Commonwealth.*

*"Disclaimer" means those words or phrases used to provide a clear understanding or limitation to an advertised statement but not used to contradict or change the meaning of the statement.*

*"Disclosure" means a statement in clear terms of the dollar amounts, time, frames, down payments and other terms which may be needed to provide a full understanding of credit terms, periodic payment, interest rates, time payment plans, etc.*

*"Department" means the Department of Motor Vehicles of this Commonwealth.*

*"License" means the document issued to a Virginia motor vehicle dealer and which permits such deales to engage in the business of buying and selling new and used motor vehicles or used motor vehicles only.*

*"Licensee" means any person, partnership, association, corporation or entity which is required to be licensed as a motor vehicle dealer in this Commonwealth.*

*"Line-make marketing group" means an association of motor vehicle dealers franchised to sell and advertise the same line-make of new motor vehicles.*

*"New motor vehicle" means a vehicle which meets all of the following criteria:*

*A. It has had limited use necessary in moving or road testing the vehicle prior to delivery to a customer;*

*B. It is transferred by a manufacturer's or distributor's certificate of origin which is the document provided by the manufacturer of a new motor vehicle, or its the manufacturer of a new motor vehicle dealer;*

*C. It has the manufacturer's or distributor's certification that it conforms to all applicable federal motor vehicle safety and emission standards;*

*D. It has not been previously sold by a dealer except for the purpose of resale and when the exchange is between franchised dealers of the same line-make;*

*E. It has not been used as a rental, driver education, or demonstration motor vehicle; and*

*F. It has not been used for the personal and business transportation of the manufacturer, distributor or dealer or any of their employees.*

*"Sale" means there is a significant reduction from the advertiser's usual and customary price of a motor vehicle and the offer is for a limited period of time.*

*"Used motor vehicle" shall mean any vehicle other than a new motor vehicle as defined in these regulations.*

*PART II.*
*REGULATED ADVERTISING PRACTICES.*

*§ 2.1. Practices.*

*For purposes of these regulations, a violation of the following regulated advertising practices shall be an unfair, deceptive, or misleading act or practice:*

*A. New motor vehicle*

*1. A motor vehicle shall not be advertised as new, either by word or implication, unless it is one which conforms to the definition of a "new motor vehicle" as defined in Part I.*

B. Used motor vehicle

2. The fact that a motor vehicle is used should be clearly and unequivocally expressed by the term "used" or by such other term as is commonly understood to mean that the vehicle is used. For example, "special purchase" by itself is not a satisfactory disclosure; however, such terms as "demonstrator" or "former leased and/or rental vehicles" used alone clearly express that they meet the definition of a used vehicle for advertising purposes. When in doubt, the dealer should provide more information or simply say "used".

2. Once a certificate of origin as defined in § 46.1-516 has been assigned to a purchaser, the motor vehicle becomes a used vehicle and must be advertised as such.

C. Finance charges or interest rates advertisements -

1. Advertisements of finance charges or other interest rates "below market" (or words to that effect) shall not be used unless it is manufacturer or distributor sponsored or substantiated by a written agreement with the finance source.

D. Terms, conditions, and disclaimers

1. When terms, conditions or disclaimers are used, they must always be 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 be used as a means of contradicting or changing the meaning of an advertised statement. In addition, they must meet the Federal Trade Commission Truth in Lending Act Requirements (Regulation Z).

2. In all printed media, where terms, conditions or disclaimers are used, they must be clearly and conspicuously visible and printed in not less than 6 point upper case type print. When billboards, portable signs, posters, etc. are used, all terms, conditions or disclaimers need to be displayed and phrased in a manner which are clear and conspicuous.

3. In radio ads, where terms, conditions or disclaimers are used, they must be clearly announced during the ad. They must be explained clearly and at an understandable speed and volume level.

4. In television ads, where terms, conditions or disclaimers are used, they must be clearly and conspicuously displayed and/or announced during the ad. They must be at an understandable speed and/or volume level.

E. Sales(s)

The expiration date of an advertised "sale" shall be clearly and conspicuously disclosed. If the sale exceeds thirty days, the advertiser should be prepared to substantiate that the offering is indeed a valid reduction and has not become his regular price.

F. "List price,""sticker price," "suggested retail price".

These terms and similar terms shall be used only as follows:

a. In reference to the manufacturer's or distributor's suggested retail price for new vehicles, or

b. The dealer's own usual and customary price for used vehicles.

G. "Cost" and "invoice price" terms

1. "At cost," "below cost," "$ off cost" shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of sale.

2. "Invoice price," "$ over invoice," may be used, provided that the invoice referred to is the manufacturer's factory invoice, distributor's invoice, or a bona fide bill of sale is available for customer inspection.

3. "Manufacturer's factory invoice" or "distributor's invoice" means that document supplied by the manufacturer or the distributor listing the manufacturer's or distributor's charge to the dealer before any deduction for items such as holdback, group advertising, factory incentives or rebates, or any governmental charges.

Price or credit terms of advertised vehicles

1. When the price of credit terms of a vehicle are advertised in print, radio, or television, the vehicle should be fully identified as to year, make, and model. In addition, in all advertisements placed by individual dealers and not marketing groups, the stated price or credit terms shall include all charges which the buyer must pay to the seller including "freight" or "destination charges". State and local fees and taxes need not be included in the stated price. If the buyer will be required to pay to the seller charges which increase the advertised price, the charges must be disclosed and priced in the advertisement.

I. Matching or bettering competitor's price ads

1. Advertisements which set out a policy matching or bettering competitor's price shall not be used unless the terms of the offer are specific, verifiable, and reasonable. All terms of the offer must be included in the disclosure and disclaimer area and cannot say such things as "rules or terms available in showroom" or "available before delivery". You must fully disclose

as a part of the ad any material or significant conditions which must be met or the evidence the consumer must present to take advantage of the offer.

J. Advertisements of dealer rebates shall not be used.

a. Offers to match down payments or guarantee minimum trade-in allowances are forms of dealer rebates.

K. "Free," "at no extra cost" terms.

1. In a negotiated sale no "free", "at no cost" (or any words to that effect) offer of equipment, accessory, other merchandise or service, shall be made. No equipment, acessory, other merchandise or service shall be described as "free" or "at no cost", if its cost, or any part of its cost, is included in the price of the vehicle, or if the vehicle can be purchased for a lesser price without accepting the free offer.

L. "Bait advertising", shall not be used.

1. If a specific vehicle is advertised, the seller shall be in possession of a reasonable supply of said vehicles and they shall be available at the advertised price. If the advertised vehicle is available only in limited numbers or only by order, that shall be stated in the ad. For purposes of these guidelines, the listings of a vehicle by stock number of vehicle identification number in the advertisement is permissible for a used vehicle , and is one means of satisfactorily disclosing a limitation of availability. For new vehicles, if the offer is limited, you will be able to say such things as "in stock" or "will order" provided you can order the vehicle just as advertised and delivery can be assured as soon as the manufacturer or distributor can confirm the order and deliver to your dealership. If you cannot get an order confirmation within thirty days, you must refund all monies collected from the buyer at his request. If the vehicle is available only by order then it must be clearly and conspicuously disclosed in the advertisement.

2. Advertising a vehicle at a certain price (including "as low as" statements), but having available for sale only vehicles equipped with dealer added cost "options" which increase the selling price, above the advertised price, may also be considered "bait advertising".

3. If a lease payment is advertised, the fact that it is a lease arrangement shall be disclosed.

M. Term "repossessed vehicle" means a vehicle which meets all of the following criteria:

1. It has been sold, titled, registered, and taken back from a purchaser; and

2. Has not yet been resold to an ultimate user.

N. "Finance" or "loan".

1. Words such as "finance" or "loan" shall not be used in a motor vehicle dealer advertiser's firm name or trade name, unless that person is actually engaged in the financing of motor vehicles.

O. "Special arrangement or relationship" advertisements.

1. Statements such as "big volume buying power", "manufacturer's outlet", "factory authorized outlet", and "factory wholesale outlet", shall not be used. Any term that gives the consumer the impression the dealer has a special arrangement with the manufacturer or distributor as compared to similarly situated dealers, is misleading and shall not be used.

P. "Records retention".

1. Advertisers must maintain the original or a clear facsimile copy of all ads in a manner that permits systematic retrieval for a period of 60 days subsequent to the expiration date of the advertised sale.

PART III.
ENFORCEMENT.

In addition to any other sanctions or remedies available to the Commissioner under the Act, the following regulations are adopted to enforce the regulated advertising practices set forth in § 46.1-550.5:40 and as described in Part II.

§ 3.1. Administrative and Civil Penalties.

A. Violations of any regulated advertising practice may, in the discretion of the Commissioner, be addressed by a written warning to the licensee as an initial step in the enforcement process.

B. Any single violation of a regulated advertising practice may also, after an informal fact finding proceeding as provided in the Administrative Process Act (§ 9-6.14:1 et seq.), result in an assessment of a civil penalty up to one thousand dollars.

C. Subsequent same or similar violations may after an informal fact finding proceeding as provided in the Administrative Process Act (§ 9-6.14:1 et seq.), result in an assessment of a civil penalty up to the one thousand dollars and may also be grounds for denying, suspending or revoking a license subject to the hearing requirements pursuant to § 46.1-550.5:35 of the Act, either or both.

§ 3.2. Appeals.

A. The action of the Department in suspending, revoking or refusing any license or in imposing a monetary civil penalty against the licensee shall be subject to judicial review as provided in §§ 46.1-550.5:36 and 46.1-550.5:37 of the Act.

*§ 3.3. Other enforcement.*

*A. These regulations and the provisions of Article 7 (§ 46.1-550.5:39 et seq.), Chapter 7 of Title 46.1 of the Code of Virginia shall be in addition to and not a substitute for the powers and authority granted pursuant to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) or of any other provision of the Code of Virginia.*

Approved:

/s/ Vivian E. Watts
Secretary
Transportation and Public Safety
Date: June 9, 1989

Approved:

/s/ Gerald L. Baliles
Governor
Date: June 23, 1989

Filed by:

/s/ Joan W. Smith
Date: June 26, 1989 - 2:27 p.m.

**STATE CORPORATION COMMISSION**

AT RICHMOND, JUNE 16, 1989

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS890325

Ex Parte: In the matter of adopting
Rules Governing Underwriting Practices
and Coverage Limitations and Exclusions
for Acquired Immune Defficiency Syndrome
(AIDS)

ORDER SETTING HEARING

WHEREAS, Virginia Code § 12.1-13 provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction and Virginia Code §§ 38.2-223, 38.2-316, 38.2-508, 38.2-610, 38.2-3100.1 and 38.2-3401 provide that the Commission is authorized to issue reasonable rules and regulations necessary to regulate underwriting practices and policy limitations and exclusions with regard to Acquired Immune Deficiency Syndrome (AIDS);

WHEREAS, the Bureau of Insurance has submitted to the Commission a proposed regulation entitled "Rules Governing Underwriting Practices and Coverage Limitations and Practices and Coverage Limitations and Exclusions for Acquired Immune Deficiency Syndrome (AIDS)";

WHEREAS, said regulation concerns a subject appropriate for Commission regulation; and

WHEREAS, the Commission is of the opinion that a hearing should be held on the proposed regulation, at which hearing all persons in interest may appear and be heard,

IT IS ORDERED:

(1) That the proposed regulation entitled "Rules Governing Underwriting Practices and Coverage Limitations and Exclusions for Acquired Immune Deficiency Syndrome (AIDS)" be appended hereto and made a part hereof, filed and made a part of the record herein;

(2) That this matter be docketed and assigned Case No. INS890325, and that a hearing be held before the Commission's Hearing Examiner, who is hereby appointed to conduct a hearing on behalf of the Commission pursuant to the authority granted the Commission in Virginia Code § 12.1-31, in the Commission's Third Floor Courtroom, Jefferson Building, Bank and Governor Streets, Richmond, Virginia, at 10:00 a.m. on July 17, 1989, for the purpose of considering the adoption of the proposed regulation, at which time and place all interested persons may appear and be heard with respect to the proposed regulation;

(3) That, in accordance with § 12.1-31 of the Code of Virginia, a Hearing Examiner shall conduct all further proceedings in this matter on behalf of the Commission, concluding with the filing of the Examiner's final report to the Commission. In the discharge of such duties, the Hearing Examiner shall exercise all the inquisitorial powers possessed by the Commission, including, but not limited to, the power to administer oaths, require the appearance of witnesses and parties and the production of documents, schedule and conduct prehearing conferences, admit or exclude evidence, grant or deny continuances, and rule on motions, matters of law and procedural questions. Any party objecting to any ruling or action of said Examiner shall make known its objection with reasonable certainty at the time of the ruling, and may argue such objections to the Commission as a part of its comments to the final report of said Examiner; provided, however, if any ruling by the Examiner denies further participation by any party in interest in a proceeding not thereby concluded, such party shall have the right to file a written motion with the Examiner for his immediate certification of such ruling to the Commission for its consideration. Pending resolution by the Commission of any ruling so certified, the Examiner shall retain procedural control of the proceeding;

(4) That the Hearing Examiner hereinbefore appointed shall cause the testimony taken at such hearing to be reduced to writing and promptly deliver his written findings and recommendations together with the transcript of the hearing to the Commission for its consideration and judgment;

(5) That an attested copy hereof together with a copy of the proposed regulation be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky who shall forthwith give further notice of the proposed regulation and hearing by mailing a copy of this order together with a copy of the proposed regulation to every insurance company licensed to sell life and accident and sickness insurance policies in the Commonwealth of Virginia and every health services plan and health maintenance organization licensed to do business in the Commonwealth of Virginia; and

(6) That the Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (5) above.

* * *

Section 1. Authority.

This Regulation is issued pursuant to the authority vested in the Commission under Sections 38.2-223, 38.2-316, 38.2-508, 38.2-610, 38.2-3100.1 and 38.2-3401 of the Code of Virginia.

Section 2. Purpose.

The purpose of this Regulation is to set forth rules and procedural requirements that the Commission deems necessary to regulate underwriting practices and policy limitations and exclusions with regard to Acquired Immune Deficiency Syndrome (AIDS).

Section 3. Effective Date.

This Regulation shall become effective January 1, 1990.

A. No new application, policy, subscription contract or rider as described in Section 4 shall be approved on or after January 1, 1990, unless it complies with this Regulation.

B. No application shall be used and no policy, subscription contract or rider as described in Section 4 shall be delivered, issued for delivery, reissued, renewed or extended in Virginia nor shall any term of the policy, contract or rider be changed or premium adjustment be made, on or after January 1, 1990, unless it complies with this Regulation.

Section 4. Scope.

This Regulation shall apply to all life and accident and sickness insurance policies, and all health service plans and health maintenance organization subscription contracts delivered or issued for delivery in this Commonwealth, and to all applications, riders, and underwriting procedures used in connection with such policies or subscription contracts. This Regulation shall apply to all such coverage delivered or issued for delivery in Virginia, whether individual or group.

Section 5. Definitions.

As used in this Regulation:

A. "Adverse Underwriting Decision" means any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

1. A declination of insurance coverage,

2. A termination of insurance coverage,

3. Failure of an agent to apply for insurance coverage with a specific institution that an agent represents and that is requested by an applicant,

4. An offer to insure at higher than standard rates, or with limitations or exceptions or benefits other than those applied for.

B. "AIDS" means Acquired Immune Deficiency Syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

C. "HIV" means the human immunodeficiency virus.

D. "HIV-related test" means a test for infection with HIV, including antibody tests such as the ELISA or Western Blot assays, or any future valid test approved by the Commission.

E. "Insurance" means any coverage provided by an insurer.

F. "Insurer" means any insurance company, health services plan, or health maintenance organization licensed in this Commonwealth.

Section 6. Underwriting Procedures.

A. Insurers may underwrite for Acquired Immune Deficiency Syndrome (AIDS) or HIV infection provided the underwriting procedures, including the questions used on the application for life or accident and sickness insurance coverage, are consistent and not unfairly discriminatory.

1. Questions relating to the applicant having or having been diagnosed as having AIDS or HIV infection are permissible if they are factual and designed to establish the existence of the condition.

2. An adverse underwriting decision is permissible if, during the underwriting process, it is revealed that the applicant has been diagnosed as having AIDS or HIV infection.

3. An adverse underwriting decision is not permissible if it is based solely on the presence of symptoms, as disclosed in an application for life or accident and sickness insurance coverage, indicating the possible existence of AIDS or HIV infection. An adverse underwriting decision is permissible, however, if the symptoms disclosed in the application for coverage are confirmed as being HIV-related through the use of HIV-related tests as provided in Section 6.C.

B. No inquiry in an application for life or accident and sickness insurance coverage, or in an investigation conducted by an insurer or an insurance support organization on its behalf in connection with an application for such coverage, shall be directed toward determining the applicant's sexual orientation.

1. No question that is designed to establish the sexual orientation of the applicant shall be used on an application for life or accident and sickness insurance coverage.

2. Neither the marital status, the "living arrangements," the occupation, the gender, the medical history, the beneficiary designation, nor the zip code or other territorial classification of an applicant may be used to establish, or aid in establishing, the sexual orientation of the applicant.

3. If information about an applicant's sexual orientation becomes known through other means, no adverse underwriting decision shall be made based solely on such information.

4. Questions relating to medical and other factual matters intending to reveal the possible existence of a medical condition are permissible if they are not used as a proxy to establish the sexual orientation of the applicant. The applicant must be given an opportunity to provide an explanation of any answers given in the application for life or accident and sickness insurance coverage that may result in an adverse underwriting decision.

5. Questions relating to an applicant having, or having been diagnosed as having, or having been advised to seek treatment for, a sexually transmitted disease are permissible.

6. No adverse underwriting decision shall be made solely because medical records or a report from an insurance support organization as defined in Section 38.2-602 shows that an applicant has demonstrated AIDS-related concerns by seeking preventative educational counseling or advice from health care professionals. This prohibition does not apply to an applicant diagnosed as having been infected with the HIV or seeking treatment for AIDS.

C. Insurers may require applicants for life or accident and sickness insurance coverage to be tested for the presence of HIV infection, provided the procedures are consistent, accurate, and not unfairly discriminatory.

1. If an HIV-related test is not required for all applicants, insurers may test a specific class of applicants based on type or face amount of coverage being requested or late entrance under a group insurance policy or subscription contract. In all other cases, the insurer must have a medical basis for requiring individual applicants to take an HIV-related test.

2. Whenever an applicant is requested to take an HIV-related test in connection with an application for life or accident and sickness insurance coverage, the use of such a test must be revealed to the applicant and his or her written consent obtained. The consent form does not need to be filed with the Commission but must disclose:

a. The individuals or organizations that will receive a copy of the test results;

b. The individuals or organizations that will have access to the applicant's insurance file;

c. The individuals or organizations that will keep the blood test information in a data bank or other file;

d. The name and address of the person to be notified of the HIV test results. The applicant may choose to receive the test results directly or designate another person such as a physician; and

e. That if the person being tested does not designate a person or physician as provided in Section 6.C.2.d of this regulation, personal face-to-face counseling is available through the Virginia Department of Health. To obtain information regarding counseling, a person should contact their local health department. Additional information concerning AIDS or HIV infection can be obtained by calling the Virginia Health Department at 1-800-533-4148.

3. Insurers shall not send test results or notification of an Adverse Underwriting Decision, to the applicant if another person is named on the consent form as provided in Section 6.C.2.d of this regulation.

4. Insurers shall maintain strict confidentiality regarding HIV-related test results or the diagnosis of a specific sickness or medical condition derived from such tests.

a. Information regarding specific HIV-related test results shall not be disclosed outside the insurance company or its employees, insurance affiliates, agents or reinsurers except to the applicant being tested or persons designated in the consent form by the applicant.

b. Specific HIV-related test results may not be furnished to an insurance industry data bank if a review of the information would identify the individual and the specific test results.

c. The use of an insurance industry data bank code for a general blood disorder which is not specific to the HIV infection is permissible.

5. No adverse underwriting decision shall be made on the basis of positive HIV-related test results unless based on, as a minimum, the following test protocol: (i) two positive enzyme-linked immunosorbent assay (ELISA) tests, followed by (ii) one Western Blot. If the results of the Western Blot are indeterminate and the insurer makes a decision to delay issuing the insurance coverage, an adverse underwriting decision notice must be issued.

6. New and more effective HIV-related tests are anticipated to be developed in the future. If, in the opinion of the Commission, the medical community and public health officials establish that future tests are superior to the existing protocol, they may be used instead of the above.

7. An insurer may include questions on the application for life or accident and sickness insurance coverage as to whether the applicant has tested positive for the presence of HIV infection.

a. No adverse underwriting decision shall be made concerning an applicant who has tested positive for the presence of HIV infection unless the insurer determines that the test protocol outlined in paragraph C.5, or C.6 if applicable, of this section was followed.

b. Nothing in this section prohibits an insurer from requiring such an applicant to be re-tested if the insurer is unable to make a determination that the proper test protocol was followed.

8. An adverse underwriting decision is permissible if the applicant refuses to take an HIV-related test requested by the insurer.

9. If an insurer requires an applicant to be tested for the presence of HIV infection as a condition of underwriting, the cost of testing must be borne by the insurer to the same extent that the insurer bears the cost for any other tests required in the underwriting process.

Section 7. Prohibition on Coverage Limitations and Exclusions.

The following policy limitations and exclusions are prohibited under this regulation:

A. Any life or accident and sickness insurance policy, any health services plan or health maintenance organization subscription contract or any rider used in connection with such policies or subscription contracts that excludes coverage for the treatment of Acquired Immune Deficiency Syndrome (AIDS) or complications or death resulting from such disease.

B. Any life or accident and sickness insurance policy, any health services plan or health maintenance organization subscription contract or any rider used in connection with such policies or subscription contracts that places a dollar limit on face amount or benefits payable for the treatment of Acquired Immune Deficiency Syndrome (AIDS) or complications or death resulting from such disease (other than the overall policy maximum or face amount).

C. A "pre-existing condition" limitation related to Acquired Immune Deficiency Syndrome (AIDS) that is:

1. Defined to be more restrictive than the following:

a. The existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment within a five (5) year period preceding the effective date of the coverage of the insured person; or

b. A condition for which medical advice or treatment, not including preventative educational counseling, was recommended by a physician or received from a physician within a five (5) year period preceding the effective date of the coverage of the insured.

2. Based on the sole existence of a positive HIV-related test result, following the protocol as described in Section 6.C, without the manifestation of symptoms or actual diagnosis of AIDS. Claims may not be denied as a pre-existing condition solely on the existence of a positive HIV-related test result without the manifestation of symptoms or actual diagnosis of AIDS.

Section 8. Severability.

If any provisions of this Regulation, or the application of it to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Regulation which can be given effect without the invalid provision or application, and to that end the provisions of this regulation are severable.

* * * * * * * * *

AT RICHMOND, JUNE 21, 1989

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE880109

Ex Parte, in re: Investigation into the promulgation of gas submetering standards and regulations.

ORDER DIRECTING PUBLIC NOTICE AND INVITING COMMENT

Section 56-245.3 of the Code of Virginia requires the State Corporation Commission (Commission) to promulgate rules under which submetering equipment may be installed in each dwelling unit, rental unit or store to fairly allocate each unit's cost of gas consumption and gas demand or customer charges.

Pursuant to orders dated December 15, 1988 and December 21, 1988, the Commission directed the Commission's Staff to investigate the issue of gas submetering, to coordinate a Gas Submetering Task Force from which it may obtain relevant and useful information, and to file a Report with the Commission with proposed gas submetering rules. Upon conducting its investigation and pursuant to our direction, the Staff filed its Report on May 31, 1989.

In the Report, the Staff recommended that the gas submetering rules mirror, in large part, the currently approved electric submetering rules. To that end, the Staff has proposed to establish one set of rules for electric and gas submetering, thereby, in effect, modifying the currently approved electric submetering rules.

The Staff Report further discusses a number of issues raised by the Task Force members to include the applicable standard by which to measure gas consumption and the experience of other State Commissions regarding gas submetering. It appears, however, that the most controversy arises from whether the Statute authorizes this Commission to regulate gas timing devices.

NOW THE COMMISSION, having reviewed the Staff's Report, appendices, and the applicable law, is of the opinion and finds that notice of the proposed policies and conclusions contained in the Staff's Report and the proposed rules should be made available to all interested persons, and that such persons should be provided an opportunity to comment on these proposals and to request a hearing. If any requests for hearing are received after such publication, the Commission will issue a subsequent order addressing these requests. In the absence of a request for a hearing, the Commission may decide to act on the recommendations contained in the Staff's Report after considering all written comments.

Accordingly, IT IS ORDERED:

(1) That on or before July 21, 1989, the Commission's Division of Energy Regulation shall cause a copy of the following notice to be published once a week for two consecutive weeks in newspapers having general circulation throughout the Commonwealth:

NOTICE OF CONSIDERATION BY THE VIRGINIA STATE CORPORATION COMMISSION OF PROPOSED RULES GOVERNING GAS SUBMETERING UNDER VIRGINIA CODE § 56-245.3 - CASE NO. PUE880109

Section 56-245.3 of the Code of Virginia requires the State Corporation Commission to promulgate rules under which submetering equipment may be installed in each dwelling unit, rental unit or store to fairly allocate each unit's cost of gas consumption and gas demand or customer charges.

Pursuant to orders dated December 15, 1988, and December 21, 1988, the Commission directed the Commission's Staff to investigate the issue of gas submetering, to coordinate a Gas Submetering Task Force from which it may obtain relevant and useful information, and to file a Report with the Commission with proposed gas submetering rules. Upon conducting its investigation and pursuant to the Commission's direction, the Staff filed its Report on May 31, 1989.

The Staff Report recommends the consolidation of the currently approved electric submetering rules with the proposed gas submetering rules in one set of uniform regulations. The Staff further recommends that timing devices, which measure the operation of a gas furnace or other appliance, do not come under the Commission's regulation because such equipment is not properly subject to Virginia Code § 56-245.3.

The text of the Staff's Report and accompanying appendices may be reviewed by the public at the State Corporation Commission's Document Control Center, located on Floor B-1 of the Jefferson Building, Bank and Governor Streets, Richmond, Virginia, from Monday through Friday, during its regular hours of operation, i.e., 8:15 a.m. to 5:00 p.m. In addition, the Staff Report and its accompanying appendices may be reviewed at each electric and gas utility's business office where utility bills may be paid.

Any interested person who wishes to submit written comments on the proposed recommendations contained in the Staff's Report and accompanying appendices or to request a hearing on the proposed recommendations contained in the Staff's Report must file an original and fifteen (15) copies of such comments or requests with George W. Bryant, Jr., Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216, not later than August 25, 1989. A copy of the request shall be served upon all persons reflected in the attestation paragraph of the Commission's June 21, 1989 order. If any hearing requests are received, the Commission will issue a subsequent order addressing such requests. In the absence of a request for a hearing, the Commission may decide to act on the recommendations contained in the Staff's Report after considering all written comments.

VIRGINIA STATE CORPORATION COMMISSION
DIVISION OF ENERGY REGULATION

(2) That any person, including the Commission's Staff and any person subject to the recommendations set forth in the May 31, 1989, Staff's Report, may file written comments concerning the Staff's recommendations and may request a hearing thereon, provided an original and fifteen (15) copies of the comments and any request for oral argument are filed no later than August 25, 1989, with George W. Bryant, Jr., Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216 and shall refer to Case No. PUE880109. If any requests for a hearing are received, the Commission will issue a subsequent order addressing such requests. In the absence of a request for a hearing, the Commission may decide to act on the proposed recommendations contained in the Staff's Report after considering all written comments. A copy of the comments shall be served upon all persons reflected in the attestation paragraph of the Commission's June 21, 1989 order in this case.

(3) That all Virginia gas and electric utilities subject to the Commission's jurisdiction shall forthwith make available for public inspection during normal business hours at their respective business offices where utility bills may be paid a copy of the May 31, 1989, Staff Report and accompanying appendices, and a copy of the Commission's June 21, 1989 order. A copy of the Staff Report and its appendices is incorporated as part of this Order as

Attachment A; and

(4) That, the Division of Energy Regulation shall upon completion provide proof of the publication required herein.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to each gas and electric company subject to the jurisdiction of this Commission; Mark Looney, Division Chief, Landlord Tenant Relations, City of Alexandria, Office of Housing, Box 178, City Hall, Alexandria, Virginia 22313; Stephen Sinclair, Utilities Analyst, Fairfax County Department of Consumer Affairs, 3959 Pender Drive, Suite 200, Fairfax, Virginia 22030; Frann Francis, General Counsel, Apartment and Office Building Association, 1413 K Street, N.W., Suite 600, Washington, D.C. 20005; Donna Hankin, Peninsula Housing and Homebuilder Association, 760 McGuire Place, Newport News, Virginia 23601; Michael Ellison, Economic Analyst, Attorney General's Office, Supreme Court Building, 101 North 8th Street, Richmond, Virginia 23219; Ed Fox, City of Richmond, Department of Public Utilities, Service and Metering Division, 1130 Overbrook Road, Richmond, Virginia 23220; Gerald Atterbury, YEM, P.O. Box 675, Hunt Valley, Maryland 21030; Utilitrol, Ed Leyden, 7222 Ambassador Road, Baltimore, Maryland 21207; American Gas Association, Jim Ranfone, 1515 Wilson Boulevard, Arlington, Virginia 22209; Daryl Gordon, CPM, Jerry Rhodes, CPM, Edmondson & Gallagher Property Services, 1350 Beverly Road, Suite 108, McLean, Virginia 22101; VMS Realty Partners, Joseph S. Bridgforth, Vice President - Eastern Division, Richard McGilvary, Construction Manager - Eastern Division, 600 Thimble Shoals Boulevard, Suite 350, Newport News, Virginia 23606; Roxanne O'Gara, GRH Electronics, Inc., 4520 South 36th Street, Omaha, Nebraska 68107; and to the Commission's Divisions of Energy Regulation, Economic Research and Development, and Accounting and Finance.

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**Bureau of Insurance**

June 15, 1989

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION
v. CASE NO. SRC890040
Ex Parte, in re: Promulgation
of rules pursuant to Virginia
Code § 13.1-523 (Securities Act)

ORDER ADOPTING RULES

*On or about April 19, 1989, the Division and Retail Franchising of the State Corporation Commission gave notice to interested persons and to the general public of proposed rules designed to implement recently enacted amendments of the Securities Act (Va. Code § 13.1-501 et seq.) and to amend or repeal a number of the existing Securities Act Rules. In response to the notice, a number of written comments and a request for an opportunity to be heard with respect to the proposed rules were received. By order dated May 26, 1989, the Commission scheduled a hearing for June 7, 1989.*

*This matter came on for hearing as scheduled. The Commission heard the oral comments of one party and the testimony of another party as well as the Director of the Division of Securities and Retail Franchising. As a result of the testimony and comments, the Commission is of the opinion and finds that the proposed changes to Rule 504 should be modified in certain respects and that all of the other proposed rules, rule amendments and rule deletions should be adopted as proposed; it is, therefore, ORDERED:*

*(1.) That the proposed additions, deletions and amendments, as modified, to the Securities Act Rules considered in this proceeding, a copy of which is attached hereto and made a part hereof, be, and they hereby are, adopted;*

*(2.) That Secutities Act Rule 403 shall become effective as of the date of this Order; and*

*(3.) That all other additions, deletions and amendments referred to in paragraph (1) above shall become effective as of July 1, 1989.*

*AN ATTESTED COPY hereof, including the attachment, shall be sent to each of the following: Any person who appeared at the aforesaid hearing; Securities Regulation and Law Report, c/o The Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D. C. 20037; and, Blue Sky Law Reporter, c/o Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Illinois 60646.*

s/s/ George W. Bryant, Jr.
Clerk of the State Corporation Commission

* * *

*ARTICLE II.*
*BROKER-DEALERS, BROKER-DEALER AGENTS AND AGENTS OF THE ISSUER.*

*Registration, Expiration, Renewal, Updates and Amendments, Termination, Changing Connection, Merger or Consolidation, Examinations/Qualification, Financial Statements and Reports.*

*BROKER-DEALERS.*

*Rule 200. Application for Registration as a Broker-Dealer.*

*A. Application for registration as a broker-dealer shall be filed with the Commission at its Division of Securities and Retail Franchising and/or such other entity designated by the Commission on and in full compliance with forms prescribed by the Commission and shall include all information required by such forms.*

*B. An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer unless the following executed forms, fee and information are submitted to the Commission:*

*1. Form BD (adopted by Rule 800).*

*2. Statutory fee payable to the Treasurer of Virginia in the amount of $200.00 pursuant to § 13.1-505 F of the Act.*

*3. All items included on the Virginia Supplemental Sheet to Form BD.*

*4. A signed and executed Agreement for Inspection of Records form.*

*5. A copy of the firm's written supervisory procedures. Sole proprietorships are excluded.*

*6. Financial statements required by Rule 207.*

*7. Evidence of exam requirements for principals required by Rule 206.*

*8. Any other information the Commission may require.*

*C. The Commission shall either grant or deny each application for registration within thirty (30) days after it is filed, but this period may be extended if additional time is required for formal hearing on the application.*

*Rule 201. Expiration.*

*A broker-dealer's registration, and any renewal thereof, shall expire annually at midnight on the thirty-first day of December, unless renewed in accordance with Rule 202.*

*Rule 202. Renewals.*

*A. To renew its registration, a NASD member broker-dealer will be billed by the NASAA/NASD Central Registration Depository the statutory fee of $200.00 prior to the annual expiration date. A renewal of registration shall be granted as of course upon payment of the proper fee together with any surety bond that the Commission may, pursuant to Rule 307, require unless the registration was, or the renewal would be, subject to revocation under § 13.1-506.*

*B. Any other broker-dealer shall file with the Commission at its Division of Securities and Retail Franchising the following items at least thirty (30) days prior to the expiration of registration.*

*1. Application for Renewal of a Broker-Dealer's Registration (Form S.A.2) accompanied by the statutory fee of $200.00.*

*2. Financial Statements:*

*(a) The most recent certified financial statements prepared by an independent accountant in accordance with generally accepted accounting principles, as promulgated by the American Institute of Certified Public Accountants. "Certified Financial Statements," "Financial Statements" and "Independent Accountant" shall have the same definition as those terms are defined under subsection B.1, 2, and 3 of Rule 207.*

*(b) If the most recent certified financial statements precede the date of renewal by more than 120 days, the registrant must submit:*

*(1) The certified financial statements required by subsection B.2.(a) of this Rule within sixty (60) days after the date of the financial statements, and;*

*(2) A copy of the most recent Part II or Part II A filing of Form X-17A-5 prepared in accordance with Securities Exchange Act Rule 12a-5 (17 CFR 240.17a.5), as amended.*

*(c) Whenever the Commission so requires, an interim financial report shall be filed as of the date and within the period specified in the Commission's request.*

*Rule 203. Updates and Amendments.*

*A. A NASD member broker-dealer shall update its Form BD as required by Form BD instructions and shall file all such amendments on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with the RULES prescribed by the Commission.*

*B. Any other broker-dealer shall update its Form BD as required by Form BD instructions and shall file all such amendments with the Commission at its Division of Securities and Retail Franchising.*

*C. If registrant changes its name or address a newly executed Agreement for Inspection of Records form must be submitted to the Commission.*

*Rule 204. Termination of Registration.*

*A. When a NASD member broker-dealer desires to terminate its registration, it shall file Form BDW in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with the RULES prescribed by the Commission.*

*B. Any other broker-dealer shall file a Form BDW with the Commission at its Division of Securities and Retail Franchising.*

*Rule 205. Broker-dealer Merger or Consolidation.*

When there is a merger or consolidation of two or more registrants, the surviving or new corporation shall amend or file, as the case may be, Form BD (the filing of a Form BD requires the payment of a $200.00 fee) and shall file a copy of the certificate of merger or consolidation, the plan of merger or consolidation, the amended or new charter and by-laws, any documents or explanation, Agreement for Inspection of Records, the current financial statements of the surviving or new corporation and surety bond, if necessary. Such amendment and/or filing shall be made immediately after the merger or consolidation becomes effective, except that the required financial statements shall be filed within thirty (30) calendar days of the effective date of the merger or consolidation. The registration of the surviving or new corporation usually will be granted by the Commission on the same date that the merger or consolidation becomes effective. Each agent of the non-surviving or new corporation shall comply with Rule 208 before registration as an agent with his new employer becomes effective. Every other agent of the defunct corporation(s) shall comply with Rule 208 or Rule 212, whichever may be applicable.

Rule 206. Examinations/Qualifications.

A. Broker-Dealers Registered Pursuant to Section 15 of the Securities Exchange Act of 1934.

1. All principals of an applicant for registration as a broker-dealer must provide the Commission with evidence of a minimum passing grade of 70% on the Uniform Securities Agent State Law Examination - Series 63 (USASLE-Series 63).

2. In lieu of meeting the examination requirement described in subsection A.1 of this Rule, at least two principals of an applicant may provide evidence of having passed the General Securities Principal Qualification Exam (Series 24). For the purposes of this subsection A, the term "principal" means any person associated with a broker-dealer who is engaged directly (i) in the management, direction or supervision on a regular or continuous basis on behalf of such broker-dealer of the following activities: sales, training, research, investment advice, underwriting, private placements, advertising, public relations, trading, maintenance of books or records, financial operations; or (ii) in the training of persons associated with such broker-dealer for the management, direction, or supervision on a regular or continuous basis of any such activities.

3. Subsection A of this Rule is applicale only to principals of broker-dealers that are, or intend to forthwith become, registered pursuant to Section 15 of the Securities Exchange Act of 1934.

B. Broker-Dealers Not Registered Pursuant to Section 15 of the Securities Exchange Act of 1934.

1. All principals of an applicant for registration as a broker-dealer must provide the Commission with evidence of a minimum passing grade of 70% on:

a. The Uniform Securities Agent State Law Examination - Series 63 (USASLE -Series 63);

b. Any additional securities-related examination(s) that the Commission deems appropriate in light of the business in which the applicant proposes to engage.

2. Subsection B of this Rule is applicable only to principals of broker-dealers that are not, or do not intend to forthwith become, registered pursuant to Section 15 of the Securities Exchange Act of 1934.

Rule 207. Financial Statements and Reports.

A. All financial statements required for registration of broker-dealers shall be prepared in accordance with generally accepted accounting principals, as promulgated by the American Institute of Certified Public Accountants.

B. Definitions:

1. "Certified Financial Statements" shall be defined as those financial statements examined and reported upon with an opinion expressed by an independent accountant and shall include at least the following information:

a. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;

b. Representations as to whether the audit was made in accordance with generally accepted auditing standards and designation of any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which may have been omitted, and the reason for their omission; nothing in this Rule however shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit for the purpose of expressing the opinions required under this Rule;

c. Statement of the opinion of the accountant in respect to the financial statements and schedules covered by the report and the accounting principles and practices reflected therein, and as the consistency of the application of the accounting principles, or as to any changes in such principles which would have a material effect on the financial statements;

d. Any matters to which the accountant takes exception shall be clearly identified, the exemption thereto specifically and clearly stated, and, to the

*extent practicable, the effect of each such exception on the related financial statements given.*

*2. "Financial Statements" shall be defined as those reports, schedules and statements, prepared in accordance with generally accepted accounting principles and which contain at least the following information unless the context otherwise dictates:*

*a. Statement of Financial Condition or Balance Sheet;*

*b. Statement of Income;*

*c. Statement of Changes in Financial Position;*

*d. Statement of Changes in Stockholder's/Partner's/Proprietor's Equity;*

*e. Statement of Changes in Liabilities Subordinated to Claims of General Creditors;*

*f. Schedule of the Computation of Net Capital Under Rule 15c3-1 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-1), as amended;*

*g. Schedule of the Computation for Determination of the Reserve Requirements under Exhibit A of Rule 15c3-3 and Information Relating to the Possession and Control Requirements under Rule 15c3-3 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-3), as amended.*

*3. "Independent Accountant" shall be defined as any certified public accountant in good standing and entitled to practice as such under the laws of the accountant's principal place of business or residence, and who is, in fact, not controlled by, or under common control with, the entity or person being audited; for purposes of this definition, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates in which, during the period of the accountant's professional engagements to examine the financial statements being reported on or at the date of the report, the accountant or the firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest; or in which, during the period of the accountant's professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial, the accountant or the firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee, except that a firm will not be deemed not independent in regard to a particular person if a former officer or employee of such person is employed by the firm and such individual has completely disassociated himself from the person and its affiliates covering any period of employment by the person. For partners in the firm participating in the audit or located in an office of the firm participating in a significant portion of the audit; and in determining whether an accountant may in fact be not independent with respect to a particular person, the Commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Commission.*

*4. "Review of Financial Statements" shall be defined as those financial statements prepared by an independent accountant, and shall include at least the following:*

*a. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;*

*b. Representations that the review was performed in accordance with standards established by the American Institute of Certified Public Accountants;*

*c. Representations that the accountant is not aware of any material modification that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles, other than those modifications, if any, indicated in the accountant's report.*

*5. "Unaudited Financial Statements" shall be defined as those financial statements prepared in a format acceptable to the Commission not accompanied by the statements and representations as set forth in subsection B.1 or B.4 of this Rule, and shall include an oath or affirmation that such statement or report is true and correct to the best knowledge, information, and belief of the person making such oath or affirmation; such oath or affirmation shall be made before a person authorized to administer such oath or affirmation, and shall be made by an officer of the entity for whom the financial statements were prepared.*

*C. Requirements for Broker-Dealers.*

*1. Every broker-dealer applicant, unless exempted under subsection C.2 or C.3 of this Rule, shall file financial statements as of a date within ninety (90) days prior to the date of filing its application for registration, which statements need not be audited provided that the applicant shall also file audited financial statements as of the end of the most recent fiscal year end.*

*2. Those broker-dealer applicants which have been in operation for a period of time less than twelve (12) months, and for which audited financial statements*

have not been prepared or are not available, shall be permitted to file unaudited financial statements provided the following conditions are met:

a. Such financial statements are as of a date within thirty (30) days prior to the date of filing an application for registration;

b. Such financial statements are prepared in accordance with the provisions of subsections B.2, B.5, and C.2 of this Rule:

c. Such applicant is a member of the National Association of Security Dealers, Inc.

3. Those broker-dealer applicants which have been in operation for a period of time less than twelve (12) months, and for which unaudited financial statements have been prepared or are not available, and which are not registered with the Securities and Exchange Commission, a national securities association or a national securities exchange shall be permitted to file a review of financial statements prepared by an independent accountant provided the following conditions are met:

a. Such financial statements shall be as of a date within thirty (30) days prior to the date of filing an application for registration;

b. Such financial statements shall be prepared by an independent accountant as defined under subsection B.3 and in accordance with subsections B.2, B.4, and C.3.

*BROKER-DEALER AGENTS.*

*Rule 208. Application for Registration as a Broker-Dealer Agent.*

A. Application for registration as a NASD member broker-dealer agent shall be filed on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with the RULES prescribed by the Commission. The application shall include all information required by such forms.

B. An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4 (adopted by Rule 800).

2. The statutory fee in the amount of $30.00. The check must be made payable to the NASD.

3. Provide evidence in the form of a NASD exam report of obtaining a minimum passing grade of 70% on the Uniform Securities Agent State Law Exam, "USASLE", Series 63 exam. (Rule 214).

4. Any other information the Commission may require.

C. Application for registration for all other broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the Commission.

D. An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4 (adopted by Rule 800).

2. The statutory fee in the amount of $30.00. The check must be made payable to the Treasurer of Virginia.

3. Provide evidence in the form of a NASD exam report of obtaining a minimum passing grade of 70% on the Uniform Securities Agent State Law Exam, "USASLE", Series 63 exam. (Rule 214).

4. Any other information the Commission may require.

E. The Commission shall either grant or deny each application for registration within thirty (30) days after it is filed, but this period may be extended if additional time is required for formal hearing on the application.

*Rule 209. Expiration.*

The registration, and any renewals thereof, of a broker-dealer agent shall expire annually at midnight on the thirty-first day of December unless renewed in accordance with Rule 210.

*Rule 210. Renewals.*

A. To renew the registration(s) of its broker-dealer agent(s), a NASD member broker-dealer will be billed by the NASAA/NASD Central Registration Depository the statutory fee of $30.00 per broker-dealer agent. A renewal of registration(s) shall be granted as of course upon payment of the proper fee(s) unless the registration was, or the renewal would be, subject to revocation under § 13.1-506.

B. Any other broker-dealer shall file with the Commission at its Division of Securities and Retail Franchising the following items at least thirty (30) days prior to the expiration of registration.

1. Agents to be Renewed (Form S.D.4(a)) accompanied by the statutory fee of $30.00 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.

2. If applicable, Agents to be Canceled with clear records (Form S.D.4(b)).

3. If applicable, Agents to be Canceled without clear

*records (Form S.D.4(c)).*

*Rule 211. Updates and Amendments.*

*A broker-dealer agent shall amend or update his/her Form U-4 as required by the "Amendment Filings" provisions set forth under "How to Use Form U-4." All filings shall be made with the NASAA/NASD Central Registration Depository system for NASD member firm agents or with the Commission for all other broker-dealer agents.*

*Rule 212. Termination of Registration.*

*When a broker-dealer agent terminates a connection with a broker-dealer, or a broker-dealer terminates connection with an agent, the broker-dealer shall file notice of such termination on Form U-5 within 30 calendar days of the date of termination. All filings shall be made with the NASAA/NASD Central Registration Depository system for NASD member firm agents or with the Commission for all other broker-dealer agents.*

*Rule 213. Changing Connection from One Broker-Dealer to Another.*

*A broker-dealer agent who changes connection from one broker-dealer to another shall comply with Rule 208.*

*Rule 214. Examination/Qualification.*

*An individual applying for registration as a broker-dealer agent shall be required to show evidence of passing the Uniform Securities Agent State Law Examination (USASLE-Series 63) with a minimum grade of 70%.*

*AGENTS OF THE ISSUER.*

*Rule 215. Application for Registration as an Agent of the Issuer.*

*A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the Commission.*

*B. An application shall be deemed incomplete for purposes of applying for registration as an agent of the issuer unless the following executed forms, fee and information are submitted:*

*1. Form U-4.*

*2. The statutory fee in the amount of $30.00. The check must be made payable to the Treasurer of Virginia.*

*3. Completed Agreement for Inspection of Records Form.*

*4. Provide evidence in the form of a NASD exam report of obtaining a minimum passing grade of 70% on the Uniform Securities Agent State Law Exam, "USASLE", Series 63 exam. (Rule 221).*

*5. Any other information the Commission may require.*

*C. The Commission shall either grant or deny each application for registration within thirty (30) days after it is filed, but this period may be extended if additional time is required for formal hearing on the application.*

*Rule 216. Expiration.*

*The registration, and any renewals thereof, of an agent of the issuer shall expire annually at midnight on the thirty-first day of December unless renewed in accordance with Rule 217.*

*Rule 217. Renewals.*

*An issuer, on behalf of its agent(s), shall file with the Commission at its Division of Securities and Retail Franchising at least thirty (30) days prior to the expiration of registration an Agents to be Renewed Form (Form S.D.4(a)) accompanied by the statutory fee of $30.00 for each agent whose registration is to be renewed. The check must be made payable to the Treasurer of Virginia.*

*Rule 218. Updates and Amendments.*

*An agent of the issuer shall amend or update his/her Form U-4 as required by the "Amendment Filings" provisions set forth under "How to Use Form U-4." Filings shall be made with the Commission.*

*Rule 219. Termination of Registration.*

*When an agent of the issuer terminates a connection with an issuer, or an issuer terminates connection with an agent, the issuer shall file notice of such termination on Form U-5 within 30 calendar days of the date of termination. Filings shall be made with the Commission.*

*Rule 220. Changing Connection from One Issuer to Another.*

*An agent of the issuer who changes connection from one issuer to another shall comply with Rule 215.*

*Rule 221. Examination/Qualification.*

*An individual applying for registration as an agent of the issuer shall be required to provide evidence in the form of a NASD exam report of passing the Uniform Securities Agent State Law Examination (USASLE-Series 63) with a minimum grade of 70%.*

* * *

Rule 307. Net Worth.

A. The term "net worth" as used in § 13.1-505 B of the

Act shall be computed as total assets minus total liabilities, excluding liabilities of the broker-dealer which are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement as defined in Appendix D of Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1d), as amended.

B. If a broker-dealer applicant or registrant cannot demonstrate and maintain a net worth in excess of $25,000, the Commission shall require the filing of a surety bond on the form prescribed under Rule 800. The amount of the penal sum of the surety bond can be determined according to the following table:

| NET WORTH (Rounded to nearest $1) | PENALTY AMOUNT OF SURETY BOND |
|---|---|
| $ *Less than* $5,000 | $25,000 |
| 5,001 - 10,000 | 20,000 |
| 10,001 - 15,000 | 15,000 |
| 15,001 - 20,000 | 10,000 |
| 20,001 - 25,000 | 5,000 |

C. If a broker-dealer registrant's net worth plus *the penal sum* of the registrant's surety bond drops below $25,000, the registrant must so notify the Division of Securities and Retail Franchising in writing within three (3) business days and immediately take action to establish a net worth in excess of $25,000.

* * *

Rule 309. Clerical or Ministerial Services.

The phrase "clerical or ministerial services," as used in § *§* 13.1-504.1 *and 13.1-504.2* of the Act, shall mean any or all of the following:

A. Distributing to customers of the savings and loan association , ~~or~~ savings bank *or credit union* literature that describes the services available from the registered broker-dealer.

B. Providing to customers of the savings and loan association , ~~or~~ savings bank *or credit union* the broker-dealer's account applications and assisting customers in completing such applications.

C. Assisting customers of the savings and loan association , ~~or~~ savings bank *or credit union* in contacting the registered broker-dealer.

D. Assisting customers of the savings and loan association , ~~or~~ savings bank *or credit union* in effecting the transfer of funds into or out of the customers' accounts maintained at such association , ~~or~~ such bank *or credit union* .

E. Assisting customers of the savings and loan association , ~~or~~ savings bank *or credit union* in transmitting securities and related documents to the registered broker-dealer, and providing the materials necessary for such transmittal.

* * *

*Rule 403. Requirements for Registration Statements Relating to Nonissuer Distributions.*

*A. The requirements for a registration statement filed pursuant to § 13.1-508 of the Act relating to securities to be offered and sold pursuant to a nonissuer distribution (i.e., "secondary trading") are:*

*1. The registration statement shall contain the issuer's most recent 10-K Annual Report and 10-Q Quarterly Report filed with the United States Securities and Exchange Commission ("SEC") pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.*

*2. If within 12 months of the date of filing the registration statement any 8-K Current Report has been filed with the SEC pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, then a copy of each such report shall be filed with the registration statement.*

*3. If within 12 months of the date of filing the registration statement any Form 10 general form for registration of securities has been filed with the SEC pursuant to Section 12(d) or (g) of the Securities Exchange Act of 1934, then a copy of each such form shall be filed with the registration statement.*

*4. If within 12 months of the date of filing the registration statement a registration statement has been filed with the SEC pursuant to Section 6 of the Securities Act of 1933, then a copy of each such registration statement shall be filed with this registration statement.*

*B. For purposes of this Rule, the word "registered" as used in Section 13.1-508(a)(2)(i) of the Act shall mean registered pursuant to this Act, the Securities Act of 1933 or the Securities Exchange Act of 1934.*

*C. The requirement for delivery of a prospectus under Section 13.1-508(d) of the Act, with respect to securities registered pursuant to this Rule, shall be met by compliance with Rule 305 A 19.*

* * *

Rule 503. Uniform Limited Offering Exemption.

PRELIMINARY NOTES.

1. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, issuers or persons acting on their behalf from providing disclosure to prospective investors adequate to satisfy

the anti-fraud provisions of the Act.

2. In view of the objective of this Rule and the purpose and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule.

3. Nothing in this Rule is intended to exempt registered broker-dealers or agents from the due diligence standards otherwise applicable to such registered persons.

4. Nothing in this Rule is intended to exempt any person from the broker-dealer or agent registration requirements of the Act.

RULE.

For the purpose of the limited offering exemption referred to in § 13.1-514(b)(14) of the Act, the following securities are determined to be exempt from the securities registration requirements of the Act:

A. Any securities offered or sold in compliance with Securities Act of 1933, Regulation D ("Reg. D"), Rules 230.501-230.503 and 230.505 or 230.506 as made effective in Release No. 33-6389 *and as amended in Release Nos. 33-6437; 33-6663 and 33-6758* and which satisfy the following further conditions and limitations:

1. The issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that all persons who offer or sell securities subject to this Rule are registered in accordance with § 13.1-505 of the Act.

2. No exemption under this Rule shall be available for the securities of any issuer if any of the persons described in Securities Act of 1933, Regulation A, Rule 230.252(c), (d), (e) or (f):

a. Has filed a registration statement which is subject of a currently effective stop order entered pursuant to any state's securities law within five years prior to the commencement of the offering.

b. Has been convicted within five years prior to the commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

c. Is currently subject to any state's administrative order or judgment entered by that state's securities administrator within five years prior to the commencement of the offering or is subject to any state's administrative order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the commencement of the offering.

d. Is currently subject to any state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

e. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the commencement of the offering, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.

f. The prohibitions of paragraphs a, b, c and e above shall not apply if the party subject to the disqualifying order, judgment or decree is duly licensed or registered to conduct securities related business in the state in which the administrative order, judgment or decree was entered against such party.

g. Any disqualification caused by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification, or the Commission, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption under this Rule be denied.

3. The issuer shall file with the Commission no later than 15 days after the first sale in this state from an offering being made in reliance upon this exemption:

a. A notice on Form D (17 CFR 239.500).

b. An undertaking by the issuer to promptly provide, upon written request, the information furnished by the issuer to offerees.

c. An executed consent to service of process appointing the Clerk of the State Corporation Commission, unless a currently effective consent to service of process is on file with the Commission.

d. A filing fee of $250.00.

4. In all sales to nonaccredited investors, the issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is

suitable for the purchaser as to his/her other security holdings and financial situation and needs.

5. The Commission may, upon request, waive the examination requirements of Rule 221 for an agent of the issuer offering and/or selling securities exempted by this Rule upon a showing of good cause; provided, however, that the agent has not participated in more than two securities offerings during the 18 months prior to the request for waiver.

6. Offers and sales of securities which are exempted by this Rule may not be combined with offers and sales of securities exempted by any other Rule or section of the Act; however, nothing in this limitation shall act as an election. The issuer may claim the availability of any other applicable exemption should, for any reason, the securities or persons fail to comply with the conditions and limitations of this exemption.

7. In any proceeding involving this Rule, the burden of proving the exemption or any exception from a definition or condition is upon the person claiming it.

B. The exemption authorized by this Rule shall be known and may be cited as the "Uniform Limited Offering Exemption."

* * *

Rule 504. NASDAQ/National Market System Exemption.

In accordance with Virginia Code § 13.1-514(a)(13), any security designated on the National Association of Securities Dealers Automated Quotations National Market System (NASDAQ/National Market System) is exempt from the securities registration requirements of the Act if the *system has at least the* following criteria ~~are met~~ :

1. The issuer has a class of securities currently registered under Section 12 of the Securities Exchange Act of 1934 or in the case of an American Depository Receipt issued against the equity securities of a foreign issuer, such equity securities are registered pursuant to Section 12 of the Act.

2. The issuer, or in the case of an American Depository Receipt, the foreign issuer of the underlying equity securities, has been subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934 for the preceding 180 days and is current in its filings.

3. The National Association of Securities Dealers (NASD) shall require at least the following standards to be met for designation of securities of an issuer on the quotation system:

| | Alt. No. 1 | Alt. No. 2 |
|---|---|---|
| Net Tangible Assets[1] | $4,000,000 | $12,000,000 |
| Public Float | 500,000 | 1,000,000 |
| Pre-Tax Income | 750,000 | -- |
| Net Income | 400,000 | -- |
| Shareholders[2] | 800/400 | 800/400 |
| Market Value of Float | 3,000,000 | 15,000,000 |
| Minimum Bid | $5/Share | -- |
| Operating History | -- | 3 Years |

The rules of the NASD shall require at least two authorized market makers for each issuer.

.....

[1] "Net Tangible Assets" is defined for purposes of this Rule to include the value of patents, copyrights, and trademarks but to exclude the value of good will.

[2] The minimum number of shareholders under each alternative is 800 for companies with 500,000 to 1,000,000 shares publicly held and 400 for companies with over 500,000 shares publicly held and daily trading volume in excess of 2,000 shares per day for six months.

.....

4. The NASD shall require at least the following minimum corporate governance standards *for its domestic issuers* :

a. Distribution of Annual and Interim Reports.

i. Each issuer shall distribute to shareholders copies of an annual report containing audited financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with the NASD at the time it is distributed to shareholders.

ii. Each issuer which is subject to SEC Rule 13a-13 shall make available to shareholders copies of quarterly reports including statements of operating results either prior to or as soon as practicable following the company's filing its Form 10-Q with the SEC. If the form of such quarterly report differs from the Form 10-Q, both the quarterly report and the Form 10-Q shall be filed with the NASD. The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items of an unusual or nonrecurrent nature, net income, and the amount of estimated federal taxes.

iii. Each issuer which is not subject to SEC Rule 13a-13 and which is required to file with the SEC or another federal or state regulatory authority interim reports relating primarily to operations and financial position shall ~~distribute~~ *make available* to shareholders reports which reflect the information contained in those interim reports. Such reports shall be ~~distributed~~ *made available* to shareholders

either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report ~~provided~~ *made available* to shareholders differs from that filed with the regulatory authority, both the report to shareholders and the report to the regulatory authority shall be filed with the NASD.

b. Independent Directors. Each issuer shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the issuer or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

c. Audit Committee. Each issuer shall establish and maintain an audit committee, a majority of the members of which shall be independent directors.

d. Shareholder Meetings. Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to the NASD.

e. Quorum. Each issuer shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3% of the outstanding shares of the issuer's common voting stock.

f. Solicitation of Proxies. Each issuer shall solicit *proxies* and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to the NASD.

g. Conflicts of Interest. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the issuer's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.

h. Shareholder Approval Policy. Each issuer shall require shareholder approval of the issuance of securities in connection with the following:

i. Options plans or other special remuneration plans for directors, officers, or key employees.

ii. Actions resulting in a change in control of the issuer.

iii. The acquisition, direct or indirect, of a business, a company, tangible or intangible assets, or property or securities representing any such interests:

(1) From a director, officer, or substantial security holder of the issuer (including its subsidiaries and affiliates), or from any company or party in which one of such persons has a direct or indirect interest;

(2) Where the present or potential issuance of common stock or securities convertible into common stock could result in an increase in outstanding common shares of 25% or more.

5. Voting Rights.

~~a. The NASD rules shall provide that no rule, stated policy, practice, or interpretation shall permit the authorization for designation on the NASDAQ/National Market System (authorization), or the continuance of the authorization, of any common stock or equity security of a United States domestic issuer if, on or after September 1, 1988, the issuer issues any class of security or takes other corporate action that would have the effect of nullifying, restricting, or disparately reducing the per-share voting rights of holders of all of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934.~~

~~b. The following securities may be excluded from these voting rights requirements:~~

~~i. Any class of securities having a preference over the issuer's common stock as to dividends, interest payments, redemption, or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the issuer's common stock, which reasonably can be expected to relate to the issuer's financial ability to meet its payment obligations to the holders of that class of securities.~~

~~ii. Any class of securities created as part of a merger or acquisition or a recapitalization or modification of voting rights within an existing single class of voting equity security if such merger, acquisition, recapitalization, or modification receives prior approval by a majority of the votes eligible to be cast by the issuer's independent, disinterested directors[1] and by a majority of the votes eligible to be cast by the issuer's public shareholders.~~

~~iii. Any securities of an issuer distributed pro rata among the issuer's existing common stock shareholders.~~

[1] ~~For those NASDAQ/National Market System issuers that do not currently have independent directors, an exception will be provided until such time as they are required to have independent directors, as provided by Schedule D Part III Section 5(J) of the NASD Manual. See paragraph 1812 CCH NASD Manual.~~

~~iv. Securities outstanding at the time an issuer first~~

~~had a class of securities held by 500 shareholders.~~

~~v. Any class of securities issued through a public offering with voting rights not greater than the per share voting rights of any outstanding class of the issuer's common stock.~~

~~d. The following terms shall have the following meanings for purposes of this Section, and the NASD rules shall include such definitions for purposes of the prohibition in paragraph a of this Section:~~

~~i. "Common stock" is any security of an issuer designated as common stock and any security of an issuer, however designated, which by its terms is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).~~

~~ii. "Equity security" is any equity security defined as such pursuant to Rule 3a11-1 under the Securities Exchange Act of 1934 (17 C.F.R. Section 240.3a11-1 as amended or superseded).~~

~~iii. "Public shareholders" are beneficial owners of the issuer's voting equity securities who are not directors, officers, or members of their immediate families or their affiliates, or affiliates of the issuer.~~

*a. The NASD rules shall provide as follows: No rule, stated policy, practice, or interpretation shall permit the authorization for designation on the NASDAQ/National Market System ("authorization"), or the continuance of authorization, of any common stock or other equity security of a domestic issuer, if, on or after July 1, 1989, the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934.*

*b. For the purposes of paragraph (a) of this Section, the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock;*

*(1) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the number of shares held by such beneficial or record holder;*

*(2) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder;*

*(3) Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer;*

*(4) Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.*

*c. For the purpose of paragraph (a) of this Section, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:*

*(1) The issuance of securities pursuant to an intial registered public offering;*

*(2) The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;*

*(3) The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;*

*(4) Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.*

*d. Definitions. The following terms shall have the following meanings for purposes of this Section, and the rules of the NASD shall include such definitions for the purposes of the prohibition in paragraph (a) of this Section:*

*(1) The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which, by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).*

*(2) The term "equity security" shall include any equity security defined as such pursuant to Rule 3a11-1 under the Securities Exchange Act of 1934.*

*(3) The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in Rule 3b-4 under the Securities Exchange Act of 1934.*

*(4) The term "security" shall include any security defined as such pursuant to Section 3(a)(10) of the Securities Exchange Act of 1934, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.*

6. Maintenance Criteria. After authorization for designation of a security on the NASDAQ/National Market System, the ~~issuer of such~~ security must meet the following criteria in order for such designation to continue in effect:

a. The issuer of the security has net tangible assets of at least:

i. $2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or

ii. $4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years;

b. There are at least 200,000 publicly held shares;

c. There are at least 400 shareholders or at least 300 shareholders of round lots;

d. The aggregate market value of publicly held shares is at least $1,000,000 ; ~~or~~ .

~~e. The issuer has complied with all NASD policies and procedures relating to the maintenance criteria for the NASDAQ/National Market System exemption.~~

7. The Commission may vacate this order pursuant to its authority under section 13.1-523, thereby revoking this rule, if the Commission determines that the requirements of the NASDAQ/National Market System have been so changed or insufficiently applied so that the protection of investors is no longer afforded.

8. The Commission shall have the authority to deny or revoke the exemption created by this Rule as to a specific issue or category of securities.

9. The NASD shall promptly notify the Commission when an issue of securities is removed from NASDAQ/National Market System designation.

* * *

ARTICLE VII.
REPORTS.

Rule 700. Registrants whose securities are registered pursuant to Code Section 13.1-509 must file any amended prospectus that is filed with the Securities and Exchange Commission.

Rule 701. Registrants whose securities are registered pursuant to Code §§ 13.1-508 and 13.1-510 must file the following reports:

A. A report of any material changes regarding the issuer or the terms of the offering.

B. A copy of the issuer's unaudited financial statements for the period beginning on the date of the certified balance sheet or the certified financial statements and ending on such a date as the Commission may require.

C. The reports must be filed six months after the registration statement is effective and continue to be filed at six month intervals so long as the registration statement remains effective.

D. The issuer may incorporate the reports into the prospectus being utilized and submit the document to the Commission.

*E. Registrants whose securities are registered pursuant to Rule 403 are exempt from compliance with this Rule 701.*

* * *

ARTICLE X.
INVESTMENT ADVISOR REGISTRATION, EXPIRATION, RENEWAL, UPDATES AND AMENDMENTS, TERMINATION AND MERGER OR CONSOLIDATION.

Rule 1003. Updates and Amendments.

*A.* An investment advisor shall update its Form ADV as required by the "Updating" provisions of Item 7 of Form ADV Instructions and shall file all such information with the Commission at its Division of Securities and Retail Franchising.

*B. An investment advisor shall file the balance sheet as prescribed by Part II, Item 14 of Form ADV, unless excluded from such requirement, with the Commission at*

*its Division of Securities and Retail Franchising within 90 days of the investment advisor's fiscal year end.*

* * *

*Rule 1106. Examination/Qualification.*

*An individual applying for registration as an investment advisor representative on or after July 1, 1989, shall be required to provide evidence of passing the Uniform Investment Adviser Law Examination, Series 65, with a minimum grade of 70%.*

* * *

ARTICLE XII.
INVESTMENT ADVISOR AND INVESTMENT ADVISOR REPRESENTATIVE REGULATIONS.

Rule 1202. Record-Keeping Requirements for Investment Advisors.

A. Every investment advisor registered or required to be registered under the Act shall make and keep *current* the following books, ledgers and records:

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entities in any ledger.

2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

3. A memorandum of each order given by the investment advisor for the purchase or sale of any security, of any instruction received by the investment advisor from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment advisor who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

4. All check books, bank statements, cancelled checks and cash reconciliations of the investment advisor.

5. All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment advisor as such.

6. All trial balances, financial statements, and internal audit working papers relating to the business of such investment advisor.

7. Originals of all written communications received and copies of all written communications sent by such investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, and (iii) the placing or execution of any order to purchase or sell any security; provided, however, (a) that the investment advisor shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and (b) that if the investment advisor sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment advisor shall retain with a copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

8. A list or other record of all accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.

10. All written agreements (or copies thereof) entered into by the investment advisor with any client or otherwise relating to the business of such investment advisor as such.

11. *(a)* A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment advisor circulates or distributes, directly or indirectly, to 10 or more persons (other than investment advisory clients or persons connected with such investment advisor), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment advisor indicating the reasons therefor.

*(b) All of their advertisements and all records, worksheets, and calculations necessary to form the basis for performance data in their advertisements.*

12. (a) A record of every transaction in a security in which the investment advisor or any investment advisor representative of such investment advisor has, or by reason of such transaction acquires, any direct

or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisor representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisor representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(b) An investment advisor shall not be deemed to have violated the provisions of this paragraph 12 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. (a) Notwithstanding the provisions of paragraph 12 above, where the investment advisor is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment advisor or any investment advisor representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisor representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisor representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(b) An investment advisor is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment advisor derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(c) An investment advisor shall not be deemed to have violated the provisions of this paragraph 13 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment advisor in accordance with the provisions of Rule 1205 and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

B. If an investment advisor subject to subsection A of this Rule has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A above shall include:

1. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.

2. A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.

3. Copies of confirmations of all transactions effected by or for the account of any such client.

4. A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security.

C. Every investment advisor subject to subsection A of this rule who renders any investment advisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:

1. Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale.

2. For each security in which any such client has a current position, information from which the investment advisor can promptly furnish the name of each such client, and the current amount or interest of such client.

D. Any books or records required by this rule may be maintained by the investment advisor in such manner that the identity of any client to whom such investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

E. 1. All books and records required to be made under the provisions of subsections A to C.1, inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years of such period in the office of the investment advisor.

2. Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.

F. An investment advisor subject to subsection A of this Rule, before ceasing to conduct or discontinuing business as an investment advisor shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the Commission in writing of the exact address where such books and records will be maintained during such period.

G. All books, records or other documents required to be maintained and preserved under this Rule may be stored on microfilm, microfiche, or an electronic data processing system or similar system utilizing an internal memory device provided a printed copy of any such record is immediately accessible.

H. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the Securities Exchange Act of 1934, which is substantially the same as the book, or other record required to be made, kept, maintained, and preserved under this Rule shall be deemed to be made, kept, maintained, and preserved in compliance with this Rule.

* * *

*ARTICLE XII.*
*INVESTMENT ADVISOR AND INVESTMENT ADVISOR REPRESENTATIVE REGULATIONS.*

*Rule 1206. Dishonest or Unethical Practices.*

*I. An investment advisor is a fiduciary and has a duty to act primarily for the benefit of its clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor and its clients and the circumstances of each case, an investment advisor shall not engage in unethical practices, including the following:*

*A. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor after reasonable examination of the client's financial records.*

*B. Placing an order to purchase or sell a security for the account of a client without written authority to do so.*

*C. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.*

*D. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.*

*E. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.*

*F. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor, or a financial institution engaged in the business of loaning funds or securities.*

*G. Loaning money to a client unless the investment advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor.*

*H. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the*

*investment advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.*

*I. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.*

*J. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors providing essentially the same services.*

*K. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:*

*1. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and*

*2. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or its employees.*

*L. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.*

*M. Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.*

*N. Disclosing the identity, affairs, or investments of any client to any third party unless required by law to do so, or unless consented to by the client.*

*O. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of Rule 1200.*

*P. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor and that no assignment of such contract shall be made by the investment advisor without the consent of the other party to the contract.*

*The conduct set forth above is not inclusive. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice.*

*II. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his/her clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his/her clients and the circumstances of each case, an investment advisor representative shall not engage in unethical practices, including the following:*

*A. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.*

*B. Placing an order to purchase or sell a security for the account of a client without written authority to do so.*

*C. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.*

*D. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.*

*E. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.*

*F. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.*

*G. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.*

*H. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.*

*I. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor uses published research reports or statistical analyses to render advice or where an investment advisor orders such a report in the normal course of providing service.*

*J. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.*

*K. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:*

*1. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and*

*2. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.*

*L. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.*

*M. Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisors Act of 1940.*

*N. Disclosing the identity, affairs, or investments of any client to any third party unless required by law to do so, or unless consented to by the client.*

*O. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of Rule 1200.*

*P. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.*

*The conduct set forth above is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice.*

## GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

**(Required by § 9-6.12:9.1 of the Code of Virginia)**

### CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Title of Regulation: **VR 173-02-00. Chesapeake Bay Preservation Area Designation and Management Regulations.**

Governor's Comment:

The Chesapeake Bay is an important economic and natural resource. It is clear that non-point source pollutants contribute to the degradation of its water quality. Efforts to improve the Bay's water quality should be paramount in the Board's efforts in promulgating criteria to be used by local governments in exercising their authorities in land-use planning.

I urge the Board to consider carefully the host and range of public comment on the proposed regulations and to be cognizant of the importance of addressing non-point source pollution in cooperation with local governments.

/s/ Gerald L. Baliles
Date: June 23, 1989

### BOARD OF MEDICINE

Title of Regulation: **VR 465-04-01. Regulations Governing the Practice of Certified Respiratory Therapy Practitioners.**

Governor's Comment:

I have carefully reviewed the Board of Medicine's proposed Regulations Governing the Practice of Certified Respiratory Therapy Practitioners.

In view of the significant quality-of-care concerns raised by these regulations, I would strongly urge the Board to amend these standards to include the following:

a. a requirement for proof of additional training or experience in those instances in which there has been a significant lapse of time between the date of application for certification and the dates of the applicant's most recent training or experience;

b. provisions for reinstatement for an individual whose certification has lapsed; and

c. procedures and standards for revoking or withdrawing certification in appropriate situations.

I would also suggest that the flexibility of these standards be increased to permit the Board to accept results of examinations administered by qualified companies and organizations in addition to the National Board of Respiratory Care, Inc. for purposes of granting certification.

/s/ Gerald L. Baliles
Date: June 15, 1989

### STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-13-02. Underground Storage Tanks; Technical Standards and Corrective Action Requirements.**

Governor's Comment:

The promulgation of these regulations is intended to protect water quality and meet federal standards. Pending public comment, I recommend approval of these regulations. I would suggest, however, that consideration be given to changes recommended by the Department of General Services with respect to facilities leased by the State.

/s/ Gerald L. Baliles
Date: June 26, 1989

* * * * * * * * *

Title of Regulation: **VR 680-21-01.11. Chlorine Standards and Policy and VR 680-21-07.2. Outstanding State Resource Waters.**

Governor's Comment:

The promulgation of these regulations is intended to protect water quality and water life. After review of these regulations, I have no substantive comment or concern and I recommend that these regulations be approved.

/s/ Gerald L. Baliles
Date: June 21, 1989

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

## DEPARTMENT OF AGRICULTURE AND CONSUMER 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 Agriculture and Consumer Services intends to consider amending regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to review the regulation for effectiveness and appropriateness.

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

Written comments may be submitted until 5 p.m., July 21, 1989.

**Contact:** L. H. Redford, Regulatory Coordinator, Office of Policy Analysis and Development, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-3539 or SCATS 786-3539

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-04-09. Rules and Regulations for Enforcement of the Virginia Seed Law.** The purpose of the proposed action is to amend paragraph 2 A. Prohibited Noxious Weed Seed - by adding Serrated Tussock - Nassella Trichotoma. The proposed addition to the Prohibited Noxious Weed Seed List would prohibit from sale, expose for sale, transporting or advertising for sale within this state, any seed or mixture of seed containing Serrated Tussock.

Statutory Authority: § 3.1-271 (2) of the Code of Virginia.

Written comments may be submitted until 5 p.m., July 20, 1989.

**Contact:** D. E. Brown, Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Room 403, 1100 Bank Street, Richmond, VA 23209, telephone (804) 786-3797 or SCATS 786-3797

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-04-12. Rules and Regulations for the Enforcement of the Virginia Gasoline and Motor Fuels Law.** The purpose of the proposed action is to allow the sale of Racing Gasoline for highway use.

The Virginia Board of Agriculture and Consumer Services has been requested by the petroleum industry to allow the sale of "Racing Gasoline" for highway use under the Board's authority to regulate the sale and use of motor fuels in Virginia.

There are two major suppliers of racing gasoline and the fuels produced by these companies will not meet the 10% evaporation standard as established by the American Society for Testing and Materials (ASTM) which were adopted in our Regulations effective September 23, 1986.

Current regulations are intended to assure that any gasoline offered for sale to the general motoring public will have characteristics that will provide quick engine starts. Producers of racing gasoline feel there is a market for gasoline manufactured for high performance engines, and to insure cooler engine operating temperatures, cold startability problems are a necessary risk.

The Motor Fuel Section is seeking data from scientific research and opinions of experts on the effects of the sale of unleaded racing gasoline as well as the economic impact of prohibiting its sale for highway use.

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

Written comments may be submitted until 5 p.m., July 20, 1989.

**Contact:** W. P. Zentmeyer, Supervisor, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-3511 or SCATS 786-3511

## STATE AIR POLLUTION CONTROL BOARD

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed action is to require the owner to limit source emissions of noncriteria pollutants to a level that will not produce

ambient air concentrations that may cause, or contribute to, the endangerment of public health.

A public meeting will be held on September 20, 1989, at 10 a.m. in House Committee Room 1, State Capitol Building, Richmond, Virginia to receive input on the development of the proposed regulations.

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

Written comments may be submitted until September 20, 1989, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

**Contact:** Nancy S. Saylor, Policy and Program Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249 or SCATS 786-1249

**† Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed regulation is to enhance the Department of Air Pollution Control's ability to ensure compliance with emission standards by requiring a permit to operate.

A public meeting will be held on September 27, 1989, at 10 a.m. in House Committee Room 1, State Capitol Building, Richmond, Virginia to receive input on the development of the proposed regulation.

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

Written comments may be submitted until September 27, 1989, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240.

**Contact:** Nancy S. Saylor, Policy and Program Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249 or SCATS 786-1249

**Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed action is to reduce ozone producing evaporative volatile organic compound (VOC) emissions, by limiting gasoline volatility during the ozone season (June through September), for the protection of public health and welfare.

A public meeting will be held on August 16, 1989, at 10 a.m., in House Committee Room 1, State Capitol, Capitol Square, Richmond, Virginia, to receive input on the development of the proposed regulation.

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

Written comments may be submitted until August 16, 1989.

**Contact:** Ellen P. Snyder, Policy and Program Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-0177 or SCATS 786-0177

## CHILD DAY-CARE COUNCIL

**Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider amending regulations entitled: **VR 175-02-01. Minimum Standards for Licensed Child Care Centers.** The purpose of the proposed action is to (i) revise regulation to incorporate requirements for occasional child care and care for children who are mildly ill; (ii) determine appropriate activity space and group size requirements after reviewing public comment; and (iii) make other revisions for improvement in clarity and content.

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

Written comments may be submitted until August 1, 1989.

**Contact:** Diana Thomason, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9025 or SCATS 662-9025

## DEPARTMENT OF CONSERVATION AND RECREATION

**† Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Conservation and Recreation intends to consider promulgating regulations entitled: **VR 215-02-00. Stormwater Management Regulations.** The purpose of the proposed action is to implement the Stormwater Management Law, Chapter 467 and Chapter 499 of the 1989 Virginia Acts of Assembly (Fomerly SB 722 and HB 1848) to provide the minimum state requirements whereby local governments may adopt comprehensive Stormwater Management Programs at their option. All state agency projects involving land clearing, soil movement or construction activity involving soil movement or land development will be governed by these regulations.

**Note:** This replaces notice published in 5:19 VA.R. 2722

June 19, 1989.

Statutory Authority: §§ 10.1-104 and 10.1-603.4 of the Code of Virginia.

Written comments may be submitted until August 30, 1989, to Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219.

**Contact:** John R. Poland, Urban Programs Supervisor, Department of Conservation and Recreation, Division of Soil and Water Conservation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 371-7483 or SCATS 371-7483

## BOARD OF CORRECTIONS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to repeal regulations entitled: **VR 230-01-002. Rules and Regulations for the Purchase of Services for Clients.** The purpose of the proposed action is to provide instructions for the purchase of services from public or private vendors when such needed services are not available within the Department of Corrections.

Statutory Authority: § 53.1-5 of the Code of Virginia.

Written comments may be submitted until August 2, 1989.

**Contact:** Ben Hawkins, Agency Regulatory Coordinator, Planning and Development Unit, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3262 or SCATS 674-3262

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider promulgating regulations entitled: **VR 230-01-003. Rules and Regulations Governing the Certification Process.** The purpose of the proposed action is to provide regulations governing the process and procedures utilized by the Board of Corrections to monitor and certify correctional programs.

Statutory Authority: § 53.1-5 of the Code of Virginia.

Written comments may be submitted until August 21, 1989.

**Contact:** John T. Britton, Certification Unit Manager, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3237 or SCATS 634-3237

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider promulgating regulations entitled: **Regulations Governing Electronic Classroom/Distance Learning.** The purpose of this action is to specify the services provided by the electronic classroom/distance learning program provided by the Department of Education.

Statutory Authority: § 22.1-212.2 of the Code of Virginia.

Written comments may be submitted until August 1, 1989.

**Contact:** Dr. Ida J. Hill, Assistant Superintendant for Education Technology, State Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2757

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider promulgating regulations entitled: **Regulations Governing Film, Videotape, and Audiotape Circulation from Department of Education Library.** The purpose of this proposed action is to set forth those agencies which are eligible to participate in the sharing of resources and dissemination of audiovisual materials. Also included will be regulations specifying those agencies not eligible to participate.

Statutory Authority: § 22.1-16 of the Code of Virginia and HJR 114.

Written comments may be submitted until August 1, 1989.

**Contact:** Dr. Ida J. Hill, Assistant Superintendant for Education Technology, State Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2757

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider promulgating regulations entitled: **Regulations Governing the Relationship of the Board of Education and the Virginia Council for Private Education.** ;The purpose of this regulatin is to set forth the working relationship of the Board of Education and the Virginia Council for Private Education, including the frequency of advisory committee meetings.

Statutory Authority: §§ 22.1-16 and 22.1-19 of the Code of Virginia.

Written comments may be submitted until August 1, 1989.

**Contact:** Dr. Margaret Roberts, Director, Community

Relations, State Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2540

**Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider amending regulations entitled: **Regulations Governing Driver Education.** The purpose of the proposed regulation is to more clearly define the regulations for public, nonpublic and commercial schools related to driver education requirements.

Statutory Authority: §§ 22.1-205, 46.1-357, 46.1-368 and 54.1-1003 of the Code of Virginia.

Written comments may be submitted until September 1, 1989.

**Contact:** Claude A. Sandy, Director, Department of Education, Division of Sciences and Elementary Administration, P.O. Box 6Z, Richmond, VA 23216, telephone (804) 225-2865 or SCATS 225-2865

## BOARD OF HEALTH

**Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Health intends to consider amending regulations entitled: **Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** The purpose of the proposed action is to amend the existing Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (Regulations) so that the regulations are consistent with the amended law.

Statutory Authority: §§ 32.1-1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until August 8, 1989.

**Contact:** Marilyn H. West, Director, Division of Resources Development, Department of Health, James Madison Bldg., 109 Governor St., Room 1005, Richmond, VA 23219, telephone (804) 786-7463 or SCATS 786-7463

## BOARD OF MEDICINE

**Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-01. Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend Part III Examinations, Sections 3.1 A to identify the parts of the FLEX examination; 3.1 B, add all examinations which if failed would require additional training to be eligible for additional attempts to sit for the examination; 3.1 C, regulation renumbered, to change; and 3.2 A, provides for a combination of examinations acceptable for licensure to practice Medicine or Osteopathy in Virginia.

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

Written comments may be submitted until August 2, 1989.

**Contact:** Eugenia K. Dorson, Board Administrator, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9923

**Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider promulgating regulations entitled: **VR 465-08-01. Regulations Governing the Certification of Occupational Therapy.** The purpose of the proposed action is to regulate the Certification and practice of Occupational Therapy pursuant to §§ 54.1-2956.1 through 54.1-2956.5 of the Code of Virginia effective July 1, 1989.

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

Written comments may be submitted until July 31, 1989.

**Contact:** Eugenia K. Dorson, Board Administrator, Board of Medicine, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9923 or SCATS 662-9923

## DEPARTMENT OF MINORITY BUSINESS ENTERPRISE

**Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Minority Business Enterprise intends to consider promulgating regulations entitled: **VR 486-01-01. Public Participation Guidelines.** The purpose of the proposed action is to seek public participation from interested parties prior to formation and during drafting, promulgation and final adoption of regulations.

Statutory Authority: §§ 2.1-64-34 and 2.1-64-35 of the Code of Virginia.

Written comments may be submitted until August 2, 1989.

**Contact:** Garland W. Curtis, Deputy Director, Department of Minority Business Enterprise, 200-202 N. 9th St., Richmond, VA 23219, telephone (804) 786-5560, toll-free 1-800-223-0671 or SCATS 786-5560

### DEPARTMENT OF SOCIAL SERVICES

**Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Social Services intends to consider amending regulations entitled: **Aid to Dependent Children (ADC) Program - Deprivation Due to the Incapacity of a Parent.** The purpose of the proposed action is to formally adopt emergency regulation VR 615-01-26. Aid to Dependent Children-Deprivation Due to the Incapacity of a Parent, which requires that the limited employment opportunities of handicapped individuals be considered in determining ADC eligibility based upon a parent's incapacity. The term "handicapped individual" will be defined in the regulation.

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

Written comments may be submitted until July 19, 1989, to Guy Lusk, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

**Contact:** Peggy Friedenberg, Agency Regulatory Liaison, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217 or SCATS 662-9217

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

**† Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Soil and Water Conservation Board intends to consider promulgating regulations entitled: **VR 625-02-00. Erosion and Sediment Control Regulations;** and repeal regulations entitled: **VR 625-01-01. The Virginia Erosion and Sediment Control Handbook, including standards, criteria and guidelines.** The purpose of the proposed action is to implement the Erosion and Sediment Control Law, as amended, for the effective control of soil erosion, sediment deposition and nonagricultural runoff which must be met in any local control program to prevent unreasonable degradation of properties, stream channels and other natural resources.

**Note:** This replaces notice published in 5:19 VA.R. 2722 June 19, 1989.

Statutory Authority: §§ 10.1-502 and 10.1-561 of the Code of Virginia.

Written comments may be submitted until August 30, 1989, to Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219.

**Contact:** John R. Poland, Urban Program Supervisor, Department of Conservation and Recreation, Division of Soil and Water Conservation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 371-7483 or SCATS 371-7483

### STATE WATER CONTROL BOARD

**† Notice of Intended Regulatory Action**

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-14-03. Toxics Regulation.** The purpose is to consider necessary amendments to the Toxics Regulation.

The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(2) authorizes the board to study and investigate all problems concerned with the quality of state waters and to make reports and recommendations. Further § 62.1-44.15(14) authorizes the State Water Control Board to establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of the State Water Control Law, and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of State waters. Statutory authority for the adoption of regulations can be found in § 62.1-44.15(10).

Any amendments could potentially impact the approximately 400 Virginia Pollutant Discharge Elimination System permittees impacted by the Toxics Regulation.

Applicable laws and regulations include the State Water Control Law, the Clean Water Act, the Permit Regulation (VR 680-14-01), the Toxics Regulation (VR 680-14-03), and the Water Quality Standards (VR 680-21-00).

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

Written comments may be submitted until 4 p.m., July 28, 1989.

**Contact:** Richard Ayers, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-0384 or SCATS 367-0384

## GENERAL NOTICES

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

**† Legal Notice**

Take notice that a referendum will be conducted by mail ballot among Virginia corn producers regardless of age,

and as otherwise defined in § 1035, Title 3.1 of the Code of Virginia, who sold corn, except sugar corn, popcorn, and ornamental corn during two of the past three years preceding September 1, 1989.

The purpose of the referendum is to allow Virginia farmers producing corn to vote to determine whether they want to increase the corn assessment from 1/4 cent to 1 cent per bushel sold. The increased assessment shall be used by the Virginia Corn Board to provide programs for additional research, education, publicity and promotion of the sale and use of corn.

The processor, dealer, shipper, exporter or any other business entity who purchases corn from the producer shall deduct the assessment from payments made to the producer for corn. The levy thereon shall be remitted to the Virginia State Tax Commissioner.

Producers must establish their eligibility to vote in this referendum by properly completing a certification form and returning the form to the Virginia Department of Agriculture and Consumer Services no later than July 31, 1989.

Eligible voters will be mailed a ballot and a return envelope. Each eligible voter must return the ballot, and the ballot must be received by the Director, Division of Marketing, Virginia Department of Agriculture and Consumer Services on or before 5 p.m. September 1, 1989.

Producers may obtain eligibility certification forms from the following sources: County Extension Offices; Virginia Corn Growers Association, 10806 Trade Road, Richmond, Virginia 23236; Virginia Department of Agriculture and Consumer Services Office, Division of Marketing, P.O. Box 1163, Richmond, Virginia 23209.

## DEPARTMENT OF LABOR AND INDUSTRY

### † Notice to the Public

Notice is hereby given that the Department of Labor and Industry, Labor Law Division Policy Statement 89-6, entitled "Discharge of Employee for Work-Related Injury," has been rescinded.

As a result of comments received concerning the published policy statement, it is being revised and will be reissued at a later time.

For information contact:

Sharon S. Watson, Director
Division of State Labor Law Administration
Department of Labor and Industry
205 North Fourth Street
P.O. Box 12064
Richmond, VA 23241

(804) 786-2386

† VOSH Program Directive: 02-067

Issued: June 5, 1989

Subject: Overhead High Voltage Line Safety Procedures and Interpretations Manual

A. Purpose.
This directive establishes procedures for the enforcement of the Overhead High Voltage Line Safety Act, Va. Code § 59.1-406 to 59.1-414.

B. Scope.
This directive applies to all VOSH personnel.

C. Reference.
Not Applicable.

D. Cancellation.
Not Applicable.

E. Action.
The Assistant Commissioner, Directors and Supervisors shall assure that employers comply with the policies and procedures contained in this manual.

F. Expiration Date.
Not Applicable.

G. Background.
Each year approximately 20% of occupational fatalities in Virginia are the result of accidental contact with overhead high voltage lines. This legislation was passed by the 1989 General Assembly to provide a means to assure that workers are better protected from the hazards that high voltage lines present. This legislation designates the Department of Labor and Industry as the enforcement authority. The Safety Enforcement Division will enforce the provisions of the Act as part of their daily operations.

Section 59.1-406 through 59.1-414, Chapter 30, was added to 40.1-49.4 and will be put under paragraph "P" of that section.

H. Summary of Act.

1. Effective Date.

July 1, 1989

2. Scope.

Applies to all persons responsible for work being done in the vicinity of high voltage lines.

3. Exemptions.

Exempts any electrical or communications circuits or conductors of rail communication systems; electrical generating, transmission or distribution systems; coal or other mines covered by the Federal Mine Safety and Health Act; and privately or publicly owned systems where work is performed by employees of the owner/operator or independent contractors hired by the owner/operator. In addition, the Act does not supercede already existing, more stringent or different VOSH standards applicable to work in proximity to overhead high voltage lines.

4. Prohibits.

a. Operating "covered" equipment within 10 feet of high voltage power lines.

b. Placing individual or tools being used by individual within 6 feet of high voltage power lines.

[NOTE: Does not apply to covered equipment when lawfully driven or transported on public streets and highways in compliance with the height restriction imposed by Va. Code § 46.1-329 of the Code.]

5. Requirements.

a. Warning signs.

Must be placed on all "covered" equipment capable of being operated in the proximity of high voltage power lines.

i. One sign must be placed within equipment and readily visible and legible to the operator when he is at the controls.

ii. Signs must be placed on the outside of equipment in numbers and locations readily visible and legible at 12 feet to others engaged in work operations.

b. Training and information.

Owners/employers are responsible for informing their operators about the requirements of this legislation.

c. Notification procedures.

i. Owner/Operator of O.H.V.P.L.

Every owner/operator of O.H.V.P.L. shall file with the Clerk of the Circuit Court of each county and city in which its lines are located, the address and telephone numbers of person or office to whom all notifications concerning proposed work in that county or city should be directed. The clerk of the circuit court shall maintain information and shall be entitled to a fee of $2.00 per page for any documents filed.

ii. Notifications Concerning Proposed Work.

Notification may be in writing or by phone. If notification is done by phone, both parties shall document the record of notification. (See also "Temporary Safety Arrangements" below.)

Information to be included in the notification:

A. Name of the individual serving notice;

B. Location of proposed work;

C. Name, address and telephone number of the person responsible for the work;

D. Field telephone number at the site of such work if one is available;

E. Type and extent of the proposed work;

F. Name of the person for whom the proposed work is being done;

G. Time and date of the notice; and

H. Approximate date and time when the work is to begin.

d. Temporary Safety Arrangements.

Employer must notify owner or operator of high voltage lines of intent to do work closer than permitted to the lines (without special safety arrangements) at least 48 hours prior to beginning the work (excluding Saturday, Sunday, and holidays).

In emergency situations, notification is to be made as soon as possible.

Work is not to begin until arrangements have been negotiated between owner/operator of the high voltage lines and the person responsible for the work to be done.

Owner/operator of lines shall initiate agreed upon safety arrangements within 5 working days.

e. Examples of Safety Arrangements.

i. Placement of temporary mechanical barriers preventing contact between persons, equipment and high voltage power lines.

ii. Temporary de-energization and grounding.

iii. Temporary relocation or raising of the lines.

iv. Other measures the owner/operator finds appropriate.

6. Expenses.

To be paid by the person responsible for the work to be done.

7. Enforcement.

Provisions of this legislation shall be considered a safety and health standard and shall be enforced by the Commissioner of the Department of Labor and Industry according to Title 40.1-49.4.

For violations over which the commissioner does not have enforcement powers, a civil penalty of up to $1,000 may be imposed at the discretion of the general district court for the jurisdiction where the offense occurred.

[NOTE: See also procedures listed below.]

8. Definitions.

a. Overhead high voltage power lines. (O.H.V.P.L.).

All above ground bare or insulated electrical conductors of voltage greater than 600 volts (except conductors that are de-energized and grounded or that are enclosed in rigid metallic conduit or flexible armored conduit).

b. Covered equipment.

Any mechanical equipment which could be operated within ten feet of an overhead high voltage line (i.e., cranes, derricks, power shovels, drilling rigs, excavating equipment, hay loaders, hay stackers, combines, grain augers and mechanical cotton pickers).

c. Warning sign.

A weather-resistant sign of not less than five inches by seven inches with a yellow background and black lettering which reads: "WARNING - UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN TEN FEET OF OVERHEAD HIGH VOLTAGE LINES" or equally effective warning signs approved by the Virginia Safety and Health Codes Board or the Commissioner of Labor and Industry.

d. Person.

Means natural person, firm, business association, company, partnership, corporation or other legal entity.

e. Person Responsible for the Work to Be Done.

Means the person performing or controlling the job or activity.

I. Procedures.

A. Classification of Violations.

1. Violations of the High Voltage Power Line Safety Act will be cited as serious when that violation occurred during work performed in proximity to high voltage overhead power lines.

a. If work is being performed in proximity to the power lines, but no work is being done within the 10 or 6 foot limits and the employer does not intend to work within the 10 or 6 foot limits, then the following violations are appropriate to cite as serious:

i. Lack of Warning Signs (Inside).

ii. Lack of Warning Signs (Outside).

iii. Lack of Training.

b. If the employer intends to work within either of the 10 or 6 foot limits all violations can be cited as serious.

c. If the employer does not intend to work within either the 10 or 6 foot limits but work does occur within the limits then all violations can be cited as serious. However, the inspector shall document any possible employee misconduct defense in accordance with the F.O.M.

2. Violations of the Act will be cited as other-than-serious when the violation occurs during work performed where there is no present exposure to high voltage overhead power lines, but either past exposure or potential exposure is documented in accordance with the F.O.M.

[Example: A construction crane sitting in an empty field with no power lines in the area can be citied for lack of warning signs because the crane is "covered equipment" and "could be operated within ten feet" of a power line. To support a citation in this instance the inspector must document either past or potential exposure. This violation would be cited as other-than-serious because there is no potential for death or serious physical harm to result from the violation on that worksite.]

Violations that are appropriate to cite as other-than-serious when there is no present exposure include:

a. Lack of warning signs (Inside)

b. Lack of warning signs (Outside)

c. Lack of training

B. Violations to be Cited.

The following violations shall be cited under the Act:

1. Working within 6 feet of a power line with no temporary safety arrangements having been made. (Va. Code § 59.1-408.1(i)).

2. Using any part of any tool or material within 6 feet of a powerline with no temporary safety arrangements having been made. (Va. Code § 59.1-408.1(ii)).

3. Operating covered equipment within 10 feet of a powerline with no temporary safety arrangements having been made. (Va. Code § 59.1-408.2).

4. Lack of warning signs inside covered equipment and visible to the operator. (Va. Code § 59.1-409 A 1).

5. Lack of warning signs on the outside of covered equipment in such numbers and locations that would make them legible from 12 feet to any persons working near the equipment. (Va. Code § 59.1-409 A 2).

6. Lack of training for employees on the requirements of the Act. (Va. Code § 59.1-409 B).

7. Failure to notify the Overhead High Voltage Line Operator of work to be performed within 6 or 10 feet (as described above). (Va. Code § 59.1-410).

8. Failure to maintain record of notification (by phone) required under the Act (the notification need only be retained by the employer until the work has been successfully completed and the temporary safety arrangements have been removed by the Overhead High Voltage Line Operator. The employer shall retain the notification when an accident has occurred for review by the Department and/or the Commonwealth's attorney). (Va. Code § 59.1-411 B).

[NOTE: Violations of existing VOSH Standards that are more stringent or different than requirements of the Act shall also be cited in accordance with procedures in the Field Operations Manual. If a violation of identical provisions of the Act and VOSH Standards occurs, the Act shall be cited.]

C. Citation Numbering Procedures (Field Personnel Only).

Violations of the Act printed on VOSH citations shall be written as follows:

1. Va. Code Sections 40.1-49.4 P and 59.1-408.1(i) [working within 6 feet of power line].

2. Va. Code Sections 40.1-49.4 P and 59.1-408.1(ii) [tools within 6 feet of power lines].

3. Va. Code Sections 40.1-49.4 and 59.1-408.2 [covered equipment within 10 feet of power line].

4. Va. Code Sections 40.1-49.4 P and 59.1-409 A 1 [lack of warning signs inside covered equipment].

5. Va. Code Sections 40.1-49.4 P and 59.1-409 A 2 [lack of warning signs on outside of covered equipment].

6. Va. Code Sections 40.1-49.4 P and 59.1-409 B [lack of training on the requirements of the Act].

7. Va. Code Sections 40.1-49.4 P and 59.1-410 [failure to notify owner of power line].

8. Va. Code Sections 40.1-49.4 P and 59.1-411 B [failure to maintain records of phone notification to owner of power line].

D. IMIS Numbering Procedures (IMIS Personnel Only).

Data on violations of the Act shall be entered into the IMIS database as follows:

1. 0408
   001
   00i

2. 0408
   001
   0ii

3. 0408
   002

4. 0409
   00A
   001

5. 0409
   00A
   002

6. 0409
   00B

7. 0410

8. 0411
   00B

E. Procedures for Obtaining Agency Interpretations.

All outside requests for interpretations of the Act shall be referred to the Occupational Safety Enforcement Director. Draft interpretations shall be developed by the Safety Enforcement Director and circulated for concurrence to the other Directors, Assistant Commissioner and Commissioner (if deemed necessary).

The interpretation shall be drafted for signature by the Commissioner and added to this manual upon issuance. The Federal Liaison and Technical Support Director shall assure that the interpretations in this manual remain current.

Interpretations issued will be published in the Virginia Register by the Federal Liaison and Technical Support Director.

F. Referrals.

1. Background.

The Act provides that in the case of violations of the Act over which the department does not have enforcement powers pursuant to § 40.1-49.4 (i.e., no employer-employee relationship, Federal enclaves, Maritime jurisdiction), a civil penalty of up to $1000 may be imposed at the discretion of the General District Court for the jurisdiction in which the violation occurred.

2. Procedures.

a. Documentation.

In those cases where an inspection has been initiated and violations of the Act have been noted, but the inspector determines that VOSH does not have jurisdiction; the inspector shall fill out a VOSH-1 for a "No Inspection". However, the inspector shall, to the extent possible, obtain documentation of the violations for referral purposes.

Appropriate documentation includes the following:

i. Complete information to fill out the VOSH-1.

ii. Pictures of violations.

iii. Names and addresses of exposed persons.

iv. Witness statements where obtainable.

v. Owner/operator of the Overhead High Voltage Power Line, if possible.

b. Referral by Regional Supervisor.

When all appropriate documentation has been gathered, the inspector shall turn over the documentation to the Regional Supervisor for regular referral procedures. The Regional Supervisor shall refer the information to the Owner/Operator of the Overhead High Voltage Power Line.

c. Imminent Danger Situations (Where VOSH Does Not Have Jurisdiction).

In the event of an imminent danger situation that meets the guidelines in the FOM (but where VOSH does not have jurisdiction), the inspector shall attempt to eliminate the imminent danger situation in accordance with the requirements in the FOM.

If the employer either cannot or will not voluntarily eliminate the imminent danger situation, the inspector shall call his Supervisor and the Safety Enforcement Director. The Director will consult with the Commissioner, Assistant Commissioner and Technical Support personnel and will proceed to request the immediate assistance of the Owner/Operator of the Overhead High Voltage Power Line and the Commonwealth's attorney for the jurisdiction in which the violation is located. The Owner/Operator and the Commonwealth's attorney will determine what further action is necessary to eliminate the imminent danger situation.

G. SAVES

The Standard Alleged Violation Elements (SAVES) for the Overhead High Voltage Line Safety Act are attached to this manual as an appendix.

H. Appropriations Act

VOSH Directive 02-005 contains the Federal Appropriations Act Limitations on funding for State Plans such as Virginia. The Appropriations Act places certain limitations on where and when inspections can be conducted by OSHA (and VOSH).

As an example, farming operations with 10 or fewer employees that do not maintain an active temporary labor camp, are exempt from inspections. This exemption means that VOSH cannot conduct inspections on such farms, unless the state wishes to pay 100% of the cost of that inspection.

All violations of the Overhead Power Line Safety Act will be cited regardless of any exemptions, restrictions or limitations contained in the Appropriations Act.

It shall be the responsibility of the inspector/Regional Supervisor to notify their Enforcement Director of all inspections that go beyond the limitations of the Appropriations Act. The Director shall inform his Assistant Commissioner who shall assure that expenses attributed to such inspections are paid for with 100% state funds.

## NOTICES TO STATE AGENCIES

RE: 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: Jane Chaffin, Virginia Code Commission, P.O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591.

FORMS:

NOTICE OF INTENDED REGULATORY ACTION - RR01
NOTICE OF COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE OF MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT OF PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained from Jane Chaffin at the above address.

## ERRATA

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: **VR 115-02-12. Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds into Virginia.**

Publication: 5:19 VA.R. 2607 June 19, 1989

Correction to the Proposed Regulation:

Page 2607, an incorrect date for the public hearing was published; the correct date is September 27, 1989 at 10 a.m.

### DEPARTMENT OF CORRECTIONS

Title of Regulation: **VR 230-30-005. Guide for Minimum Standards in Design and Construction of Jail Facilities.**

Publication: 5:19 VA.R. 2623 June 19, 1989

Correction to the Proposed Regulation:

Page 2623, "Pod" was incorrectly published as "Pad" and should read: "Pod" means a group of cells clustered together.

### DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Notice: **Standards Governing Operating of Individual and Regional Code Academies.**

Publication: 5:19 VA.R. 2727 June 19, 1989

Correction to the Notice:

Page 2728, 8. Instruction Program, last sentence in the second paragraph "or" should be changed to "on" so the sentence reads "...administered by the department or change to the Uniform..."

Page 2729, 9 B, the comma in the first sentence after Certificate of Accreditation should be removed.

Page 2729, 13 A, in the last sentence "file" should be changed to "fire" so the sentence reads "...a current fire inspection report..."

Page 2730, 14 C, "proved" was mispelled "provded"; the sentence should read "...if proved, would constitute..."

Page 2730, 15. Penalties, text was omitted at the end of the paragraph and should read "...the owner permits the school to be open and operate without such a..."

Page 2730, 16. Listing of Certified Schools, should read "...valid Certificates of Accreditation under the...."

# 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

### BOARD FOR ACCOUNTANCY

† **July 17, 1989 - 10 a.m.** – Open Meeting
† **July 18, 1989 - 8 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to (i) review enforcement cases; (ii) review regulations; (iii) review applications for certification and licensure; (iv) review correspondence; (v) conduct routine board business; (vi) conduct old business; and (vii) conduct new business.

**Contact:** Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

† **July 27, 1989 - 1 p.m.** – Open Meeting
Southwest 4-H Education Center, Abingdon, Virginia. ♿

Staff reports on agricultural diversification projects and the implementation of the new state pesticide law will be received. Tours of agricultural operations will be held in conjunction with this meeting in the Southwest.

**Contact:** Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-3501 or SCATS 786-3501

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

**September 27, 1989 - 10 a.m.** – Public Hearing
Washington Building, 1100 Bank Street, Board Room, 2nd Floor, Richmond, Virginia. ♿

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: **VR 115-02-12. Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and other Animals or Birds into Virginia.** The amendment to the regulation is necessary to establish a program in Virginia for the eradication of pseudorabies in swine and to improve the regulation's clarity and effectiveness.

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

Written comments may be submitted until August 28, 19898, to William D. Miller, D.V.M., State Veterinarian, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Suite 600, Richmond, Virginia 23219.

**Contact:** Paul J. Friedman, D.V.M., Chief, Bureau of Veterinary Services, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or SCATS 786-2483

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**September 27, 1989 - 10 a.m.** – Public Hearing
Washington Building, 1100 Bank Street, Board Room, 2nd Floor, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Agriculture and Consumer Services intends to adopt regulations entitled: **VR 115-02-16. Rules and Regulations Governing Pseudorabies in Virginia.** The regulation is necessary to establish a program in Virginia for the eradication of pseudorabies in swine.

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

Written comments may be submitted until August 28, 1989,

to William D. Miller, D.V.M., State Veterinarian, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Suite 600, Richmond, Virginia 23219.

**Contact:** Paul J. Friedman, D.V.M., Chief, Bureau of Veterinary Services, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or SCATS 786-2483

## DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

**† September 20, 1989 - 10 a.m.** – Public Hearing
2901 Hermitage Road, First Floor Hearing Room, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to amend numerous regulations which relate to (i) corporations not being required to be represented by attorneys at initial or appeal hearings with respect to matters involving legal conclusions, examination of witnesses, preparation of briefs or pleadings, (ii) statutory reference changes to the Wine Franchise Act, (iii) permitting more alcoholic beverage advertising inside retail licensee establishments through the use of printed paper and cardboard materials which are not obtained from manufacturers, bottlers or wholesalers, (iv) regulation subsection and subdivision changes, (v) the sale of ice and the cleaning and servicing of equipment, (vi) changing licensee record keeping requirements for beer and 3.2 beverages to two years, and (vii) permitting the 45% food sales ratio requirement for special mixed beverage licensees located in food courts to be determined by reference to the combined sales of all places primarily engaged in the sale of meals or light lunches in a food court.

STATEMENT

**Notice to the Public**

Pursuant to §§ 9-6.14:7.1 and 9-6.14:22 of the Code of Virginia, notice is hereby given that the Virginia Alcoholic Beverage Control Board will conduct hearings as to whether the following proposed actions should be taken regarding its regulations under authorities shown:

**VR 125-01-1 § 3** - Attorneys.

Subject of proposal: - To eliminate the requirement that a corporation must be represented by an attorney at an initial hearing with respect to matters involving legal conclusions, examination of witnesses, or preparation of briefs or pleadings.

Basis: - §§ 4-7(j) and (l), 4-11(a), 4-98.14, 4-103(b) and Chapter 1.1:1 (§§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

Purpose: - To comply with 1989 statutory changes involving §§ 4-10.1, 4-105 and 4-114 of the Code of Virginia.

Issue: - The amendment ensures that the regulation does not conflict with statutory law.

Substance: Amendment specifies that a corporation may choose to be represented by counsel or represent themselves with respect to legal conclusions, examination of witnesses or preparation of briefs or pleadings at initial hearings.

**VR 125-01-1 § 2.2** - Attorneys.

Subject of proposal: To eliminate the requirement that a corporation must be represented by an attorney at an appeal hearing with respect to matters involving legal conclusions, examination of witnesses or preparation of briefs or pleadings.

Basis: §§ 4-7(j) and (l), 4-11(a), 4-98.14, 4-103(b) and Chapter 1.1:1 (§§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

Purpose: To comply with 1989 statutory changes involving §§ 4-10.1, 4-105 and 4-114 of the Code of Virginia.

Issue: The amendment ensures that the regulation does not conflict with statutory law.

Substance: Amendment specifies that a coporation may choose to be represented by counsel or represent themselves with respect to legal conclusions, examination of witnesses or preparation of briefs or pleadings at appeal hearings.

**VR 125-01-1 § 3.1** - Complaint.

Subject of proposal: To amend the regulation to comply with 1989 statutory changes involving the Wine Franchise Act (which was repealed February 18, 1989) by changing statutory references to the Code of Virginia.

Basis: §§ 4-7(j) and (l), 4-11(a), Chapter 2.1 (§§ 4-118.3 et seq.), Chapter 2.3 (§§ 4-118.42 et seq.) of Title 4 and Chapter 1.1:1 (§§ 9-6.14.1 et seq.) of Title 9 of the Code of Virginia.

Purpose: To change references from Chapter 2.2 (which was repealed February 18, 1989) of Title 4 of the Code of Virginia to Chapter 2.3.

Issue: This amendment ensures that the regulation complies with statutory law.

Substance: Amendment specifies that the regulation will comply with all statutory changes of the Code of Virginia.

**VR 125-01-1 § 3.5** - Discovery, prehearing procedures and

production at hearings.

Subject of proposal: To amend the regulation to comply with 1989 statutory changes involving the Wine Franchise Act (which was repealed February 18, 1989) by changing statutory references to the Code of Virginia.

Basis: §§ 4-7(j) and (l), 4-11(a), Chapter 2.1 (§§ 4-118.3 et seq.), Chapter 2.3 (§§ 4-118.42 et seq.) of Title 4 and Chapter 1.1:1 (§§ 9-6.14.1 et seq.) of Title 9 of the Code of Virginia.

Purpose: To comply with 1989 statutory changes involving the Wine Franchise Act (which was repealed February 18, 1989) by changing statutory references to the Code of Virginia.

Issue: This amendment ensures that the regulation complies with statutory law.

Substance: Amendment specifies that the regulation will comply with all statutory changes of the Code of Virginia.

**VR 125-01-2 § 2** - Advertising; Interior; Retail Licensees; Show Windows.

Subject of proposal: To allow more interior alcoholic beverage advertising in retail licensee establishments through the use of printed paper and cardboard matter which is obtained from sources other than manufacturers, bottlers and wholesalers; to combine all interior advertising in one section; to provide the correct regulation citation.

Basis: §§ 4-7(l), 4-11(a), 4-60(i), 4-69, 4-69.2, 4-79.1, 4-98.10(w), 4-98.14 and 4-103(b) and (c) of the Code of Virginia.

Purpose: To allow more interior advertising of alcoholic beverages in licensed retail establishments; to change VR 125-01-3 § 9 F to VR 125-01-3 § 8 F and to combine all interior advertising in one section.

Issue: The amount of interior alcoholic beverage advertising to be permitted in licensed retail establishments.

Substance: Retail licensee establishments may use interior alcoholic beverage advertising obtained from sources other than manufacturers, bottlers or wholesalers.

**VR 125-01-2 § 6** - Advertising; Novelties and Specialties.

Subject of proposal: To cite the correct regulation subdivision and to clarify this section.

Basis: §§ 4-7(l), 4-11(a), 4-69, 4-98.10(w) and 4-98.14 of the Code of Virginia.

Purpose: To change VR 125-01-3 § 9 F to VR 125-01-3 § 8 F and to clarify this section.

Issue: This amendment ensures that the correct regulation subdivision is cited.

Substance: To cite the correct regulation subdivision and clarify this section.

**VR 125-01-3 § 8** - Inducements to Retailers; Tapping Equipment; Bottle or Can Openers; Banquet Licensees; Cut Case Cards; Clip-Ons and Table Tents.

Subject of proposal: To include in the regulations the sale of ice and the cleaning and servicing of equipment as exceptions to § 4-79 (which was repealed as of July 1, 1989) and § 4-79.1 of the Code of Virginia; to make any licensee of the board who violates, solicits any person to violate or consents to any violation of this section, subject to the sanctions and penalties of § 4-79.1 (D) of the Code of Virginia.

Basis: §§ 4-7(l), 4-11(a), 4-69, 4-69.2, 4-98.10, 4-98.14 and 4-103(b) of the Code of Virginia.

Purpose: To include all exceptions to §§ 4-79 and 4-79.1 of the Code of Virginia in the regulations; to make any licensee subject to § 4-79.1(D) sanctions and penalties who violates, solicits any person to violate or consents to any violation of this section.

Issue: This amendment to §§ 4-79 and 4-79.1 of the Code of Virginia.

Substance: To include in the regulations the sale of ice and the cleaning and servicing of equipment as exceptions to § 4-79 (which was repealed as of July 1, 1989) and § 4-79.1 of the Code of Virginia; to make any licensee of the board who violates, solicits any person to violate or consents to any violation of this section, subject to the sanctions and penalties of § 4-79.1(D) of the Code of Virginia.

**VR 125-01-7 § 9** - Records to be Kept by Licensees Generally; Additional Requirements for Certain Retailers; "Sale" and "Sell" Defined; Gross Receipts; Reports.

Subject of proposal: To comply with § 4-136 of the Code of Virginia by changing licensee record keeping requirements for beer and 3.2 beverages to two years and to clarify this section.

Basis: §§ 4-7(l), 4-11(a), 4-44, 4-98.6, 4-98.7, 4-98.14 and 4-103(b) of the Code of Virginia.

Purpose: To comply with the statutory requirements of § 4-136 of the Code of Virginia.

Issue: The amendment ensures that the regulation is not in conflict with statutory law.

Substance: To change licensee record keeping requirements for beer and 3.2 beverages from three to two years.

**VR 125-01-7 § 13** - Special Mixed Beverage Licensees; Locations; Special Privileges; Taxes on Licenses.

Subject of proposal: To permit the 45% food sales ratio requirement for special mixed beverage licensees located in a food court to be determined by reference to the combined sales of all places primarily engaged in the sale of meals or light lunches in a food court.

Basis: §§ 4-11(a), 4-98.2, 4-98.14 and 7.1-21.1 of the Code of Virginia.

Purpose: To accommodate the Metropolitan Washington Airports Authority.

Issue: How to determine the 45% sales ratio requirement for special mixed beverage licensees located in food courts.

Substance: To permit the 45% food sales ratio requirement for special mixed beverage licensees located in a food court to be determined by reference to the combined sales of all places primarily engaged in the sale of meals or light lunches in a food court.

**VR 125-01-7 § 15** - Wholesale Alcoholic Beverage and Beverage Sales; Discounts; Price-Fixing; Price Increases; Price Discrimination; Retailers.

Subject of proposal: To amend regulations to comply with 1989 statutory changes involving the Wine Franchise Act (which was repealed February 18, 1989) by changing statutory references to the Code of Virginia.

Basis: §§ 4-7(l), 4-11(a), 4-103(b), 4-118.12, 4-118.12:1, 4-118.15, 4-118.52, 4-118.53 and 4-118.56 of the Code of Virginia.

Purpose: To amend the regulation in order that is will comply with the 1989 statutory changes.

Issue: The amendment ensures that the regulation does not conflict with statutory law.

Substance: The changes ensure that the regulation complies with the statutory changes in the Code of Virginia.

The hearing will be conducted on September 20, 1989 at 10 a.m. in the Hearing Room, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. Interested persons will be afforded an opportunity to submit data, views and arguments orally or in writing with respect to the proposals. Tentative drafts will be available for public inspection at the Office of the Secretary to the Board at the foregoing address, with copies obtainable at such address or by request addressed to such office at P.O. Box 27491, Richmond, Virginia 23261.

Statutory Authority: §§ 4-7(l), 4-11, 4-36, 4-69, 4-69.2, 4-72.1, 4-98.14, 4-103(b) and 9-6.14:1 et seq. of the Code of Virginia.

Written comments may be submitted until 10 a.m., September 20, 1989.

**Contact:** Robert N. Swinson, Secretary to the Board, Alcoholic Beverage Control Board, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616 or SCATS 367-0616

## STATE AIR POLLUTION CONTROL BOARD

**September 6, 1989 - 10 a.m.** – Public Hearing
Department of Air Pollution Control, Southwest Virginia Regional Office, 121 Russell Road, Abingdon, Virginia

**September 6, 1989 - 10 a.m.** – Public Hearing
Department of Air Pollution Control, Valley of Virginia Regional Office, 5338 Peters Creek Road, Suite D, Roanoke, Virginia

**September 6, 1989 - 10 a.m.** – Public Hearing
Department of Air Pollution Control, Central Virginia Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia

**September 6, 1989 - 10 a.m.** – Public Hearing
Department of Air Pollution Control, State Capitol Regional Office, 8205 Hermitage Road, Richmond, Virginia

**September 6, 1989 - 10 a.m.** – Public Hearing
Department of Air Pollution Control, Hampton Roads Regional Office, Old Greenbrier Road, 2010 Old Greenbrier Road, Chesapeake, Virginia

**September 6, 1989 - 10 a.m.** – Public Hearing
Department of Air Pollution Control, National Capitol Regional Office, Springfield Towers, Suite 502, 6320 Augusta Drive, Springfield, Virginia

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The proposed amendments to the regulations will provide the latest edition of referenced documents and incorporate newly promulgated federal New Source Performance Standards and National Emissions Standard for Hazardous Air Pollutants.

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

Written comments may be submitted until September 6, 1989, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

**Contact:** Nancy S. Saylor, Policy Analyst, Department of Air Pollution Control, Division of Program Development,

P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249 or SCATS 786-1249

## BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

### Board for Land Surveyors

† **August 11, 1989 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to (i) approve minutes of May 18, 1989, meeting; (ii) review applications; (iii) review and discuss correspondence; and (iv) review enforcement files.

### Board for Professional Engineers

† **August 23, 1989 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to (i) approve minutes from May 4, 1989, meeting; (ii) review applications; (iii) review general correspondence; and (iv) review enforcement files.

**Contact:** Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 West Broad St., Richmond, VA 23230, telephone (804) 367-8514, toll-free 1-800-552-3016 or SCATS 367-8514

## BOARD FOR BARBERS

† **July 17, 1989 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to discuss written barber examination.

**Contact:** Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

## VIRGINIA BOATING ADVISORY BOARD

**July 21, 1989 - 2 p.m.** – Open Meeting
Bernard's Landing Marina, Smith Mountain Lake, Virginia

Discussion of and action on issues of concern to Virginia's recreational boaters. Focus of July 21 meeting is on boating problems at Smith Mountain Lake.

**Contact:** E. L. (Ron) Rash, Member, Boating Advisory Board, P.O. Box 2177, Lynchburg, VA 24551, telephone (804) 845-2371

## STATE BUILDING CODE TECHNICAL REVIEW BOARD

† **July 28, 1989 - 10 a.m.** – Open Meeting
Fourth Street State Office Building, 205 North Fourth Street, 2nd Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

A meeting to (i) consider requests for interpretation of the Virginia Uniform Statewide Building Code; (ii) consider appeals from the rulings of local appeal boards regarding application of the Virginia Uniform Statewide Building Code, and (iii) approve minutes of previous meeting.

**Contact:** Jack A. Proctor, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 786-4752

## BOARD FOR BRANCH PILOTS

**July 18, 1989 - 10 a.m.** – Open Meeting
Virginia Port Authority, World Trade Center, Suite 600, Norfolk, Virginia. ♿

The board will meet to conduct routine business at its regular quarterly business meeting.

**Contact:** David E. Dick, Deputy Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8500 or toll-free 1-800-552-3016

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NOTE: CHANGE OF HEARING DATE
**September 12, 1989 - 9 a.m.** – Public Hearing
Virginia Port Authority, World Trade Center, Suite 600, Norfolk, Virginia

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 adopt, amend and repeal regulations entitled: **VR 535-01-01. Branch Pilot Regulations.** The purpose of the proposed amendments is to continue and revise the standards for Branch Pilot licensure, continued licensure and conduct in piloting vessels in Virginia's waters.

Statutory Authority: § 54.1-902 of the Code of Virginia.

Written comments may be submitted until September 5, 1989.

**Contact:** David E. Dick, Deputy Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8500, toll-free 1-800-552-3016 or SCATS 367-8500

### LOCAL EMERGENCY PLANNING COMMITTEE OF CHESTERFIELD COUNTY

**August 3, 1989 - 5:30 p.m.** – Open Meeting
† **September 7, 1989 - 5:30 p.m.** – Open Meeting
Chesterfield County Administration Building, 10001 Ironbridge Road, Room 502, Chesterfield, Virginia. ♿

To meet requirements of Superfund Amendment and Reauthorization Act of 1986.

**Contact:** Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236

### CONSORTIUM ON CHILD MENTAL HEALTH

**August 2, 1989 - 9 a.m.** – Open Meeting
**September 6, 1989 - 9 a.m.** – Open Meeting
Eighth Street Office Building, 805 East Broad Street, 11th Floor Conference Room, Richmond, Virginia. ♿

A regular business meeting open to the public, followed by an executive session, for purposes of confidentiality, to review applications for funding of services to individuals.

**Contact:** Wenda Singer, Chair, Virginia Department for Children, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-2208 or SCATS 786-2208

### DEPARTMENT FOR CHILDREN

#### Rural Child Care Project Committee

† **July 25, 1989 - 1 p.m.** – Open Meeting
Caroline County Cooperative Extension Service, 111B Ennis Street, Bowling Green, Virginia. ♿ (Interpreter for deaf provided if requested)

The committee will discuss transitional planning for the end of the project and school-age child care.

**Contact:** Linda B. Thomas, Human Resources Developer, Virginia Department for Children, 805 E. Broad St., 11th Floor, Eighth Street Office Bldg., Richmond, VA 23219-1982, telephone (804) 786-5793 or SCATS 786-5793

#### State-Level Runaway Youth Services Network

† **July 27, 1989 - 11 a.m.** – Open Meeting
† **July 28, 1989 - 9 a.m.** – Open Meeting
Airfield 4-H Educational Center, Wakefield, Virginia. ♿

A regular business meeting and training session.

**Contact:** Anita H. Prince, Planner, Virginia Department for Children, 805 E. Broad St., 11th Floor, Richmond, VA 23219, telephone (804) 786-5692 or SCATS 786-5692

### COORDINATING COMMITTEE FOR INTERDEPARTMENTAL LICENSURE AND CERTIFICATION OF RESIDENTIAL FACILITIES FOR CHILDREN

**August 11, 1989 - 8:30 a.m.** – Open Meeting
**September 8, 1989 - 8:30 a.m.** – Open Meeting
Interdepartmental Licensure and Certification, Office of the Coordinator, Tyler Building, 1603 Santa Rosa Drive, Suite 210, Richmond, Virginia. ♿

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee.

**Contact:** John Allen, Coordinator, Interdepartmental Licensure and Certification, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124 or SCATS 662-7124

### BOARD OF COMMERCE

† **July 27, 1989 - 8:45 p.m.** – Open Meeting
† **July 28, 1989 - 10:30 a.m.** – Open Meeting
The Great Room, McCampbell Inn, Lexington, Virginia. ♿

1. The board will review Commerce Department performance during prior fiscal year, and discuss goals for the current FY.

2. The board will review an analysis of the Commerce Department's examinations function for occupational licensees, prepared by Research Dimensions, Inc.

3. The board will discuss the results of studies and public hearings conducted on the questions of whether there should be regulation of Arborists, Radon Gas Testers, and Estheticians, and consider subcommittee recommendations.

4. The board will elect a new chairman and vice chairman.

**Contact:** Alvin Whitley, Policy Analyst to Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8564, toll-free 1-800-552-3016 or SCATS 367-8564

### STATE BOARD FOR COMMUNITY COLLEGES

**July 19, 1989 - 2 p.m.** – Open Meeting
James Monroe Building, 101 North 14th Street, Board Room, 15th Floor, Richmond, Virginia. ♿

The state board will meet at 2 p.m. for a working session followed by a meeting of the state board committees at 3 p.m.

**Contact:** Joy S. Graham, James Monroe Bldg., 101 N. 14th

St., Richmond, VA 23219, telephone (804) 225-2126

### BOARD FOR CONTRACTORS

**August 7, 1989 - 7:30 p.m.** – Public Hearing
Roanoke, Virginia

**August 8, 1989 - 7:30 p.m.** – Public Hearing
Fredericksburg, Virginia

**August 9, 1989 - 7:30 p.m.** – Public Hearing
Williamsburg, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Contractors intends to adopt, amend and repeal regulations entitled: **VR 220-01-2. Board for Contractors Licensing Regulations.** The proposed regulations have been reorganized to place entry requirements before renewal, list fees at appropriate places, and to separate standards of practice from standards of conduct. In addition, in accordance with changes made by the Code Commission to Title 54.1, Chapter 11 on the regulation of contractors, the term "registration" has been added in the appropriate places. The proposed regulations also change some of the conditions for licensure, add the requirement for licensure of an individual Class A contractor for every licensed Class A firm, delete the requirement for board-administered examinations for certain specialty classifications, and substitute the requirement of a master certification from the Department of Housing and Community Development in those specialities. In addition, the regulations require assurance of continued competence for renewal or reinstatement of a license or registration and require some additional documentation of contractual agreements, record keeping and reporting to the board.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1102 of the Code of Virginia.

Written comments may be submitted until September 3, 1989.

**Contact:** Florence R. Brassier, Deputy Director, Board for Contractors, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8557, toll-free 1-800-552-3016 or SCATS 367-8557

### VIRGINIA COUNCIL FOR THE COORDINATION OF PREVENTION

**July 21, 1989 - 10 a.m.**
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

The agenda includes (i) presentation of an award to the Governor; (ii) distribution of the printed Comprehensive Prevention Plan; and (iii) discussion of how to implement the prevention plan recommendations.

**Contact:** Ron Collier or Hariet Russell, Office of Prevention, Promotion and Library Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-1530

### BOARD OF CORRECTIONS

**July 19, 1989 - 10 a.m.** – Open Meeting
† **August 23, 1989 - 10 a.m.** – Open Meeting
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.

A regular monthly meeting to consider such matters as may be presented to the board.

† **July 26, 1989 - 10 a.m.** – Open Meeting
† **August 28, 1989 - 10 a.m.** – Open Meeting
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.

Special board meeting/budget briefing.

NOTE: If this briefing is completed during the August 23, 1989, board meeting; the August 28, 1989, special meeting will not be held.

**Contact:** Vivian Toler, Secretary of the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235

### DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

**August 3, 1989 - 7 p.m.** – Public Hearing
Holiday Inn Airport, 6626 Thirlane Road, Roanoke, Virginia

**August 16, 1989 - 10 a.m.** – Public Hearing
Board of Corrections, 6900 Atmore Drive, Meeting Room, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Board of Corrections intends to adopt regulations entitled: **VR 230-30-005. Guide for Minimum Standards in Design and Construction of Jail Facilities.** These regulations establish minimum standards for the design and construction of jail facilities.

Statutory Authority: § 53.1-68 of the Code of Virginia.

Written comments may be submitted until August 18, 1989.

**Contact:** Dave Hawkins, Architect, Department of Corrections, Architecture and Design Unit, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3231 or SCATS 674-3231

# Calendar of Events

## BOARD OF COSMETOLOGY

† **July 24, 1989 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to (i) review enforcement cases; (ii) review applications; (iii) review correspondence; (iv) conduct routine board business; (v) conduct old business; and (vi) conduct new business.

**Contact:** Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

## DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

NOTE: CHANGE OF HEARING DATE

**September 15, 1989 - 10 a.m** – Public Hearing
State Capitol, Capitol Square, House Room 2, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Criminal Justice Services intends to amend regulations entitled: **VR 240-02-1. Regulations Relating to Criminal History Record Information Use and Security.** Regulations to ensure the completeness, accuracy, privacy and security of criminal history record information. Amendments expand present language to provide further clarification of procedures.

Statutory Authority: §§ 9-170 and 9-184 through 9-196 of the Code of Virginia.

Written comments may be submitted until August 30, 1989.

**Contact:** Paula Scott, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000 or SCATS 786-4000

## BOARD OF DENTISTRY

† **September 21, 1989 - 2 p.m.** – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

An informational public hearing for the Virginia Board of Dentistry for the purpose of receiving proposed regulations.

† **September 20, 1989 - 1 p.m.** – Open Meeting
† **September 21, 1989 - 8:30 a.m.** – Open Meeting
† **September 22, 1989 - 1:45 p.m.** – Open Meeting
† **September 23, 1989 - 10 a.m.** – Open Meeting
Richmond-Marriott Hotel, 500 East Broad Street, Richmond, Virginia.

A business meeting, formal hearings, committee meetings, disciplinary actions, and committee reports.

**Contact:** Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9906

## STATE BOARD OF EDUCATION

**July 27, 1989 - 9 a.m.** – Open Meeting
**July 28, 1989 - 9 a.m.** – Open Meeting
James Monroe Building, 101 North Fourteenth Street, Conference Rooms D & E, Richmond, Virginia. (Interpreter for deaf provided if requested)

Business will be conducted according to items listed on the agenda. The agenda is available upon request. The public is reminded that the Board of Vocational Education may convene, if required.

**Contact:** Margaret Roberts, James Monroe Building, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540

## DEPARTMENT OF EDUCATION

**August 31, 1989 - 7 p.m.** – Public Hearing
Hermitage High School, Richmond, Virginia
Lake Taylor High School, Norfolk, Virginia
George Wythe High School, Wytheville, Virginia
Osbourn High School, Manassas, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Education intends to amend regulations entitled: **VR 270-01-0012. Standards for Accrediting Public Schools in Virginia.** These regulations provide a foundation for quality education and provide guidance and direction to assist schools in their continuing efforts to offer educational programs to meet the needs, interests and aspirations of students. These proposed regulations establish minimum standards and criteria which serve as the basis for determining the accreditation status of public schools in the Commonwealth.

Statutory Authority: §§ 22.1-16 and 22.1-19 of the Code of Virginia.

Written comments may be submitted until September 1, 1989.

**Contact:** Dr. Robert B. Jewell, Associate Director, Accreditation and Evaluation Service, Department of Education, P.O. Box 6Q, Richmond, VA 23216, telephone (804) 225-2105

## VIRGINIA EMPLOYMENT COMMISSION

### Advisory Board

† **August 9, 1989 - 1 p.m.** – Open Meeting
† **August 10, 1989 - 9 a.m.** – Open Meeting
Sheraton Hotel, Harrisonburg, Virginia. ♿

A regular meeting of the Advisory Board to conduct general business.

**Contact:** Ron Montgomery, 703 E. Main St., Richmond, VA 23219, telephone (804) 786-1070

## COUNCIL ON THE ENVIRONMENT

**July 17, 1989 - 7 p.m.** – Open Meeting
Wilton Museum House, South Wilton Road, Richmond, Virginia. ♿

A quarterly meeting to consider and discuss statewide environmental issues. Citizens will be given an opportunity to express their views during the citizens' forum portion of the meeting.

**Contact:** David J. Kinsey, Special Projects Coordinator, Council on the Environment, 202 N. Ninth St., Room 900, Richmond, VA 23219, telephone (804) 786-4500 or SCATS 786-4500

## VIRGINIA FARMER'S MARKET BOARD

† **July 20, 1989 - 9 a.m.** – Open Meeting
Accomack County, (Location to be announced), Eastern Shore, Virginia

A regular board meeting.

**Contact:** J. P. Welch, 1100 Bank Street, Washington Bldg., Room 802, Richmond, VA 23219, telephone (804) 786-1949

## GOVERNOR'S MIGRANT AND SEASONAL FARMWORKERS BOARD

**July 19, 1989 - 10 a.m.** – Open Meeting
State Capitol Building, House Room 2, Richmond, Virginia. ♿

A regular meeting of the board.

**Contact:** Marilyn Mandel, Planning, Research and Policy Analysis Director, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2385 or SCATS 786-2385

## VIRGINIA FIRE SERVICES BOARD

† **July 31, 1989 - 7 p.m.** – Public Hearing
Lynchburg Public Library, 2315 Memorial Avenue, Lynchburg, Virginia

† **August 1, 1989 - 7 p.m.** – Public Hearing
Wytheville Municipal Building, Tazewell and Monroe Streets, Wytheville, Virginia

† **August 17, 1989 - 7 p.m.** – Public Hearing
Fredericksburg City Council Chambers, 715 Princess Ann Street, Fredericksburg, Virginia

† **August 24, 1989 - 7 p.m.** – Public Hearing
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia

The Virginia Fire Services Board is requested by HJR 351 to study the feasibility of adopting the National Fire Protection Association (NFPA) 1500 - standard for a fire department occupational safety and health program. The design of NFPA 1500 is to provide the framework for a safety and health program for a fire department or any type of organization providing similar services. This standard is intended to meet or exceed any existing mandatory or voluntary compliance standards addressing any aspect of firefighter safety and health. The purpose of the public hearings is two-fold. One is to provide complete and accurate information about NFPA 1500 to the fire service personnel throughout the State. The other purpose is to solicit comments from the fire service community concerning the adoption of NFPA 1500 by the Commonwealth of Virginia.

**Contact:** Carl N. Cimino, Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2681 or SCATS 225-2681

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**August 27, 1989 - 3 p.m.** – Open Meeting
**August 28, 1989 - 9 a.m.** – Open Meeting
† **August 29, 1989 - 9 a.m.** – Open Meeting
Koger Center - West, 1601 Rolling Hills Drive, Surry Building, Richmond, Virginia.

August 27, 1989 - Preneed Committee Meeting.

August 28, 1989 - Certify candidates for September examination, general board meeting, and discuss proposed regulations.

August 29, 1989 - Informal fact-finding conferences.

**Contact:** Mark L. Forberg, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9907

## BOARD OF GAME AND INLAND FISHERIES

† **July 28, 1989 - 9:30 a.m.** – Open Meeting
Southwest Virginia 4-H Educational Center, Inc., Route 4, Box 20, Abingdon, Virginia.

The board will meet to:

- set the Virginia Webless Migratory Game Bird Seasons (doves, woodcock, rail, snipe, and falconry) for 1989-1990;

- receive committee reports including the Nominating Committee's selection of officers for the 1989-1990 term;

- discuss land acquisition for additions to Wildlife Management Areas;

- consider general administrative matters.

### Finance Committee

† **July 27, 1989 - 4:30 p.m.** – Open Meeting
Southwest Virginia 4-H Educational Center, Inc., Route 4, Box 20, Abingdon, Virginia.

The Finance Committee of the board will meet to discuss:

- acquisition of property; and

- financial report.

### Law and Education Committee

† **July 27, 1989 - 1 p.m.** – Open Meeting
Southwest Virginia 4-H Educational Center, Inc., Route 4, Box 20, Abingdon, Virginia.

The Law and Education Committee of the board will meet to address:

- delegation of authority to the director;

- report from Education and Wildlife Management areas;

- report on last year's Wildlife Stamp;

- report on this year's Wildlife Stamp;

- training and personnel (where we stand); and

- report on Virginia Wildlife.

### Planning Committee

† **July 27, 1989 - 3:30 p.m.** – Open Meeting
Southwest Virginia 4-H Educational Center, Inc., Route 4, Box 20, Abingdon, Virginia.

The Planning Committee of the board will meet to discuss:

- the formation of a planning section; and

- the implementation of planning within the agency.

### Wildlife and Boat Committee

† **July 27, 1989 - 2 p.m.** – Open Meeting
Southwest Virginia 4-H Educational Center, Inc., Route 4, Box 20, Abingdon, Virginia.

The Wildlife and Boat Committee of the board will meet to discuss:

- setting the Virginia Webless Migratory Game Bird Seasons (doves, woodcock, rail, snipe and falconry);

- permits for keeping exotic deer;

- authority to take rifles onto Wildlife Management Areas out of season;

- "take" and the Endangered Species Act; and

- Hunting Preserves.

**Contact:** Nancy B. Dowdy, Agency Regulatory Coordinator, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000, toll-free 1-800-237-5712 or SCATS 367-1000

## DEPARTMENT OF GENERAL SERVICES

### Art and Architectural Review Board

† **August 4, 1989 - 10 a.m.** – Open Meeting
Virginia Museum of Fine Arts, Main Conference Room, Richmond, Virginia.

The board will advise the Director of General Services and the Governor on architecture of state facilities to be constructed and works of art to be accepted or acquired by the Commonwealth.

**Contact:** M. Stanley Krause, AIA, AICP, Rancorn, Wildman & Krause, Architects, P.O. Box 1817, Newport News, VA 23601, telephone (804) 867-8030

## GLOUCESTER COUNTY LOCAL EMERGENCY PLANNING COMMITTEE

**August 30, 1989 - 6:30 p.m.** – Open Meeting

The Old Courthouse, Gloucester, Virginia.

The committee will conduct a table top exercise to test the recently approved County Hazardous Materials Plan.

**Contact:** Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042

## BOARD OF HEALTH

**August 8, 1989 - 10 a.m.** – Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to amend regulation entitled: **VR 355-30-01. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** This action amends the existing Virginia Medicare Care Facilities Certificate of Public Need (COPN) Rules and Regulations in order to implement the COPN program consistent with amended COPN law that becomes effective on July 1, 1989.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until 5 p.m., August 8, 1989.

**Contact:** Marilyn H. West, Director, Division of Resources Development, Department of Health, James Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-7463 or SCATS 786-7463

## BOARD OF HEALTH PROFESSIONS

**July 18, 1989 - 11 a.m.** – Open Meeting
NOTE: CHANGE OF LOCATION
Department of Health Professions, 1601 Rolling Hills Drive, Room 1, Richmond, Virginia.

A regularly quarterly meeting of the board. The draft report on the evaluation of the enforcement system will constitute the major agenda item. Reports of the Regulatory Evaluation and Research Committee and the Administration and Budget Committee will be considered.

### Regulatory Evaluation and Research Committee

**July 18, 1989 - 9 a.m.** – Open Meeting
NOTE: CHANGE OF LOCATION
Department of Health Professions, 1601 Rollings Hills Drive, Room 2, Richmond, Virginia.

The committee will consider further the issue of direct access to the services of licensed physical therapists and criteria for determining the need for and level of regulation of health occupations and professions.

**Contact:** Richard D. Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9918

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

**July 25, 1989 - 9:30 a.m.** – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia.

A monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting.

**Contact:** Ann Y. McGee, Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371 or SCATS 786-6371

## BOARD FOR HEARING AID SPECIALISTS

**September 11, 1989 - 9 a.m.** – Public Hearing
Department of Commerce, 3600 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Hearing Aid Specialists intends to amend regulation entitled: **VR 375-01-02. Board for Hearing Aid Specialists Regulations.**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until August 30, 1989.

**Contact:** Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8534

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**August 1, 1989 - 9 a.m.** – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. (Interpreter for deaf provided if requested)

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

**Contact:** Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

**July 18, 1989 - 10 a.m.** – Open Meeting
601 S. Belvidere Street, Richmond, Virginia.

A regular meeting to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; (iv) hold collections for chairman and vice chairman of the Board of Commissioners; (v) consider and, if appropriate, approve proposed amendments to the Rules and Regulations and Procedures, Instructions and Guidelines; and (vi) consider such other matters and take such other actions as they may deem 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, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

**August 21, 1989 - 10 a.m.** – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

The purpose of this hearing is to receive public input on the proposed criteria for accrediting local jurisdictions' Building Code Academies. Localities which establish training academies for building code officials, that are consistent with these accreditation criteria, will be exempt from transmitting the 1% levy proposed for adoption in the Uniform Statewide Building Code, Volume I, New Construction Code.

See General Notices section for criteria.

**Contact:** Gregory H. Revels, Program Manager, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

**Amusement Device Technical Advisory Committee**

† **July 27, 1989 - 9 a.m.** – Open Meeting
Kings Dominion, Doswell, Virginia.

A meeting to review and discuss regulations pertaining to the construction, maintenance, operation and inspection of amusement devices adopted by the Board of Housing and Community Development.

**Contact:** Jack A. Proctor, CPCA, Deputy Director, Division of Building Regulatory Services, Department of Housing and Community Development, 205 N. 4th St., Richmond, VA 23219-1747, telephone (804) 786-4752

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

**August 21, 1989 - 10 a.m.** – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-03. Survey Standards for the Inspection of Buildings Being Converted to Condominiums.** The purpose is to amend the survey standards for inspection of buildings being converted to condominiums for the presence of asbestos.

Statutory Authority: § 55-79.94 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

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**August 21, 1989 - 10 a.m.** – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Housing and Community Development intends to amend regulations entitled: **VR 394-01-06. Virginia Uniform Statewide Fire Prevention Code/1987 Edition.**

Statutory Authority: §§ 27-95 and 27-97 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Develoment Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

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**August 21, 1989 - 10 a.m.** – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and

Community Development intends to amend regulations entitled: **VR 394-01-7. Asbestos Survey Standards for Buildings to be Renovated or Demolished. The purpose is to amend the standards for inspection and management of buildings to be renovated or demolished.**

Statutory Authority: § 36-99.7 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

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**August 21, 1989 - 10 a.m.** – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend reguations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I, New Construction Code, 1987 Edition.**

Statutory Authority: §§ 36-98 and 36-99 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

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**August 21, 1989 - 10 a.m.** – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-22. Virginia Uniform Statewide Building Code - Volume II Building Maintenance Code/1987.** The purpose is to amend those portions of the regulations pertaining to: Application to Pre-USBC and Post-USBC Buildings; Fire Protection Systems for Use Group R-1 (Hotels, Motels).

Statutory Authority: §§ 36-98 and 36-99 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

## COUNCIL ON HUMAN RIGHTS

† **August 10, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, Fourth Floor Conference Room West, Richmond, Virginia.

A regularly scheduled council meeting.

**Contact:** Sandra Norman, Staff Administrative Specialist, P.O. Box 717, Richmond, VA 23206, telephone (804) 225-2292, toll-free 1-800-633-5510/TDD ☎ or SCATS 225-2292

## VIRGINIA COUNCIL ON INDIANS

**September 18, 1989 - 2 p.m.** – Open Meeting
Old City Hall, 1001 East Broad Street, AT&T Communications Conference Room, 1st Floor, Richmond, Virginia

A regular meeting of the Council on Indians to conduct general business and to receive reports from the council standing committees.

**Contact:** Mary Zoller, Information Director, Virginia Council on Indians, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9285 or SCATS 662-9285

## INNOVATIVE TECHNOLOGY AUTHORITY AND THE CENTER FOR INNOVATIVE TECHNOLOGY

† **July 24, 1989 - 2:30 p.m.** – Open Meeting
CIT Building, Suite 600, 2214 Rock Hill Road, Conference Room, Herndon, Virginia

An annual meeting and review of operational budget.

**Contact:** William L. Brobst, Center for Innovative Technology, CIT Bldg., Suite 600, 2214 Rock Hill Rd., Herndon, VA 22070, telephone (703) 689-3039

## STATE LAND EVALUATION ADVISORY COUNCIL

† **August 18, 1989 - 10 a.m.** – Open Meeting
† **September 8, 1989 - 10 a.m.** – Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia.

A meeting to determine a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, forest and open-space uses in the various areas of the Commonwealth.

**Contact:** David E. Jordan, Assistant Director, Property Tax, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8020 or SCATS 367-8020

VIRGINIA LONG-TERM CARE COUNCIL

† **September 28, 1989 - 9:30 a.m.** – Open Meeting
Cabinet Conference Room, 622 Ninth Street Office Building, Richmond, Virginia. &

Business pertains to developing increased long-term care services for disabled or chronically ill people of all ages.

**Contact:** Thelma E. Bland, Deputy Commissioner, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271/TDD ☎ , toll-free 1-800-552-4464 or SCATS 225-2271

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

**July 20, 1989** – 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 Medical Assistance Services intends to adopt regulations entitled: **State Plan for Medical Assistance Relating to Preadmission Screening. VR 460-01-46. Utilization Control and VR 460-02-4.141. Criteria for Nursing Home Preadmission Screening: Medicaid Eligible Individuals and All Mentally Ill and Mentally Retarded Individuals At Risk of Institutionalization.** These regulations contain the requirements for patient preadmission screening prior to nursing facility admittance.

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

Written comments may be submitted until 4:30 p.m., July 20, 1989, to Charlotte C. Carnes, Manager, Medical Social Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

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**September 1, 1989** – 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 Medical Assistance Services intends to amend regulations entitled: **VR 460-02-4.191. Disproportionate Share Adjustments for Inpatient Hospitals.** These proposed regulations intend to regulate the additional reimbursement to qualifying hospitals which serve a disproportionately higher number of Medicaid days.

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

Written comments may be submitted until 4:30 p.m., September 1, 1989, to William R. Blakely, Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

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† **September 15, 1989** – 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 Medical Assistance Services intends to adopt regulations entitled: **VR 460-03-3.1100; VR 460-05-2000.0000; VR 460-05-2000.1000. New Drug Review Program.** The proposed regulations will regulate Medicaid's coverage of new drugs as a cost savings measure.

STATEMENT

Basis: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The 1989 General Assembly mandated through the Appropriations Act that DMAS - implement a plan, pursuant to regulations adopted by the Board of Medical Assistance Services, to limit coverage of new drug products which have less expensive therapeutic alternatives unless a physician obtains prior approval.

Purpose: This proposal amends the Plan and proposes regulations to limit coverage of new drug products which have less expensive therapeutic alternatives unless a physician obtains prior approval.

Summary: This summary addresses the 1989 General Assembly mandate to limit coverage of new drugs. The 1989 Appropriations Act at Chapter 668 (item 389) E.13 directed the Department to implement the following strategy to control pharmacy costs to be effective on or before February 1, 1990. Pursuant to regulations adopted by the Board of Medical Assistance Services, the department shall implement a plan to limit coverage of new drugs which have less costly therapeutic equivalents unless a physician obtains prior approval.

Each year new drugs are introduced to the market by manufacturers. Currently there is no state review of approved drug products, and reimbursement is made for them once they have been approved by the Food and Drug Administration (FDA), marketed by manufacturers, and prescribed by physicians.

Many of these new drugs are no more effective or safe than drugs already on the market. Usually only a small number of these products represent new therapeutic categories and show a significant increase in effectiveness. Most of these new products offer little or no therapeutic benefits over currently available products, but they are usually more expensive.

These proposed regulations have been developed through the cooperative efforts of a New Drug Review Program Task Force. The Task Force members represented the pharmaceutical manufacturing industry, pharmacy associations, the Virginia Voluntary Formulary, the MCV Department of Pharmacy, Drug Information Services, the Veteran's Administration Hospital, the Medical Society of Virginia, the Old Dominion Medical Society and the department. The Task Force met during April and May to develop the regulations proposed for public comment.

The New Drug Review Committee, created by these proposed regulations, will make recommendations to the Board of Medical Assistance Services regarding the coverage of new drugs. These recommendations will enable the board to make informed decisions in limiting coverage and payment for new drugs for which effective, safe, and less expensive therapeutic alternatives are available.

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

Written comments may be submitted until September 15, 1989, to Stephen B. Riggs, D.D.S., Director, Division of Health Services Review, 600 E. Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

## BOARD OF MEDICINE

**July 20, 1989 - 8:15 a.m.** – Open Meeting
**July 21, 1989 - 8:15 a.m.** – Open Meeting
**July 22, 1989 - 8:15 a.m.** – Open Meeting
**July 23, 1989 - 8:15 a.m.** – Open Meeting
Omni Charlottesville Hotel, 235 West Main Street, Charlottesville, Virginia.

An open session to conduct general board business and discuss any other items which may come before the board. On Friday, Saturday and Sunday the board will review reports, interview licensees and make decisions on discipline matters.

**Contact:** Eugenia Dorson, Board Administrator, Board of Medicine, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9925

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† **September 20, 1989** – 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 Medicine intends to adopt and amend regulations entitled: **VR 465-02-01. Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, and Acupuncture.** The purpose is to amend regulations to clarify advertising free services/examination of practitioners of the healing arts and establish fees for special purpose examinations, out-of-state candidates to sit for FLEX, and withdrawing an application for licensure.

STATEMENT

Statement of purpose: The proposed regulations establish a period of time during which no additional charges or fees may be made when a patient responds to advertising for free services (professional examinations, or other services) by a licensed practitioner; establish a new fee for the special purpose examinations; a new fee for withdrawing an application for license by endorsement; and a new fee for an applicant to sit for one component of the Federal Licensing Examination (FLEX) upon evidence of having passed one component in another state.

Estimated entities and impact:

Regulated entities: There are 22,475 practitioners of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychologists, and Acupuncturists licensed to practice the Healing Arts in Virginia.

Projected costs to regulated entities: The impact to licenses and new applicants of these regulations that may increase the regulatory burden are assessed below:

1. § 1.4. Advertising ethics. The implementation of this proposed regulation will impact an estimated 10 practitioners who may be found in violation for misrepresentation when advertising free services. Each practitioner may further be subject to monetary penalties not to exceed $1,000 for each offense by the board.

2. § 7.1. Fees. The following proposed fees are new: Fees for withdrawing an application for license by endorsement; fees for special purpose examinations, and fees to sit for one component of the licensure examination upon passing a component in another state. It is estimated that the $150 fee for withdrawing an application for license by endorsement will affect

approximately 25 applicants per year. The $350 fee for special purpose examinations will affect about five examinees per year, as will the $325 fee for sitting for a single component of FLEX. It is reasonable to assume that these costs may be passed on to the individual consumer. The amount of this economic transfer will be negligible.

| Type of Fee | Old Fee | Proposed Fee |
|---|---|---|
| License by Endorsement Withdrawal Fee | None | $150 |
| Special Purpose Examination | None | $350 |
| Out-of-State Applicants One Component | None | $325 |

Expected costs to the agency. The board anticipates a minimal increase ($5,000/year) in the costs of investigations and hearings relating to advertising of free services, and an estimated cost of $2,000 for additional test administration, proctors, examination facilities and staff for the new special purpose examinations and out-of-state applicants taking only one component of the license examination.

Source of funds. All funds of the board are derived from the fees paid by licenses and applicants for licensure.

Legal authority: Section 54.1-2400 of the Code of Virginia authorizes the Board of Medicine to adopt and revise rules and regulations. The board has determined not to hold a public hearing on these proposed regulations. A 60 day comment period has been scheduled and all comments received will be carefully reviewed.

Explanation of need of proposed regulations. The proposed regulations protect the public from false and misleading advertisement for free services and establish new examinations procedures, fees for licenses and applicants desiring to obtain a license to practice in Virginia. The board has documented evidence of the need for new advertising regulations, and has sufficient experience with costs incurred for special purpose examinations and licensure by endorsement to estimate the amount of special fees required for direct beneficiaries to underwrite these costs.

§ 1.4. Advertising ethics. The amendment is proposed to ensure the public will not be harmed by false and misleading advertising by practitioners who "bait" the public with such advertising and do not fully disclose all related costs to such services or examinations.

§ 7.1. Fees. New fees required for licensure.

Subsection L is proposed to establish that a fee required for processing an application for license by endorsement when an applicant has determined not to pursue licensure to practice the healing arts in Virginia.

Subsection Q is to establish a fee to sit for the Special Purpose Examination, as required by the board, as a means to measure the clinical competency of a practitioner who requests a new license or reinstatement of a lapsed license following a period of nonpractice.

Subsection R establishes a fee and provides a mechanism for an applicant who has been unsuccessful in passing all components of the licensure examination to practice medicine in another state to sit for the failed component in Virginia.

Assurance of clarity and simplicity. Clarity and simplicity were assured in the drafting of these regulations through an editing process involving the board, its staff, and the Office of the Attorney General.

Impact on small business. If the practice of medicine and other healing arts is defined as a small business, then the proposed regulations will impact small businesses as described within this statement. The proposed regulations, however, do not differentially impact small or large professional practice organizations.

Alternatives considered: During the last two years, the Board of Medicine has reviewed regulations developed by other states and recommendations from professional societies regulated by the board regarding its regulations. The proposed regulations, in the opinion of the board, are the least burdensome approach while ensuring the protection of the public.

Evaluation schedule. In accordance with the Board of Medicine's Public Participation Guidelines, the board will conduct a review of all its regulations during 1990, and every two years beyond.

Forms and reports nondated. The amendments proposed to these regulations do not require any new application forms.

An effective date of February 11, 1990 is anticipated.

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

Written comments may be submitted until September 20, 1989, to Hilary H. Conner, M.D., Executive Director, Virginia Board of Medicine, Department of Health Professions, 1601 Rolling Hills Drive, Surry Building, Richmond, VA 23229-5005, telephone (804) 662-9908.

**Contact:** Eugenia K. Dorson, Board Administrator, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9925 or SCATS 662-9925

**STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD**

**July 25, 1989 - 1 p.m.** – Public Hearing
Shenandoah College and Conservatory, Business Administration, Building 1460 College Drive, Winchester, Virginia

**July 25, 1989 - 7 p.m.** – Public Hearing
The First Church of the Brethren, 315 Dogwood Drive, Harrisonburg, Virginia

**July 25, 1989 - 1 p.m. & 7 p.m.** – Public Hearing
Roanoke College, Olin Hall, Main Street, Salem, Virginia

**July 25, 1989 - 7 p.m.** – Public Hearing
Lloyd C. Bird High School, 10301 Courthouse Road Extended, Chesterfield, Virginia

**July 25, 1989 - 7 p.m.** – Public Hearing
Henrico County Board Room, Government Center, Parham and Hungary Springs Road, Richmond, Virginia

**July 25, 1989 - 1 p.m.** – Public Hearing
Gloucester High School, Auditorium, Route 615, Gloucester, Virginia

**July 25, 1989 - 7 p.m.** – Public Hearing
Christopher Newport College, John W. Gaines Theater, 50 Shoe Lane, Newport News, Virginia

**July 26, 1989 - 1 p.m.** – Public Hearing
Albemarle County Office Building, 401 McIntire Road, Auditorium, Charlottesville, Virginia

**July 26, 1989 - 7 p.m.** – Public Hearing
Walker Grant Middle School, 1 Learning Lane, Fredericksburg, Virginia

**July 26, 1989 - 1 p.m. & 7 p.m.** – Public Hearing
Falls Church High School, 7521 Jaguar Trail, Fairfax County, Virginia

**July 26, 1989 - 1 p.m.** – Public Hearing
New River Community College, Route 100, Rooker Building, Richardson Auditorium, Dublin, Virginia

**July 26, 1989 - 7 p.m.** – Public Hearing
Wytheville Community College, Grayson Commons Area, 1000 East Main Street, Wytheville, Virginia

**July 26, 1989 - 1 p.m. & 7 p.m.** – Public Hearing
John Marshall High School, 4225 Old Brook Road, Richmond, Virginia

**July 26, 1989 - 1 p.m.** – Public Hearing
Henry County Administration Building, Kings Mountain Road, Collinsville, Virginia

**July 26, 1989 - 7 p.m.** – Public Hearing
Linkhorne Middle School, 2525 Linkhorne Drive, Lynchburg, Virginia

**July 26, 1989 - 1 p.m.** – Public Hearing
Old City Hall, Council Chambers, 401 Albemarle Drive, Chesapeake, Virginia

**July 26, 1989 – Public Hearing**
Virginia Beach Pavilion, 19th Street at Highway 44, Room 1, Virginia Beach, Virginia

**July 27, 1989 - 1 p.m.** – Public Hearing
Arlington County Board Room, 1 Courthouse Plaza, 2100 Clarendon Building, 3rd Floor, Arlington, Virginia

**July 27, 1989 - 7 p.m.** – Public Hearing
County Office Complex, 1 County Complex Court, Manassas, Virginia

**July 27, 1989 - 1 p.m.** – Public Hearing
Norton Holiday Inn, 551 East Highway 58, Norton, Virginia

**July 27, 1989 - 7 p.m.** – Public Hearing
Virginia Highlands Community College, Learning Resources/Business Technology Building, I-81, Exit 7, Abingdon, Virginia

**July 27, 1989 - 1 p.m.** – Public Hearing
City Council Chambers, Yancy Street, (Behind the Library on Broad Street, Route 501), South Boston, Virginia

**July 27, 1989 - 1 p.m. & 7 p.m.** – Public Hearing
Booker T. Washington High School, 1111 Park Avenue, Norfolk, Virginia

The board will be holding 27 public hearings throughout the Commonwealth to hear comments on the Draft Comprehensive State Plan which outlines the need for services to the mentally ill, mentally retarded and substance abusing citizens of the Commonwealth. Copies of the Plan are available at local community services boards' offices.

**Contact:** William C. Armistead, Health Program Analyst, P.O. box 1797, Richmond, VA 23214, telephone (804) 786-3904, toll-free 1-800-262-8311/TDD ☎ or SCATS 786-3904

**DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES**

**August 15, 1989 - 10 a.m.** – Public Hearing
James Monroe Building, 101 North 14th Street, Conference Rooms D and E, Richmond, Virginia. ⓢ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

**August 15, 1989 - 10 a.m.** – Public Hearing
Roanoke City Hall, 215 Church Avenue, Council Chambers, Room 450, Roanoke, Virginia. ⓢ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

**August 15, 1989 - 10 a.m.** – Public Hearing
Norfolk Public Schools Building, 800 East City Hall Avenue, 12th Floor Board Room, Room 202, Norfolk, Virginia. ♿ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

**August 15, 1989 - 10 a.m.** – Public Hearing
Oakton Corporate Center, 10461 White Granite Drive, 3rd Floor Training Room, Suite 300, Oakton, Virginia. ♿ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

**August 15, 1989 - 7:30 p.m.** – Public Hearing
Holiday Inn-Koger Center-South, 1021 Koger Center Boulevard, Anna Room, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

**August 15, 1989 - 7:30 p.m.** – Public Hearing
Roanoke City Hall, 215 Church Avenue, Council Chambers, Room 450, Roanoke, Virginia. ♿ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Mental Health, Mental Retardation and Substance Abuse Services, acting as the lead agency administering Part H (EHA) early intervention services to infants and toddlers with handicaps (Public Law 99-457), intends to conduct public hearings for the purpose of presenting the FY 89 State Early Intervention Grant Application. Interested parties are asked to give their comments and suggestions. Copies of the grant may be obtained by contacting the Department of Mental Health, Mental Retardation and Substance Abuse Services employee listed below. The application will be available as of June 1, 1989. Written comments will be accepted by the listed contact person until August 18, 1989.

**Contact:** Michael Fehl, Ed.D., Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710

**Substance Abuse Advisory Council**

**July 27, 1989 - 10 a.m.** – Open Meeting
James Madison Building, 109 Governor Street, 13th Floor Conference Room, Richmond, Virginia.

The council will meet to continue its agenda to improve the availability and delivery of substance abuse services statewide.

**Contact:** Wayne Thacker, Director, Office of Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3906 or SCATS 786-3906

## VIRGINIA MILITARY INSTITUTE

**Board of Visitors**

† **August 5, 1989 - 8:30 a.m.** – Open Meeting
The Homestead, Hot Springs, Virginia. ♿

A regular summer meeting of the VMI Board of Visitors.

Election of president
Committee reports

**Contact:** Colonel Edwin L. Dooley, Jr., Secretary to Board of Visitors, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206

## DEPARTMENT OF MOTOR VEHICLES

**September 11, 1989 - 10:30 a.m.** – Public Hearing
Department of Motor Vehicles, 2300 West Broad Street, Cafeteria, Richmond, Virginia

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 485-50-8901. Virginia Commercial Driver's License Regulations.** These regulations establish certain standards and requirements for licensing drivers of commercial motor vehicles in Virginia. These requirements and standards relate to (i) the licensing of new residents and nonresidents, (ii) the satisfaction of vision requirements, and (iii) the administration of skills tests by persons other than DMV employees. The Virginia Commercial Driver's License Act (House Bill 1675, enacted by the 1989 General Assembly); the federal Commercial Motor Vehicle Safety Act of 1986 (Title XII of Public Law 99-750), and §§ 46.1-26 and 46.1-370.2 of the Code of Virginia.

Statutory Authority: §§ 46.1-26 and 46.1-370.2 of the Code of Virginia.

Written comments may be submitted until September 1, 1989.

**Contact:** Dan W. Byers, DSA Assistant Administrator or Rudy C. McCollum, CDL Program Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-1836 (Dan Byers) or 367-6633 (Rudy McCollum)

**September 26, 1989 - 10 a.m.** – Public Hearing
Holiday Inn Airport, 6626 Thirlane Road, Roanoke, Virginia. ♿ (Interpreter for deaf provided if requested)

**September 27, 1989 - 1 p.m.** – Public Hearing
Best Western Springfield Inn, 6550 Loisdale Court, Springfield, Virginia. ♿ (Interpreter for deaf provided if requested)

**October 2, 1989 - 10 a.m.** – Public Hearing
Omni, 100 Batten Bay Boulevard, Newport News, Virginia. ♿ (Interpreter for deaf provided if requested)

**October 3, 1989 - 1 p.m.** – Public Hearing
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

The Department of Motor Vehicles, in conjunction with the Commission on Virginia Alcohol Safety Action program and the Transportation Safety Board, will conduct a public hearing for the purpose of discussing issues regarding SJR 172, administrative revocation of the driver's licenses of persons who operate motor vehicles while under the influence of alcohol or drugs, or both, or who refuse to submit to chemical testing after having been arrested for driving under the influence.

**Contact:** Vince M. Burgess, Administrator, Traffic Safety Administrator, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-8150 or SCATS 367-8150

## BOARD OF NURSING

**July 17, 1989 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia. ♿

† **July 31, 1989 - 10 a.m.** – Open Meeting
Lynchburg General Hospital, Large Private Dining Room, 1901 Tate Springs Road, Lynchburg, Virginia. ♿ (Interpreter for deaf provided if requested)

Four formal hearings will be held to inquire into allegations that certain laws and regulations governing the practice of nursing in Virginia may have been violated.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909 or (toll-free) 1-800-533-1560

## BOARD OF PROFESSIONAL COUNSELORS

† **August 3, 1989 - 9 a.m.** – Open Meeting
† **August 4, 1989 - 9 a.m.** – Open Meeting
The Tides Lodge, Irvington, Virginia

A meeting to (i) conduct business of the board including receiving committee reports; (ii) review the board's regulations; and (iii) engage in planning for the board for the 1990-92 biennium.

**Contact:** Stephanie A. Sivert, Executive Director, or Joyce D. Williams, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9912 or SCATS 662-9912

## BOARD OF PSYCHOLOGY

**July 28, 1989 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿

A meeting to (i) conduct general board business; (ii) review applications for licensure, residency, and registrations as Technical Assistants; and (iii) discuss oral examinations.

**Contact:** Stephanie A. Sivert, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9913

## VIRGINIA RACING COMMISSION

**September 1, 1989** – Written comments may be received until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to adopt regulations entitled: **VR 662-01-01. Virginia Racing Commission Public Participation Guidelines for Adoption or Amendment of Regulations.** The guidelines will establish permanent procedures to solicit and obtain comments from interested individuals and organizations as the commission drafts and promulgates regulations governing horse-racing and parimutuel wagering.

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

Written comments may be submitted until September 1, 1989, to Chairman, Virginia Racing Commission, P.O. Box 1123, Richmond, Virginia 23208.

**Contact:** Elizabeth Kaplan, Senior Analyst, Department of Planning and Budget, P.O. Box 1422, Richmond, VA 23211, telephone (804) 786-7478 or SCATS 786-7478

## REAL ESTATE BOARD

† **August 9, 1989 - 10:30 a.m.** – Open Meeting
Department of Agriculture and Consumer Services, 4832 Tyreeanna Road, Lynchburg, Virginia

The board will meet to conduct a formal hearing:

File Number 87-00327, Real Estate Board v. Agnes H. Dowdy.

**Contact:** Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8524

## BOARD OF REHABILITATIVE SERVICES

† **July 28, 1989 - 9:30 a.m.** – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

This will be an organizational meeting to develop priorities and agenda for the coming fiscal year. The board will also begin promulgation of new regulation amendments and take final action on biennial budget.

**Finance Committee**

† **July 27, 1989 - 3 p.m.** – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

The committee will review proposed biennial budget. It will organize its priorities and agenda for fiscal year 1990.

**Legislation and Evaluation Committee**

† **July 27, 1989 - 1 p.m.** – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

The committee will develop its priorities and agenda for fiscal year 1990 and present to the board.

**Program Committee**

† **July 27, 1989 - 2 p.m.** – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

The committee will develop new proposed vocational rehabilitation regulation amendments for presentation to the board. It will organize its priorities and annual agenda.

**Contact:** James L. Hunter, Board Administrator, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-6446, toll-free 1-800-552-5019/TDD ☎ , SCATS 367-6446 or (804) 367-0280/TDD ☎

## ROANOKE VALLEY LOCAL EMERGENCY PLANNING COMMITTEE

† **July 19, 1989 - 9 a.m.** – Open Meeting
Salem Civic Center, Room C, 1001 Roanoke Boulevard, Salem, Virginia. ♿

A meeting to receive (i) public comment; (ii) report from community coordinators; and (iii) report from standing committees.

**Contact:** Warren E. Trent, Emergency Services Coordinator, 215 Church Ave., Roanoke, VA, telephone (703) 981-2425

## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **July 27, 1989 - 10 a.m.** – Open Meeting
Virginia Small Business Financing Authority's Offices, 1021 East Cary Street, Richmond, Virginia

The authority will conduct its regular business meeting and will conduct a public hearing to consider Industrial Development Bond Applications received by the authority and for which public notice has appeared in the appropriate newspapers of general circulation.

**Contact:** Cathleen M. Surface, Virginia Small Business Financing Authority, 1021 E. Cary St., Richmond, VA 23206-0798, telephone (804) 371-8254

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

**August 24, 1989** – 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 Social Services intends to adopt regulations entitled: **VR 615-70-17. Child Support Enforcement Programs.** This regulation describes the rules the Department of Social Services will use in establishing, enforcing, and collecting child support payments.

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

Written comments may be submitted until August 24, 1989, to Jane Clements, Department of Social Services, Division of Child Support Enforcement, 8007 Discovery Drive, Blair Building, Richmond, Virginia, 23229-8699.

**Contact:** Margaret J. Friedenberg, Legislative Analyst, Department of Social Services, 8007 Discovery Drive, Blair Building, Richmond, VA 23229-8699, telephone (804) 662-9217 or SCATS 662-9217

## COMMONWEALTH TRANSPORTATION BOARD

**July 19, 1989 - 1:30 p.m.** – Open Meeting
Omni Hotel, 777 Waterside Drive, Norfolk, Virginia. ♿ (Interpreter for deaf provided if requested)

A work session.

**July 20, 1989 - 10 a.m.** – Open Meeting
NOTE: CHANGE IN LOCATION
Virginia Port Authority, Board Room, 600 World Trade Center, Norfolk, Virginia. ♿ (Interpreter for deaf provided

if requested)

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.

**Contact:** Albert W. Coates, Jr., Assistant Commissioner, Department of Transportation, 1401 E. Broad St., Richmond, VA, telephone (804) 786-9950

## BOARD OF VETERINARY MEDICINE

† **July 28, 1989 - 8:30 a.m.** – Open Meeting
Koger Building, 8001 Franklin Farms Drive, Conference Room, Richmond, Virginia. ♿ (Interpreter for deaf provided if requested)

Regulatory review, general board business, informal conferences and a formal hearing.

**Contact:** Terri H. Behr, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9915

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

### Interagency Coordinating Council on Delivery of Related Services to Handicapped Children

**July 25, 1989 - 1:30 p.m.** – Open Meeting
**August 22, 1989 - 1:30 p.m.** – Open Meeting
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ♿

A regular monthly meeting.

**Contact:** Glen R. Slonneger, Jr., Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140

## VIRGINIA VOLUNTARY FORMULARY BOARD

**August 10, 1989 - 10:30 a.m.** – Open Meeting
Department of Health, James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. ♿

A meeting to review public hearing comments and product data for drug products being considered for inclusion in the Virginia Voluntary Formulary.

**Contact:** James K. Thomson, Bureau of Pharmacy Services, 109 Governor St., Richmond, VA 23219, telephone (804) 786-4326 or SCATS 786-3596

## VIRGINIA WASTE MANAGEMENT BOARD

**July 24, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ♿

This will be a regular scheduled business meeting and discussion of proposed Infectious Waste Management Regulations.

**Contact:** Loraine Williams, Secretary, James Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667, toll-free 1-800-552-2075, SCATS 225-2667 or 225-3753/TDD ☎

## STATE WATER CONTROL BOARD

† **August 1, 1989 - 9 a.m.** – Open Meeting
† **August 2, 1989 - 9 a.m.** – Open Meeting
Sheriff's Administration Building, Training and Conference Center, 401 Albemarle Drive, Chesapeake, Virginia. ♿

A regular board meeting

**Contact:** Doneva A. Dalton, Hearing Reporter, State Water Control Board, Office of Policy Analysis, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6829

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† **August 22, 1989 - 10 a.m.** – Public Hearing
Augusta County Office Building, 6 East Johnson Street, Board Room (# 174), Staunton, Virginia

† **August 22, 1989 - 7 p.m.** – Public Hearing
Washington County Board of Supervisors Room, 205 Academy Drive, Abingdon, Virginia

† **August 23, 1989 - 2 p.m.** – Public Hearing
City of Danville Council Chambers, Municipal Building, 4th Floor, 418 Patton Street, Danville, Virginia

† **August 29, 1989 - 2 p.m.** – Public Hearing
Williamsburg/James City Courthouse Council Chambers, 321-45 Court Street, West, Williamsburg, Virginia

† **August 31, 1989 - 7 p.m.** – Public Hearing
Prince William County, McCourt Building, Board Room, 1 County Complex, 4850 Davis Ford Road, Prince William, 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 680-21-01. Surface Water Standards with General, Statewide Application; and VR 680-21-03. Water Quality Criteria for Surface Water.** The board proposes to repeal existing regulations. The purpose of this proposed action is to adopt standards for toxics for protection of aquatic life to comply with federal

regulations which state that water quality standards must be adopted for section 307(a) toxic pollutants. The associated narrative and amendments to existing sections are necessary to clarify the language, specify the implementation of the standards and provide a mechanism whereby permittees could request alternate permit limitations due to site specific factors, technology/economic limitations, or cases where natural background levels exceed established standards.

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

Written comments may be submitted until 4 p.m., September 18, 1989, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

**Contact:** Elleanore Moll, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6418 or SCATS 367-6418

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† **August 29, 1989 - 7 p.m.** – Public Hearing
Williamsburg/James City Courthouse Council Chambers, 321-45 Court Street, West, Williamsburg, 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 680-13-04. Eastern Virginia Groundwater Management Area.** The proposed amendments would expand the existing Groundwater Management Area in Southeastern Virginia to include the counties of Charles City, James City, King William, New Kent, and York; the areas of Chesterfield, Hanover, and Henrico counties east of Interstate 95; and the cities of Hampton, Newport News, Poquoson, and Williamsburg.

STATEMENT

Subject: Groundwater withdrawals in these localities will be managed to conserve, protect and beneficially utilize the ground water resources of the Commonwealth and to ensure the preservation of the public welfare, safety and health. Groundwater users in the area who withdraw more than 300,000 gallons per month for nonagricultural uses will be subject to these regulations.

Substance: This proposed regulation would require groundwater users who withdraw more than 300,000 gallons per month for nonagricultural uses on the date of enactment to file a registration statement before a certificate of groundwater right is issued for their existing withdrawals. In addition, any groundwater user who wishes to develop a new groundwater withdrawal in excess of 300,000 gallons per month for nonagricultural uses or enlarge a certificate of groundwater right after the date of enactment will be required to apply for a groundwater withdrawal permit (permit). The board will evaluate all applications and either grant a permit, grant a permit with conditions, or deny a permit. In no case will the board grant a permit for a larger withdrawal amount than was applied for. All certified and permitted groundwater users will be required to report daily meter readings of their withdrawal on a monthly basis.

Impact: There are approximately 106 current groundwater users in the area which will be impacted by the proposed expansion of the groundwater management area. In addition, any groundwater user who wishes to develop a new groundwater withdrawal in excess of 300,000 gallons per month for nonagricultural uses will be covered by this regulation.

Issues: The issue under consideration is whether or not to expand the existing groundwater management area.

Basis: The basis for this proposed regulation is § 62.1-44.83 et seq. of the Code of Virginia. Specifically, § 62.1-44.95-96 authorizes the board to declare groundwater management areas and to adopt corrective controls to protect the public welfare, health and safety.

Purpose: This proposed regulation is designed to conserve, protect and beneficially utilize the groundwater resources of the Commonwealth and the ensure the preservation of the public welfare, safety and health, through the application of appropriate controls.

Statutory Authority: § 62.1-44.96 of the Code of Virginia.

Written comments may be submitted until 4 p.m., September 15, 1989, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

**Contact:** Fred C. Cunningham, Officer of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-0411 or SCATS 367-0411

## VIRGINIA COUNCIL ON THE STATUS OF WOMEN

**September 11, 1989 - 8 p.m.** – Open Meeting
The Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia

Meetings of the standing committees of the council.

**September 12, 1989 - 9 a.m.** – Open Meeting
The Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia

A regular meeting of the council to conduct general business and to receive reports from the council standing committees.

**Contact:** Bonnie H. Robinson, Executive Director, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9200 or SCATS 662-9200

## LEGISLATIVE

### JOINT SUBCOMMITTEE STUDYING THE FEASIBILITY OF THE CREATION OF AN AGRICULTURALLY LINKED DEPOSIT PROGRAM

† **July 18, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

An organizational meeting to set agenda for interim meetings. HJR 381

**Contact:** Deanna S. Byrne, Staff Attorney, Division of Legislative Services, General Assembly Bldg., Capitol Square, Richmond, VA 23219, telephone (804) 786-3591

### COMMISSION TO STUDY ALTERNATIVE METHODS OF FINANCING CERTAIN FACILITIES AT STATE-SUPPORTED COLLEGES AND UNIVERSITIES

† **August 17, 1989 - 1 p.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

An organizational meeting to set agenda for interim meetings. HJR 373

**Contact:** Kathleen G. Harris, Staff Attorney, Division of Legislative Services, General Assembly Bldg., Capitol Square, Richmond, VA 23219, telephone (804) 786-3591

### JOINT SUBCOMMITTEE STUDYING DNA TEST DATA EXCHANGE

**July 25, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia.

A regular meeting. SJR 127

**Contact:** Mary Devine, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591, or Amy Wachter, Committee Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-3838

### UNINSURED SUBCOMMITTEE OF THE JOINT SUBCOMMITTEE STUDYING HEALTH CARE FOR ALL VIRGINIANS

† **July 24, 1989 - 1:30 p.m.** – Open Meeting

† **September 18, 1989 - 1:30 p.m.** – Open Meeting
General Assembly Building, Capitol Square, 10th Floor Conference Room, Richmond, Virginia.

A regular meeting. SJR 214

**Contact:** John McE. Garrett, Deputy Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-4639 or Dick Hickman, Senate Finance Office, 10th Floor, General Assembly Bldg., Richmond, VA 23219, telephone (804) 786-4400

### JOINT SUBCOMMITTEE STUDYING INDIGENT DEFENSE SYSTEMS

† **August 2, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia.

A regular meeting. HJR 279

**Contact:** Mary Devine, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

### JOINT SUBCOMMITTEE STUDYING STRUCTURE AND MANAGEMENT OPTIONS FOR THE VIRGINIA INDUSTRIES FOR THE BLIND PROGRAM

† **July 31, 1989 - 9:30 a.m.** – Public Hearing
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

First public hearing scheduled for this subcommittee to hear about options for the Virginia Industries for the Blind Program. HJR 418

**Contact:** Gayle Nowell, Research Associate, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591, or Anne R. Howard, House Committee Operations Office, P.O. Box 406, Richmond, VA 23203, telephone (804) 786-7681

### JOINT SUBCOMMITTEE STUDYING REINSURANCE, INSURANCE ANTITRUST LAWS AND LIABILITY INSURANCE COVERAGE

**August 21, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia.

**September 22, 1989 - 10 a.m.** – Open Meeting
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

The focus of each meeting will be devoted to either Reinsurance, Anti-trust laws or Liability Insurance Coverage. HJR 382

**Contact:** Bill Cramme', Staff Attorney, or Arlen Bolstad, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591, or Jeffrey A. Finch, House of Delegates, P.O. Box 406, Richmond, VA 23203, telephone (804) 786-2227

## CHRONOLOGICAL LIST

## OPEN MEETINGS

**July 17**
† Accountancy, Board for
† Barbers, Board for
Environment, Council on the
Nursing, Board of

**July 18**
† Accountancy, Board for
† Agriculturally Linked Deposit Program, Joint Subcommittee Studying the Feasibility of the Creation of an
Branch Pilots, Board for
Health Professions, Board of
- Regulatory Evaluation and Resource Committee
Housing Development Authority, Virginia

**July 19**
Community Colleges, State Board for
Corrections, Board of
Farmworkers Board, Governor's Migrant and Seasonal
† Roanoke Valley Local Emergency Planning Committee
Transportation Board, Commonwealth

**July 20**
† Farmer's Market Board, Virginia
Medicine, Board of
Transportation Board, Commonwealth

**July 21**
Boating Advisory Board, Virginia
Coordination of Prevention, Virginia Council for the
Medicine, Board of

**July 22**
Medicine, Board of

**July 23**
Medicine, Board of

**July 24**
† Cosmetology, Board of
† Innovative Technology Authority and the Center for Innovative Technology
† Health Care for All Virginians, Uninsured Subcommittee of the Joint Subcommittee Studying
Waste Management Board, Virginia

**July 25**
† Children, Department for
- Rural Child Care Project Committee
DNA Test Data Exchange, Joint Subcommittee Studying
Health Services Cost Review Council, Virginia
Visually Handicapped, Department for the
- Interagency Coordinating Council on Delivery of Related Services to Handicapped Children

**July 26**
† Corrections, Board of

**July 27**
† Agriculture and Consumer Services, Board of
† Children, Department for
- State-Level Runaway Youth Services Network
† Commerce, Board of
Education, State Board of

† Game and Inland Fisheries, Board of
- Finance Committee
- Law and Education Committee
- Planning Committee
- Wildlife Committee
† Housing and Community Development, Board of
- Amusement Device Technology Advisory Committee
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- Substance Abuse Advisory Council
† Rehabilitative Services, Board of
- Finance Committee
- Legislative and Evaluation Committee
- Program Committee
† Small Business Financing Authority

**July 28**
† Building Code Technical Review Board, State
† Children, Department for
- State-Level Youth Services Network
† Commerce, Board of
Education, State Board of
† Game and Inland Fisheries, Board of
Health Professions, Board of
Psychology, Board of
† Rehabilitative Services, Board of

**July 31**
† Nursing, Board of
† Structure and Management Options for the Virginia Industries for the Blind Program, Joint Subcommittee Studying

**August 1**
Hopewell Industrial Safety Council
† Water Control Board, State

**August 2**
Child Mental Health, Consortium on
† Indigent Defense Systems, Joint Subcommittee

Studying
† Water Control Board

**August 3**
Chesterfield County, Local Emergency Planning Committee of
† Professional Counselors, Board of

**August 4**
† General Services, Department of
- Art and Architectural Review Board
† Professional Counselors, Board of

**August 5**
† Virginia Military Institute
- Board of Visitors

**August 8**
Health, Board of

**August 9**
† Employment Commission, Virginia
- Advisory Board
† Real Estate Board

**August 10**
† Human Rights, Council on
Voluntary Formulary, Virginia

**August 11**
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Land Surveyors
Children, Coordinating Committee for Licensure and Certification of Residential Facilities for

**August 17**
† Alternative Methods of Financing Certain Facilities at State-Supported Colleges and Universities, Commission to Study

**August 18**
† Land Evaluation Advisory Council, State

**August 21**
Reinsurance, Insurance Antitrust Laws and Liability Insurance Coverage, Joint Subcommittee Studying

**August 22**
Visually Handicapped, Department for the
- Interagency Coordinating Council and Delivery of Related Services to Handicapped Children

**August 23**
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Professional Engineers
† Corrections, Board of

**August 27**
Funeral Directors and Embalmers, Board of

**August 28**
† Corrections, Board of
Funeral Directors and Embalmers, Board of

**August 29**
† Funeral Directors and Embalmers, Board of

**August 30**
Gloucester County Local Emergency Planning Committee

**August 31**
Education, Department of

**September 6**
Child Mental Health, Consortium on

**September 7**
† Chesterfield County Local Emergency Planning Committee

**September 8**
Children, Coordinating Committee for Licensure and Certification of Residential Facilities for
† Land Evaluation Advisory Council, State

**September 11**
Women, Virginia Council on the Status of

**September 12**
Women, Virginia Council on the Status of

**September 18**
† Health Care for All Virginians, Uninsured Subcommittee of the Joint Subcommittee Studying Indians, Virginia Council on

**September 20**
† Dentistry, Board of

**September 21**
† Dentistry, Board of

**September 22**
† Dentistry, Board of
Reinsurance, Insurance Antitrust Laws and Liability Insurance Coverage, Joint Subcommittee Studying

**September 23**
† Dentistry, Board of

**September 28**
† Long-Term Care Council, Virginia

## PUBLIC HEARINGS

**July 25**
Mental Health, Mental Retardation and Substance Abuse Services Board, State

**July 26**
Mental Health, Mental Health and Substance Abuse Services Board, State

**July 27**
Mental Health, Mental Retardation and Substance Abuse Services Board, State

**July 31**
† Fire Services Board, Virginia

**August 1**
† Fire Services Board, Virginia

**August 3**
Corrections, Virginia Board of

**August 7**
Contractors, Board for

**August 8**
Contractors, Board for

**August 9**
Contractors, Board for

**August 15**
Mental Health, Mental Retardation and Substance Abuse Services, Department of

**August 16**
Corrections, Virginia Board of

**August 17**
† Fire Services Board, Virginia

**August 21**
Housing and Community Development, Board of
Housing and Community Development, Department of

**August 22**
† Water Control Board, State

**August 23**
† Water Control Board, State

**August 24**
† Fire Services Board, Virginia

**August 29**
† Water Control Board, State

**August 31**
Education, Department of
† Water Control Board, State

**September 6**
Air Pollution Control Board, State

**September 11**
Hearing Aid Specialists, Board for
Motor Vehicles, Department of

**September 12**
Branch Pilots, Board for

**September 19**
Criminal Justice Services, Department of

**September 20**
† Alcoholic Beverage Control, Department of

**September 26**
Motor Vehicles, Department of

**September 27**
Agriculture and Consumer Services, Department of
Motor Vehicles, Department of

**October 2**
Motor Vehicles, Department of

**October 3**
Motor Vehicles, Department of