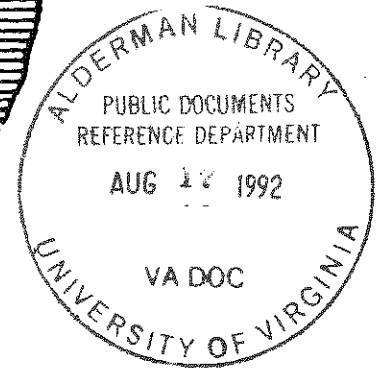


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# VIRGINIA REGISTER

OF REGULATIONS



VOLUME EIGHT • ISSUE TWENTY-THREE

August 10, 1992

# 1992

Pages 4031 Through 4280

## VIRGINIA REGISTER

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

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

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

### ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

### EMERGENCY REGULATIONS

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

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

### STATEMENT

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

### CITATION TO THE VIRGINIA REGISTER

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# NOTICES OF INTENDED REGULATORY ACTION

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<b>Symbol Key †</b>
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† Indicates entries since last publication of the Virginia Register
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## 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 promulgating regulations entitled: **VR 115-06-02. Rules and Regulations Pertaining to the Operation of Health Spas.** The purpose of the proposed action is to adopt regulations to implement the Virginia Health Spa Act.

Any person who would like to receive a copy of the proposed regulation, once it is developed, should contact J. Michael Wright.

Statutory Authority: § 59.1-308.2(E) of the Code of Virginia.

Written comments may be submitted until September 14, 1992.

**Contact:** J. Michael Wright, Supervisor, Office of Registrations, Virginia Department of Agriculture and Consumer Services, Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209, telephone (804) 225-3924.

## 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 amend the regulations concerning permits for new and expanding industry to address concerns relating to requirements for commercial medical waste incinerators.

**Public meeting:** A public meeting will be held on August 14, 1992, at 10 a.m. in House Room 1, State Capitol Building, Richmond, Virginia, to discuss the intended action.

**Ad hoc advisory group:** The department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by close of business July 17, 1992, and provide your name, address, phone number and the organization you represent (if any). Facsimile copies

will be accepted only if followed by receipt of the original within three business days. Notification of the composition of the ad hoc advisory group will be sent to all applicants by August 7, 1992. If you are selected to be on the group, you are encouraged to attend the public meeting mentioned above and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus.

**Need and issues involved:** The 1992 General Assembly of Virginia passed legislation to impose a moratorium on the issuance of permits for commercial medical waste incinerators (MWIs), and for the promulgation of regulations. The legislation was proposed in response to health concerns from commercial MWI emissions. Although the Virginia Waste Management Board has promulgated regulations regarding the storage, transportation, and incineration of infectious wastes, the Virginia Department of Air Pollution Control has not promulgated air pollution permit regulations specifically addressing MWIs. State and federal air quality regulations governing incineration in general and municipal waste combustors in particular do exist, but none specifically address MWIs.

The General Assembly passed legislation directly addressing MWIs for a number of reasons:

1. Currently, there is more than sufficient capacity at the state's sole commercial MWI to handle the state's medical waste. Concern has been expressed over the possibility that if more commercial MWIs are constructed, large quantities of medical waste will be imported from out of state.
2. Because medical waste has a higher plastics content than ordinary municipal solid waste, incineration of medical waste may generate unusual quantities of toxic or trace metals, dioxins and furans, acid gases and particulate matter. Excessive exposure to dioxin, for example, can cause severe dermatological, cardiovascular, respiratory, pancreatic, and urinary disorders; dioxins and furans are also suspected carcinogens.
3. Removal of pathogens that may cause disease is an issue directly related to incineration of infectious waste.

**Regulatory alternatives:** The alternatives are to either (i) amend the regulations to satisfy the provisions of the law and associated regulations and policies or (ii) take no

# Notices of Intended Regulatory Action

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action to amend the regulations.

**Regulatory constraints:** The legislation imposes a moratorium for the issuance of permits for commercial infectious waste incinerators (i.e., MWIs). An MWI is considered "commercial" if more than 25 percent of the waste it burns is generated off-site. "Infectious waste" is defined as solid waste with the potential to cause infectious disease in humans. The law states, "No permits for the construction, reconstruction, or expansion of a commercial infectious waste incinerator shall be issued, reviewed, processed, or approved by the State Air Pollution Control Board or the Virginia Waste Management Board prior to (i) the effective date of the regulations required to be promulgated by the State Air Pollution Control Board and the Virginia Waste Management Board or (ii) September 1, 1993, whichever first occurs." Existing and proposed noncommercial MWIs, and existing commercial MWIs are not affected.

The law further states, "The State Air Pollution Control Board and the Virginia Waste Management Board shall each promulgate regulations with respect to the permitting of infectious waste incinerators no later than September 1, 1993." Factors to be considered by both boards include:

1. An assessment of the annual need for the disposal of infectious waste generated in Virginia;
2. Ways to reduce the volume of infectious waste;
3. The availability of disposal methods other than incineration;
4. Siting criteria;
5. Standards for assessing the economic feasibility of proposed commercial MWIs;
6. The propriety of establishing different criteria and procedures for permitting MWIs;
7. The economic demand for importation of infectious waste from out of state, and an estimate of the incinerator capacity to be allowed for such waste;
8. The impact of the Clean Air Act Amendments of 1990 on the incineration of infectious waste by hospitals; and
9. The impact of reports by EPA regarding the Medical Waste Tracking Act of 1988.

Applicable statutory provisions:

1. State. The legal basis for the regulation is § 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia).
2. Federal.

a. The legal basis for the regulation is § 110 of the federal Clean Air Act (42 USC 7401 et seq., 91 State 685).

b. The regulatory basis for the regulation is Subpart L and Section 51.281 of 40 CFR Part 51.

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

Written comments may be submitted until August 14, 1992, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240.

**Contact:** Karen G. Sabasteanski, Policy Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

## DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with the agency's public participation guidelines that the Criminal Justice Services Board intends to consider amending regulations entitled: **VR 240-01-05. Rules Relating to Compulsory Minimum Training Standards for Dispatchers.** The purpose of the proposed action is to amend and revise the Rules Relating to Compulsory Minimum Training Standard for Dispatchers.

Statutory Authority: § 9-170(8) of the Code of Virginia.

Written comments may be submitted until September 10, 1992, to L.T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219.

**Contact:** Paula Scott, Staff Executive, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

## 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 Board of Education intends to consider promulgating regulations entitled: **VR 270-01-0055. Regulations Governing the Protection of Human Subjects in Research.** The purpose of the proposed action is to ensure protection of human subjects involved in research.

Statutory Authority: § 22.1-16.1 of the Code of Virginia.

Written comments may be submitted until August 21, 1992.

**Contact:** Lawrence McCluskey, Lead Specialist, Division of Research and Evaluation, Department of Education, P.O.

# Notices of Intended Regulatory Action

Box 6-Q, Richmond, VA 23216-2060, telephone (804) 225-2762 or toll-free 1-800-292-3820.

## DEPARTMENTS OF EDUCATION; MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES; SOCIAL SERVICES; AND YOUTH AND FAMILY SERVICES

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with these agency's public participation guidelines that the Boards of Education; Mental Health, Mental Retardation and Substances Abuse Services; Social Services; and Youth and Family Services intend to consider amending regulations entitled: VR 270-01-003; VR 470-02-01; VR 615-29-02; VR 690-40-004. Standards for Interdepartmental Regulation of Residential Facilities for Children. The purpose of the proposed action is to amend the standards to provide children in residential facilities with at least a minimum level of care. The current effort is intended to amend those sections of the standards where dissonance exists between the standards and Virginia statutory law as a result of legislation enacted by the General Assembly.

Only those section of the standards which address (i) the duration and types of licenses/certificates and (ii) participation of residents as subjects in human research will be considered for amendment.

Statutory Authority: §§ 16.1-311, 22.1-321, 37.1-10, 37.1-182, 37.1-189.1, 63.1-25, 63.1-196.4, 66-10 and 66-24 of the Code of Virginia.

Written comments may be submitted until September 10, 1992.

Contact: Rhonda M. Harrell, Assistant Coordinator, Office of the Corrdinator, Interdepartmental Regulation of Children's Residential Facilities, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124.

## DEPARTMENT OF HEALTH (STATE BOARD OF)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: VR 355-40-400. Regulations Governing the Virginia Medical Scholarship Program. The purpose of the proposed action is to amend the regulation governing the Virginia Medical Scholarship Program in order to make scholarship funds available for three medical students from Southwest Virginia attending the James H. Quillan College of Medicine at East Tennessee State University during the forthcoming academic year.

The amendments identify the cities and counties of

Southwest Virginia. Residents of Southwest Virginia that attend James H. Quillan College of Medicine at East Tennessee State University are eligible to receive three scholarships of those funded by the 1992 General Assembly. These regulations amend the regulations governing the Virginia Medical Scholarship Program which were adopted and became effective July 3, 1991.

Statutory Authority: § 32.1-122.6 B of the Code of Virginia.

Written comments may be submitted until August 28, 1992.

Contact: E. George Stone, Director, Virginia Medical Scholarship Program, Virginia Department of Health, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-6970.

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: VR 370-01-001. The Rules and Regulations of the Virginia Health Services Cost Review Council. The purpose of the proposed action is to clarify the definition of "charity care" as utilized in the analysis of the various filings submitted by health care institutions.

Statutory Authority: §§ 9-158 A and 9-164 2 of the Code of Virginia.

Written comments may be submitted until August 20, 1992.

Contact: John A. Rupp, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia intends to consider repealing regulations entitled: VR 380-03-01. College Scholarship Assistance Program Regulations. The purpose of this action is to permit the State Council of Higher Education to promulgate new regulations governing the College Scholarship Assistance Program.

Statutory Authority: §§ 23-38.45 through 23-38.52 of the Code of Virginia.

Written comments may be submitted until August 26, 1992.

Contact: Stephen R. Merritt, Financial Aid Programs

# Notices of Intended Regulatory Action

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Coordinator, State Council of Higher Education, James Monroe Bldg., 10th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2623.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia intends to consider promulgating regulations entitled: **VR 380-03-01:1. College Scholarship Assistance Program Regulations.** The purpose of this action is to establish policies and procedures for administering the College Scholarship Assistance Program.

Statutory Authority: §§ 23-38.45 through 23-38.52 of the Code of Virginia.

Written comments may be submitted until August 26, 1992.

**Contact:** Stephen R. Merritt, Financial Aid Programs Coordinator, State Council of Higher Education, James Monroe Bldg., 10th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2623.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia intends to consider repealing regulations entitled: **VR 380-03-02. Virginia Work-Study Program Regulations.** The purpose of the proposed action is to permit the State Council of Higher Education to promulgate new regulations governing the Virginia Work-Study Program.

Statutory Authority: §§ 23-38.70 and 23-38.71 of the Code of Virginia.

Written comments may be submitted until August 26, 1992.

**Contact:** Stephen R. Merritt, Financial Aid Programs Coordinator, State Council of Higher Education, James Monroe Bldg., 10th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2623.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia intends to consider promulgating regulations entitled: **VR 380-03-02:1. Virginia Work-Study Program Regulations.** The purpose of the proposed action is to establish policies and procedures for administering the Virginia Work-Study Program.

Statutory Authority: §§ 23-38.70 and 23-38.71 of the Code of Virginia.

Written comments may be submitted until August 26, 1992.

**Contact:** Stephen R. Merritt, Financial Aid Programs

Coordinator, State Council of Higher Education, James Monroe Bldg., 10th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2623.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia intends to consider repealing regulations entitled: **VR 380-03-03. Virginia Scholars Program Regulations.** The purpose of the proposed action is to permit the State Council of Higher Education to promulgate new regulations governing the Virginia Scholars Program.

Statutory Authority: §§ 23-38.53:1 through 23-38.53:3 of the Code of Virginia.

Written comments may be submitted until August 26, 1992.

**Contact:** Stephen R. Merritt, Financial Aid Programs Coordinator, State Council of Higher Education, James Monroe Bldg., 10th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2623.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia intends to consider promulgating regulations entitled: **VR 380-03-03:1. Virginia Scholars Program Regulations.** The purpose of the proposed action is to establish policies and procedures for administering the Virginia Scholars Program.

Statutory Authority: §§ 23-38.53:1 through 23-38.53:3 of the Code of Virginia.

Written comments may be submitted until August 26, 1992.

**Contact:** Stephen R. Merritt, Financial Aid Programs Coordinator, State Council of Higher Education, James Monroe Bldg., 10th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2623.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia intends to consider repealing regulations entitled: **VR 380-03-04. Tuition Assistance Grant Program Regulations.** The purpose of the proposed action is to permit the State Council of Higher Education to promulgate new regulations governing the Tuition Assistance Grant Program.

Statutory Authority: §§ 23-38.11 through 23-38.18 of the Code of Virginia.

Written comments may be submitted until August 26, 1992.

# Notices of Intended Regulatory Action

**Contact:** Stephen R. Merritt, Financial Aid Programs Coordinator, State Council of Higher Education, James Monroe Bldg., 10th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2623.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia intends to consider promulgating regulations entitled: **VR 380-03-04:1. Tuition Assistance Grant Program Regulations.** The purpose of the proposed action is to establish policies and procedures for administering the Tuition Assistance Grant Program

Statutory Authority: §§ 23-38.11 through 23-38.18 of the Code of Virginia.

Written comments may be submitted until August 26, 1992.

**Contact:** Stephen R. Merritt, Financial Aid Programs Coordinator, State Council of Higher Education, James Monroe Bldg., 10th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2623.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Council of Higher Education for Virginia intends to consider promulgating regulations entitled: **VR 380-03-05. Virginia Guaranteed Assistance Program Regulations.** The purpose of the proposed action is to establish policies and procedures for administering the Guaranteed Assistance Program.

Statutory Authority: §§ 22.1-212.3, 22.1-212.4 and 23-38.53:4 through 23-38.53:7 of the Code of Virginia.

**Contact:** Stephen R. Merritt, Financial Aid Programs Coordinator, State Council of Higher Education, James Monroe Bldg., 10th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2623.

## DEPARTMENT OF LABOR AND INDUSTRY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Labor and Industry intends to consider amending regulations entitled: **VR 425-02-11. Virginia Occupational Safety and Health Administrative Regulations Manual.** The purpose of the proposed action is to update the Virginia Occupational Safety and Health Administrative Regulations Manual to reflect legislative and administrative changes to the Virginia Occupational Safety and Health (VOSH) program.

Statutory Authority: § 40.1-6 of the Code of Virginia.

Written comments may be submitted until September 11, 1992.

**Contact:** John J. Crisanti, Director, Office of Enforcement Policy, Department of Labor and Industry, 13 S. Thirteenth St., Richmond, VA 23219, telephone (804) 786-2384.

## DEPARTMENT OF SOCIAL 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 Social Services intends to consider amending regulations entitled: **VR 615-43-8. Agency Placement Adoption - Subsidy.** The purpose of the proposed action is to revise policy governing the individual circumstances that make a child eligible for subsidy and to clarify policy related to reasonable efforts to first place without subsidy.

Statutory Authority: § 63.1-238.5 of the Code of Virginia.

Written comments may be submitted until August 31, 1992, to Brenda Kerr, 8007 Discovery Dr., Richmond, VA 23229-8699.

**Contact:** Peggy Friedenber, Legislative Analyst, Virginia Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

## DEPARTMENT OF TAXATION

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating regulations entitled: **VR 630-10-9.1. Virginia Retail Sales and Use Tax Regulation: Audit Sampling.** The purpose of the proposed action is to establish criteria and guidelines for the use of sampling as an audit technique.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until September 1, 1992.

**Contact:** W. Bland Sutton, III, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-6358.

## VIRGINIA RACING COMMISSION

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **Satellite Wagering Facilities.** The purpose of the



# Notices of Intended Regulatory Action

proposed action is to establish conditions under which simulcast horse racing shall be conducted at satellite wagering facilities.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until September 28, 1992.

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

## DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-40-01. Infectious Waste Management Regulations.** The purpose of the proposed action is to (i) amend the regulations to correct errors; (ii) improve and update existing exemptions, standards and procedures; (iii) add methods for the review of alternate technologies and tracking waste shipments; and (iv) consider mail shipments, reusable container management and other issues. The department may form an advisory panel to help it consider these amendments. Persons or organizations interested in being a member of the panel, please notify the department.

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia.

Written comments may be submitted until August 26, 1992, to the Department of Waste Management, 11th Floor, Monroe Building, 101 N. 14th Street, Richmond, VA 23219, ATTN: Infectious Waste Regulations.

Contact: Robert G. Wickline, Director of Research, Office of Science Services, Department of Waste Management, 101 N. 14th Street, 11th Floor, Monroe Building, Richmond, VA 23219, telephone (804) 225-2321.

## STATE WATER CONTROL BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-01-01. Fees for Permits and Certificates.** The purpose of the proposed action is to adopt a regulation which establishes, in regulation, a schedule of fees based on the time and complexity associated with processing various categories of permits within the maximum amounts specified in § 62.1-44.15:6 and specifies the method to be

used to collect such fees.

All entities which apply for new permits or certificates, apply for reissuance of permits or certificates, or have permits modified at their request or by an action initiated by the Board will be subject fees in amounts not to exceed maximums specified in Chapter 621 of the 1992 Acts of the General Assembly. Specifically, these maximum amounts for the issuance or reissuance of a permit or certificate, or the modification of a permit or certificate at the request of the permit or certificate holder are as follows:

### ISSUANCE/REISSUANCE

Type of Permit/Certificate Category ... Maximum Amount

1. Virginia Pollutant Discharge Elimination System	
Major .....	\$8,000
Minor .....	\$3,500
General .....	\$ 400
2. Virginia Pollutant Abatement	
Agriculture/Concentrated .....	\$1,000
Agriculture/Intensified .....	\$ 500
Industrial/Wastewater .....	\$5,000
Industrial/Sludge .....	\$2,500
Municipal/Wastewater .....	\$5,000
Municipal/Sludge .....	\$2,500
Other .....	\$ 250
3. 401 Certification/Virginia Water Protection	
Individual .....	\$3,000
General .....	\$ 400
Waiver .....	\$ 400
4. Ground Water Withdrawal	
Agricultural Withdrawals	
Agricultural withdrawals not exceeding 150 million gallons in any single month .....	\$ 250
Agricultural withdrawals greater than 150 million gallons but less than 300 million gallons in any single month .....	\$ 400
Agricultural withdrawals of 300 million gallons or greater in any single month .....	\$ 600
All Other Withdrawals .....	\$2,000
5. Surface Water Withdrawal	
Agricultural Withdrawals	
Agricultural withdrawals not exceeding 150 million gallons in any single month .....	\$ 250
Agricultural withdrawals greater than 150 million gallons but less than 300 million gallons in any single month .....	\$ 400
Agricultural withdrawals of 300 million gallons or greater in any	

# Notices of Intended Regulatory Action

single month .....\$ 600  
All Other Withdrawals ..... \$4,000

The maximum fees for modification of a permit or certificate initiated by the board shall not exceed 75% of the maximum amount for issuance or reissuance of a permit or certificate, or modification of a permit or certificate at the request of the permit or certificate holder.

Payments to the Department of Game and Inland Fisheries and the Department of Conservation and Recreation for reviewing any permit application they are required to review pursuant to requirements of the Code of Virginia will be made from the maximum fee amounts specified above. These payments will be up to 25% of the total fee, but not more than \$100.

All issues related to implementation of Chapter 621 of the 1992 Acts of the General Assembly will be considered. Of particular interest are proposals related to fees for modifications of permits and certificates and options for the collection of fees.

The board will hold public meetings regarding the Fees for Permits and Certificates regulation. See Calendar of Events Section.

Applicable laws and regulations include Chapter 621 of the 1992 Acts of the General Assembly, the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), the State Water Control Law, and the Board's Public Participation Guidelines.

Statutory Authority: § 62-44.15:6 of the Code of Virginia.

Written comments may be submitted until August 31, 1992, to Ms. Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Ms. Pat Woodson, Policy Analyst, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5166.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with the agency's public participation guidelines that the State Water Control Board intends to repeal regulations entitled: **VR 680-13-01. Rules of the Board and Standards for Water Wells.** The purpose of the proposed action is to repeal VR 680-13-01 Rules of the Board and Standards for Water Wells and promulgate VR 680-13-07 Ground Water Withdrawal Regulations pursuant to the Ground Water Management Act of 1992 (effective July 1, 1992).

Paragraph 2 of Chapter 812 of the 1992 Acts of the General Assembly repeals the Groundwater Act of 1973 (Code of Virginia Title 62.1, Chapter 3.4, § 62.1-44.83 through § 62.1-44.107; effective July 1, 1992). Legislative authority to promulgate VR 680-13-01 Rules of the Board

and Standards for Water Wells was contained in Chapter 3.4 of Title 62.1 of the Code of Virginia. Concurrently with this action, the board is considering the adoption of VR 680-13-07 Ground Water Withdrawal Regulations in accordance with Paragraph 1 of Chapter 812 of the 1992 Acts of the General Assembly added Chapter 25 (§§ 62.1-254 through 62.1-270) to Title 62.1 of the Code of Virginia (effective July 1, 1992).

Public meetings will be held. See Calendar of Events Section.

Applicable laws and regulations include the Groundwater Act of 1973, The Ground Water Management Act of 1992 (Chapter 812 of the 1992 Acts of Assembly), Rules of the Board and Standards for Water Wells, and the Administrative Process Act.

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

Written comments may be submitted until August 26, 1992, to Ms. Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia.

Contact: Mr. Terry Wagner, Office of Spill Response and Remediation, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5203.

## 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 680-13-03. Petroleum Underground Storage Tank Financial Responsibility Requirements.** The purpose of the proposed action is to incorporate the amendments enacted by the 1992 General Assembly in Chapters 819 and 456 (House Bills 1172 and 1043), establish revised financial responsibility compliance dates for owners and operators of underground storage tanks and petroleum storage tank vendors, and delete requirements for the Virginia Underground Petroleum Storage Tank Fund which are to be established concurrently with this proposed regulatory action in a new regulation.

The General Assembly's establishment of a sliding scale for financial responsibility (effective July 1, 1992) will reduce the amount of financial responsibility required of many owners and operators of underground storage tanks and petroleum storage tank vendors. Therefore, there would be no negative financial impact imposed on the regulated community. Extension of compliance dates will benefit the regulated community by providing owners and operators and vendors with more time in which to comply with financial responsibility requirements.

An issue under consideration is the amount and type of documentation necessary to establish the amount of petroleum pumped on an annual basis. This is required in order to determine the level of financial responsibility

# Notices of Intended Regulatory Action

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required for owners and operators.

See Calendar of Events section for schedule of public meetings.

Applicable laws and regulations include the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), the State Water Control Law, the Petroleum Storage Tank Financial Responsibility Requirements (VR 680-13-03), and Chapters 456 and 819 of the 1992 Acts of Assembly.

Statutory Authority: §§ 62.1-44.15 (10) and 62.1-44.34:8 (8) of the Code of Virginia.

Written comments may be submitted until August 31, 1992, to Ms. Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Ms. Mary-Ellen Kendall, Office of Spill Response and Remediation, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-13-06. Virginia Petroleum Storage Tank Fund Requirements.** The purpose of the proposed action is to adopt a regulation describing the requirements for the Virginia Petroleum Storage Tank Fund.

The amendments to the State Water Control Law enacted by the 1992 General Assembly (effective July 1, 1992) increased the number of persons who have access to the Fund and reduced the amount of financial responsibility required to certain categories of regulated owners and operators. Therefore, there would be no negative financial impact imposed on the regulated community and a substantial benefit may be conferred upon certain persons who are not part of the regulated community.

Issues under consideration include (1) the criteria which must be met prior to the board initiating State-Lead corrective actions at a site where a release has occurred; (2) limitations on access to the Fund by operators of facilities with aboveground storage tanks (regulated and unregulated); and (3) access to the Fund for subsequent property owners who discover/purchase abandoned tanks located on the property.

Public meetings will be held. See Calendar of Events Section.

Applicable laws and regulations include the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), the State Water Control Law, the Petroleum Storage Tank Financial Responsibility Requirements (VR 680-13-03), the Underground Storage Tanks; Technical Standards and Corrective Action Requirements (VR 680-13-02), and Chapter 819 of the 1992 Acts of Assembly.

Statutory Authority: §§ 62.1-44.15 (10) and 62.1-44.34:8 (8) of the Code of Virginia.

Written comments may be submitted until August 31, 1992, to Ms. Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Ms. Mary-Ellen Kendall, Office of Spill Response and Remediation, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-13-07. Ground Water Withdrawal Regulation.** The purpose of the proposed action is to adopt regulations which establish administrative procedures for the establishment of ground water management areas and the issuance of ground water withdrawal permits within designated areas. The regulations will also establish technical criteria to be used when evaluating an application for a ground water withdrawal permit as well as enforcement procedures to assure compliance with the regulations.

Paragraph 1 of Chapter 812 of the 1992 Acts of the General Assembly added Chapter 25 (§ 62.1-254 through § 62.1-270) to Title 62.1 of the Code of Virginia (effective July 1, 1992). Chapter 25 is titled the Ground Water Management Act of 1992. Section 62.1-256.8 specifically requires the Board to adopt regulations necessary to administer and enforce the provisions of Chapter 25.

All ground water users who hold existing permits or certificates of ground water right in existing ground water management areas will be required to apply for new permits with terms not to exceed 10 years. An unknown number of agricultural users who were exempt from the Groundwater Act of 1973 will be required to apply for a permit. Any person wishing to initiate a withdrawal in excess of 300,000 gallons per month or expand an existing permitted withdrawal within existing ground water management areas will be required to apply for a ground water withdrawal permit. The Ground Water Management Act of 1992 establishes criteria for the creation of additional ground water management areas within which any user of greater than 300,000 gallons per day would be required to apply for a permit.

All issues related to the implementation of the Ground Water Management Act of 1992 will be open for consideration. Staff of the Board is especially interested in input on methodologies to determine historic ground water withdrawals from wells that were not metered, methodologies to determine the amount of ground water needed annually for drought relief wells, information necessary to document water withdrawal savings achieved by water conservation, information necessary to document additional ground water needed (in addition to existing

# Notices of Intended Regulatory Action

use) during the term of a permit, strategies to assure that the maximum amount of ground water is preserved and protected for future beneficial uses, strategies for prioritizing types of water use when evaluating withdrawal applications, and establishment of criteria for the issuance or denial of ground water withdrawal permits.

Public meetings will be held. See Calendar of Events Section.

Applicable laws and regulations include the Groundwater Act of 1973, The Ground Water Management Act of 1992 (Chapter 812 of the 1992 Acts of Assembly), Rules of the Board and Standards for Water Wells, and the Administrative Process Act.

Statutory Authority: § 62.1-256.8 of the Code of Virginia.

Written comments may be submitted until August 31, 1992, to Ms. Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

**Contact:** Mr. Terry Wagner, Office of Spill Response and Remediation, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5203.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-12. Aboveground Storage Tanks Registration Requirements.** The purpose of this proposed regulatory action is to adopt new regulations which will allow the board to compile an inventory of facilities with an aboveground storage capacity of greater than 1320 gallons of oil or individual aboveground storage tanks having a storage capacity of greater than 660 gallons of oil.

The amendments to the State Water Control Law enacted by the General Assembly will require operators of aboveground storage tanks to register their facilities and tanks with the board. This will impose minimum additional requirements as many of these facilities will be subject to a similar registration program under federal statute and regulation.

An issue under consideration is ensuring that the regulations consider similar requirements under federal statute or regulation. The board will determine the adequacy of the federal requirements when drafting these regulations.

Another issue under consideration is the establishment of administrative fees. Section 62.1-44.34:19.1 authorizes the board, if the board determines that registration under federal law or regulations is inadequate for the purpose of compiling its inventory and that additional registration requirements are necessary, to assess a fee, according to a schedule based on the size and type of the facility or tank, not to exceed \$100 per facility or \$50 per tank,

whichever is less. The board seeks comments on the appropriateness of establishing a fee schedule for registration or reregistration.

Public meetings will be held. See Calendar of Events Section.

Applicable laws and regulations include the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), the State Water Control Law, and Chapter 456 of the 1992 Acts of Assembly.

Statutory Authority: §§ 62.1-44.34:19.1 and 62.1-44.15 (10) of the Code of Virginia.

Written comments may be submitted until August 31, 1992, to Ms. Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

**Contact:** David T. Ormes, Office of Spill Response and Remediation, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5203.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-13. Aboveground Storage Tanks Prevention Standards and Operational Requirements.** The purpose of this proposed regulatory action is to adopt regulations necessary to prevent pollution of state waters, lands, or storm drain systems from the discharge of oil from new and existing aboveground storage tanks. Section 62.1-44.34:15.1 states that the regulations shall provide:

1. For existing aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater:
  - a. To prevent leaks from aboveground storage tanks, requirements for inventory control, testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the board) and formal tank inspections every five years in accordance with accepted industry practices and procedures approved by the board. Initial testing shall be on schedule approved by the board;
  - b. To prevent overfills, requirements for safe fill and shut down procedures, including an audible staged alarm with immediate and controlled shut down procedures, or equivalent measures established by the board;
  - c. To prevent leaks from piping, requirements for cathodic protection, and pressure testing to be conducted at least once every five years, or equivalent measures established by the board;

# Notices of Intended Regulatory Action

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d. To prevent and identify leaks from any source, requirements (i) for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the board, performed by a person certified or trained by the operator in accordance with board requirements, (ii) for monthly gauging and inspection of all ground water monitoring wells located at the facility, and monitoring of the well head space for the presence of vapors indicating the presence of petroleum, and (iii) for quarterly sampling and laboratory analysis of the fluids present in each such monitoring well to determine the presence of petroleum or petroleum byproduct contamination; and

e. To ensure proper training of individuals conducting inspections, requirements for proper certification or training by operators relative to aboveground storage tanks.

2. For existing aboveground storage tanks at facilities with an aggregate capacity of less than one million gallons but more than 25,000 gallons:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control and testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the board). Initial testing shall be on a schedule approved by the board;

b. To prevent overfills, requirements for safe fill and shut down procedures;

c. To prevent leaks from piping, requirements for pressure testing to be conducted at least once every five years or equivalent measures established by the board; and

d. To prevent and identify leaks from any source, requirements for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the board, performed by a person certified or trained by the operator in accordance with board requirements developed in accordance with Item 1 above.

Further, the board shall establish performance standards for aboveground storage tanks installed, retrofitted or brought into use after the effective date of the regulations promulgated pursuant to this subsection that incorporate all technologies designed to prevent oil discharges that have been proved in accordance with accepted industry practices and shown to be cost-effective.

The amendments to the State Water Control Law enacted by the General Assembly will require operators of aboveground storage tanks of oil to adhere to the

prevention standards set by statute. These standards may require some upgrade and improvements to be made to facilities not already in substantial conformance with applicable federal statute and regulation. These regulations will also require additional operational procedures to be met.

An issue under consideration is ensuring that the regulations are in substantial conformance with the current codes and standards recommended by the National Fire Protection Association as well as practices contained in applicable American Petroleum Institute publications and other accepted industry standards. The board will also consider those pollution prevention standards mandated under federal statute and regulation.

Public meetings will be held. See Calendar of Events Section.

Applicable laws and regulations include the Administrative Process Act (§ 9-6.14.1 et seq. of the Code of Virginia), the State Water Control Law, and Chapter 456 of the 1992 Acts of Assembly.

Statutory Authority: §§ 62.1-44.34:15.1 and 62.1-44.15 (10) of the Code of Virginia.

Written comments may be submitted until August 31, 1992, to Ms. Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

**Contact:** David T. Ormes, Office of Spill Response and Remediation, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5203.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-14. Aboveground Storage Tanks Financial Responsibility Requirements.** The purpose of this intended regulatory action is to adopt new regulations setting the amount of financial responsibility operators of facilities with aboveground storage tanks must demonstrate.

The amendments to the State Water Control Law enacted by General Assembly will require operators of aboveground storage tanks of oil to demonstrate financial responsibility based on the aggregate capacity of the facilities. This may require operators to obtain additional pollution insurance to meet the amount required by regulation. No governmental agency is required to comply with these regulations.

An issue under consideration is ensuring that the regulations consider those parameters established by statute prior to determining the amount of financial responsibility required to be demonstrated. In no instance will this amount exceed five cents per gallon of aboveground storage capacity or five million dollars for a

# Notices of Intended Regulatory Action

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pipeline.

Manager, P.O. Box 3AG, Richmond, VA 23208-1108,  
telephone (804) 371-0571.

Another issue under consideration is the establishment of administrative fees for acceptance of evidence of financial responsibility. Section 62.1-44.34:21 of the Code of Virginia authorizes the board to collect from any operator seeking acceptance of evidence of financial responsibility fees sufficient to meet, but not exceed, the costs of the board related to implementation of § 62.1-44.34:16 as to an operator seeking acceptance of evidence of financial responsibility. The board seeks comments on the appropriateness of establishing a fee schedule for acceptance of evidence of financial responsibility.

Public meeting will be held. See Calendar of Events Section.

Applicable laws and regulations include the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), the State Water Control Law, and Chapters 456 and 819 of the 1992 Acts of Assembly.

Statutory Authority: §§ 62.1-44.34:16 and 62.1-44.15 (10) of the Code of Virginia.

Written comments may be submitted until August 31, 1992, to Ms. Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

**Contact:** David T. Ormes, Office of Spill Response and Remediation, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5203.

## DEPARTMENT OF YOUTH AND FAMILY 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 Youth and Family Services intends to consider promulgating regulations entitled: **Standards for the Detention of Juveniles in Jails and Lockups**. The purpose of the proposed action is to:

1. Serve as criteria for use by staff of the Department of Youth and Family Services in monitoring jails and lockups holding juveniles.
2. Serve as guidelines for jails and lockups wishing to hold juveniles.

Statutory Authority: §§ 66-10 and 16.1-249 of the Code of Virginia.

Written comments may be submitted until August 26, 1992, to Kathi Faber, Department of Youth and Family Services, P.O. Box 3AG, Richmond, VA 23208-1108.

**Contact:** Sheila Christian, Licensure/Certification Program

# PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

## Symbol Key

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

## DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

**NOTE:** The Board of Game and Inland Fisheries is exempted from the Administrative Process Act (§ 9-6.14:4 of the Code of Virginia); however, it is required by § 9-6.14:22 to publish all proposed and final regulations.

**Title of Regulation:** VR 325-02-24. Game: Waterfowl and Waterfowl Blinds.

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

**Proposed Effective Date:** October 21, 1992.

### Summary:

*Summaries are not provided since, in most instance, the summary would be as long or longer than the full text.*

### VR 325-02. GAME.

VR 325-02-24. Waterfowl and Waterfowl Blinds.

§ 5. Blinds in the City of Virginia Beach.

In the City of Virginia Beach, except for blinds and floating blind sites which may be erected by the department, no new blinds shall be erected and no licenses shall be issued for the erection of new shore or stationary water blinds upon the shores or in the public waters, nor may floating or mat blinds anchor within 500 yards of the shores of lands or blinds owned or controlled by the department *except floating blinds may be stationed at sites designated by the department*. Blinds and floating blind sites erected by the department shall not be licensed, but there shall be a metal plate affixed to such blinds for identification purposes.

## DEPARTMENT OF HEALTH (STATE BOARD OF)

**REGISTRAR'S NOTICE:** The proposed State Plan of Operations and Administration of Special Supplemental Food Program for Women, Infants, and Children (WIC) has been filed with this office. Due to its length the full text will not be published. Please see "General Notices" section for more information.

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

**Title of Regulation:** VR 394-01-2. Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen.

**Statutory Authority:** §§ 27-97 and 36-137 of the Code of Virginia.

**Public Hearing Date:** September 14, 1992 - 10 a.m.  
(See Calendar of Events section for additional information)

### Summary:

*The Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen is a statewide uniform regulation that must be used by every local governing body that chooses to require certification of plumbers, building-related mechanical workers and electricians; building officials and building code enforcement personnel; persons responsible for the use of explosives; and amusement device inspectors. A listing of approved testing agencies is included in Appendix A of the regulation.*

*Proposed amendments to the standard deal specifically with the certification of blasters and proposes to divide the certification into two categories, restricted and unrestricted. A restricted blaster is limited to conducting blasting operations involving five pounds of explosives or less per shot with instantaneous blasting caps. The proposed changes would permit the applicant for certification as a restricted blaster to utilize a competency test commensurate with that type of blasting operation instead of the comprehensive test previously required for all blasters. The applicant for the restricted certification would also have to meet experience requirements by working under a certified unrestricted or restricted blaster for at least one year.*

VR 394-01-2. Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen.

### PART I. GENERAL.

§ 1.1. Definitions.

The terms used in these standards shall have the following meaning:

**"Agent"** means the person designated by the county, city, or town, according to local ordinance, to examine and determine an applicant's qualifications for certification.

**"Agricultural blasting"** means any blasting operation which is conducted on real estate devoted to agricultural or horticultural use as defined in § 58.1-3230 of the Code of Virginia, and no less than five acres in area.

**"Apprentice"** means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Voluntary Apprenticeship Act, § 40.1-120 of the Code of Virginia.

**"Approved"** means approved by the Department of Housing and Community Development.

**"Blaster" (~~shot firer~~) or "shot firer"** means the qualified person in charge of, and responsible for, the loading and firing of an explosive or blasting agent.

**"Board"** means the Board of Housing and Community Development.

**"Building official"** means the executive official in charge of the local building department.

**"Building-related mechanical worker"** means a tradesman who does building-related mechanical work, including heating, air conditioning, and ventilation.

**"Contractor"** means a person licensed according to § 54.1-1100 of the Code of Virginia who for a fixed price, commission, fee or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing or superintending the construction, removal, repair or improvement of any building or structure owned, controlled or leased by another person.

**"Department"** means the Department of Housing and Community Development.

**"Division"** means a limited certification subcategory within any of the trades, as approved by the department.

**"Electrical work"** consists of, but is not limited to the following: (i) plan and layout of detail for installation or modifications of electrical apparatus and controls, preparation of sketches showing location of wiring and equipment; (ii) measures, cuts, bends, threads, assembles and installs electrical conduits; (iii) performs maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect hazards and need for adjustments, relocation or replacement; (v) repairs faulty systems or apparatus.

**"Electrician"** means a tradesman who does electrical work including, but not limited to, installing, repairing and maintaining electrical systems and equipment.

**"Formal vocational training"** means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, military, correspondence schools, or other similar training organizations.

**"Gasfitter"** means a tradesman who does gasfitting related work as a subdivision within the building-related mechanical or plumbing trades.

**"Helper" or "laborer"** means a person who assists a tradesman certified according to these standards.

**"Inspector"** means a person authorized by the building official to perform the inspections required in the Virginia Uniform Statewide Building Code.

**"Journeyman"** means a person who possesses the necessary ability, proficiency and qualifications to install, repair and maintain specific types of materials and equipment, utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

**"Local board"** means the board established by a county, city or town, according to local ordinance, to examine and determine an applicant's qualifications for certification.

**"Master"** means a person who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing, and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code.

**"Plumber"** means a tradesman who does plumbing work.

**"Plumbing work"** means the practice, materials and fixtures used in the installation, maintenance, extension and alteration of all piping, fixtures, appliances and appurtenances in connection with any of the following: sanitary drainage facilities, the venting system and the public or private water-supply systems within or adjacent to any building or structure.

**"Supervision"** means monitoring of the work in progress to assure that the final installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code.

**"Supervisor"** means the certified master tradesman who has the responsibility to determine that the final installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code.

**"Technical assistant"** means any person employed by, or under contract to, a Virginia governing body as an inspector for determining compliance with the building, electrical, plumbing, mechanical or fire protection



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provisions, including plans examination, of the Virginia Uniform Statewide Building Code.

"Testing organization" means an independent testing organization whose main function is to develop and administer examinations.

"Trade" means any of the following: plumbing, building-related mechanical or electrical work, and divisions within them.

"Tradesman" means a person who engages in or offers to engage in, for the general public or for compensation, any of the trades covered by these standards.

## § 1.2. Authority.

A. The tradesmen standards are adopted under authority granted by Chapter 1, § 15.1-11.4 of the Code of Virginia for use by counties, cities, and towns to be used for the certification of plumbing, building-related mechanical and electrical workers. These standards are not intended to affect licensing by local governments under other provisions of the Code of Virginia.

B. The building official, technical assistants, and amusement device inspectors standards are adopted under authority granted by Chapter 6, §§ 36-137(6) and 36-98.3 of the Code of Virginia for the certification of building officials, technical assistants and amusement device inspectors.

C. The certification standards for blasters are adopted under Chapter 9 of Title 27 of the Code of Virginia.

D. These standards were adopted by order of the Board of Housing and Community Development on November 19, 1990. This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development and is available for public inspection.

E. The 1990 edition of these standards replaces previous editions. It shall become effective on March 1, 1991. Persons already enrolled in a certification program shall remain subject to the edition in effect at the time of enrollment. Subsequent enrollment shall be subject to the pertinent provisions of the standards in effect at the time of such action.

F. The Department of Housing and Community Development shall be the administrative agency providing advisory interpretations concerning the application of these standards.

G. The Department of Housing and Community Development may utilize testing organizations that develop and administer examinations based on the current provisions of the Virginia Uniform Statewide Building Code, Virginia Statewide Fire Prevention Code, Virginia

Amusement Device Regulations, and the model codes and standards referenced by those regulations including standards for plumbing, building-related mechanical and electrical work. The department may designate divisional examinations within these trades.

## PART II. CERTIFICATION OF TRADESMAN STANDARDS.

### § 2.1. Exemption from certification.

A. Plumbers, plumber-gasfitters, building-related mechanical workers, building-related mechanical gas-fitters or electricians who were certified or licensed prior to July 1, 1978, in accordance with the certification or license provisions of the Commonwealth or any local government, shall be exempt from any further local certification requirement for the same trade.

B. Helpers or laborers who assist certified tradesmen shall be exempt.

C. Any person that performs plumbing, plumbing gas-fitting, building-related mechanical gas-fitting, building-related mechanical, or electrical work on their own property rather than for the general public or for compensation shall be exempt from local certification.

D. Any person who installs television or telephone cables, or lightning arrestor systems shall be exempt from certification as an electrician. Installers of wood stove equipment, masonry or prefabricated chimneys, or duct systems shall be exempt from certification as a building-related mechanical worker.

### § 2.2. Temporary certification.

A. Upon initial adoption of the Tradesmen Certification Standards, a locality shall be entitled to issue temporary journeymen and master tradesmen certificates to applicants that furnish evidence documenting their competence to perform work at their desired level of certification.

B. Temporary journeymen and master tradesmen certificates shall be effective for a period of six months from the date of issuance. Localities may extend a temporary tradesmen certificate for no longer than one additional six-month period, if the locality determines that the certificate holder is making an effort towards certification or special circumstances exist, or both.

C. Temporary journeymen and master tradesmen certificates shall be valid only in the jurisdiction of the issuing locality.

D. A temporary journeymen or master tradesmen certificate shall entitle the certificate holder to take the corresponding journeymen or master tradesmen certification examination.

E. Should the holder of a temporary journeymen or master tradesmen certificate fail to pass the appropriate certification examination by the expiration date of their temporary certificate, the individual shall be subject to the requirements of § 2.3 of these standards.

## § 2.3. Evidence of ability and proficiency.

A. Applicants for examination as a journeyman shall furnish evidence that one of the following experience and education standards have been attained:

1. Four years of practical experience in the trade, and 240 hours of formal vocational training in the trade; however, experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours; or

2. Successful completion of a Registered Apprenticeship Program established in accordance with the Virginia Voluntary Apprenticeship Act; or

3. A Bachelor's Degree in an engineering curriculum related to the trade for which certification is desired, and one year of practical experience in the trade for which certification is desired; or

4. Ten years of practical experience in the trade for which certification is desired.

B. Applicants desiring to obtain certification as a Master shall furnish evidence that they have one year of experience as a certified journeyman.

C. Individuals who have successfully passed the Class A contractors exam prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with these standards.

## § 2.4. Application and issuance of certificates.

A. An applicant must successfully complete an examination to be issued a card and deemed certified.

B. The local agent or board shall receive and review applications and forward applications to the national testing organizations designated by the department.

C. The applicant shall present to the local agent or board evidence of successful completion of an examination based on the current edition of the Virginia Statewide Building Code.

D. The local agent or board shall issue certificates provided by the department to applicants successfully completing the examination.

E. Apprentices that completed a program prior to July 1, 1981, shall make application for certification with a

locality; apprentices completing programs after July 1, 1981, shall make application with the Department of Labor and Industry, Apprenticeship Division.

## § 2.5. Revocation of certification.

A. Certification may be revoked for misrepresentation or a fraudulent application, or for incompetence as demonstrated by an egregious or repeated violations of the Virginia Uniform Statewide Building Code.

B. The Department of Housing and Community Development shall be notified by the local board or agent when a certification has been revoked in accordance with provisions of these standards.

## § 2.6. Reciprocity.

Individuals certified as a journeyman or master by governing bodies located outside the Commonwealth of Virginia shall be considered to be in compliance with these standards, if the Department of Housing and Community Development has determined the certifying system to be equivalent to the Virginia system.

## § 2.7. Appeals.

A. Each local governing body shall establish a board of appeals. The local board of appeals shall consist of not less than five members appointed by the local government. Members shall be selected on the basis of their ability to render fair and competent decisions. Employees or officials of the local government appointing the board of appeals shall not serve as members. The agent shall designate an employee to serve as secretary to the board of appeals, who shall keep a detailed record of all proceedings. The board of appeals shall hear appeals concerning the application of these standards or from a decision of the local agent or certification board. Application for appeals shall be in writing and made within 90 days of receipt of the decision of the agency or certification board. The appeals board must meet within 20 working days of the filing of an appeal. All hearings shall be public and conducted in accordance with the applicable provisions of the Administrative Process Act, § 9-6.14:1 of the Code of Virginia.

B. Any person aggrieved by a decision of a local board of appeals may appeal to the State Building Code Technical Review Board in accordance with § 117.0 of the Uniform Statewide Building Code, Volume I.

## PART III. CERTIFICATION PROGRAM FOR BUILDING OFFICIALS AND INSPECTORS.

### § 3.1. Exemption from certification.

A. An individual employed as the building official in any locality in Virginia prior to April 1, 1983, shall be exempt from certification while employed as the building official

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in that jurisdiction. This exemption shall not apply to subsequent employment in another jurisdiction, or a change in area of inspection discipline.

B. An individual employed as the building, electrical, plumbing, mechanical, fire protection systems inspector or plans examiner in Virginia prior to March 1, 1988, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment as a technical assistant in another jurisdiction.

## § 3.2. Certification.

To be eligible for certification an applicant shall meet the following criteria:

1. The applicant shall be qualified according to Volume I of the Uniform Statewide Building Code (USBC).
2. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A.
3. The applicant shall complete designated programs of the Virginia Code Academy.
4. The applicant shall submit an Application for Certification along with a copy of examination results from the testing agency to the Professional Services Office.

## § 3.3. Maintenance of certification.

A. A certificate issued under the Virginia Certification Standards shall expire three years from January 1 of the year in which the certificate is issued.

B. To maintain certification a certificate holder shall attend programs of instruction approved by the Department of Housing and Community Development after each code change cycle of the Uniform Statewide Building Code (USBC) and Virginia Statewide Fire Prevention Code (VFPC).

C. Certificate holders are responsible for notifying the Department of Housing and Community Development of address changes prior to the renewal date of their certification.

## § 3.4. Revocation of certification.

The board may revoke the certification for any of the following:

1. Any willful misrepresentation in obtaining or renewing the certification.
2. Gross negligence or continued incompetence in the practice of the profession.

## § 3.5. Appeals.

Any person aggrieved by a decision based upon these certification standards may appeal that decision, in writing, in accordance with the appeals process outlined in §§ 116.0 and 117.0 of the Virginia Uniform Statewide Building Code, Volume I.

## PART IV. BLASTER CERTIFICATION.

### § 4.1. Exemption from certification.

Individuals conducting agricultural blasting operations on their own property are not required to be certified as a blaster.

### § 4.2. Certification.

*Certification shall be in the following two classifications:*

1. *Unrestricted blaster. A person classified as a certified unrestricted blaster shall be qualified to conduct appropriate blasting without limit as to size of shot or type of detonation devices. An applicant for unrestricted blaster certification shall successfully complete an examination developed and administered by a recognized and approved testing agency listed in Appendix A.*

2. *Restricted blaster. A person classified as a certified restricted blaster shall be qualified to conduct blasting operations involving five pounds of explosives or less per shot and use only instantaneous blasting caps. An applicant for restricted blaster certification shall successfully complete an examination developed and administered by a recognized and approved testing agency listed in Appendix A.*

### § 4.3. Qualifications of candidates.

An applicant for a blaster's certification shall meet the following criteria:

1. Be at least 21 years of age;
2. Be able to understand and give written and oral instructions in the English language;
3. *Unrestricted blaster certification.* Have worked at least one year under the direct supervision of a blaster certified by the Commonwealth of Virginia or another authority recognized by the Department of Housing and Community Development;

*Restricted blaster certification.* Have worked at least one year under the direct supervision of an individual certified as an unrestricted blaster or as a restricted blaster by the Commonwealth of Virginia or another authority recognized by the Department of Housing and Community Development.

*NOTE: In no case shall a certified restricted blaster's supervision be acceptable for an unrestricted blaster's experience requirements.*

4. Have a working knowledge of federal, state, and local laws and regulations pertaining to explosive materials.

#### § 4.4. Temporary certification.

A temporary certificate may be issued to any person who meets the applicant criteria listed in § 4.3 and who was employed as a blaster prior to filing the application for the temporary certificate. Any temporary certificate issued before January 1, 1992, shall expire on January 1, 1993. Any temporary certificate issued after January 1, 1992, shall expire 12 months from the date of issuance. *Temporary certifications shall not be renewed.*

#### § 4.5. Renewal.

A blasters certificate shall be renewed every three years. *As a condition of renewal, proof of continued training or education in the use of explosives in an amount not less than 16 hours in three consecutive years shall be provided to the department.* Requests for renewal shall be submitted on forms provided by the department.

#### § 4.6. Revocation or suspension of certification.

The Department of Housing and Community Development may revoke or suspend certification issued under the provisions of this regulation if conditions of the certification have been violated, or if there has been any false statement or misrepresentation in the application on which the certification was based.

### PART V. CERTIFICATION OF AMUSEMENT DEVICE INSPECTOR STANDARDS.

#### § 5.1. Certification.

A. To be eligible for certification, an applicant shall meet the following criteria:

1. The applicant shall have at least three years of experience in general building construction or any combination of education and experience which would confer equivalent knowledge and ability;
2. The applicant shall successfully complete an examination developed and administered by an approved testing agency listed in Appendix A; and
3. The applicant shall submit an Application for Certification and a copy of examination results from the testing agency to the Professional Services Offices.

B. Notwithstanding any regulations to the contrary, no exemption shall be permitted from the requirements for

certification for any person, including local building officials and their representatives, to inspect amusement devices.

#### § 5.2. Maintenance of certification.

A. A certificate issued under the Virginia Amusement Device Certification Standards shall expire three years from January 1 of the year in which the certificate is issued.

B. To maintain certification, a certificate holder shall attend programs of instruction approved by the Department of Housing and Community Development after each code change cycle of the Virginia Amusement Device Regulations.

C. Certificate holders are responsible for notifying the Department of Housing and Community Development of address changes prior to the renewal date of their certification.

#### § 5.3. Revocation or suspension of certification.

The Department of Housing and Community Development may revoke or suspend certification issued under the provisions of this code if conditions of the certification have been violated, or if there has been any false statement or misrepresentation in the application on which the certification was based.

### APPENDIX A. TESTING AGENCIES.

The following testing agencies have been approved by the Department of Housing and Community Development for administering the exams. Other exams may be approved on an individual basis. Requests for exam approval shall be submitted to the department.

Professional Code Administrator

Information and registration forms may be obtained from:

NAI, Inc.  
National Assessment Institute  
2817 Parham Road  
Richmond, VA 23294  
(804) 747-3297

Council of American Building Officials (CABO)  
5203 Leesburg Pike  
Suite 708  
Falls Church, VA 22041  
(703) 931-4533

Inspection Certification Program

Information and registration forms may be obtained from:

Certification Training and Education Services

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BOCA International  
4051 West Flossmoor Road  
Country Club Hills, IL 60477  
(708) 799-2300

Educational Testing Service  
(National Certification Program for Construction Code Inspectors)  
CN 6508  
Princeton, New Jersey 08541-6508  
(609) 921-9000

National Association of Elevator Safety Authorities  
P.O. Box 15643  
Phoenix, Arizona 85060  
(602) 266-9701

## Amusement Device Inspector Program

Information and registration forms may be obtained from:

NAI, Inc.  
National Assessment Institute  
2817 Parham Road  
Richmond, VA 23294  
(804) 747-3297

## Blaster Certification Program

Information and registration forms may be obtained from:

NAI, Inc.  
National Assessment Institute  
2817 Parham Road  
Richmond, VA 23294  
(804) 747-3297

\* \* \* \* \*

**Title of Regulation:** VR 394-01-4. Virginia Amusement Device Regulations/1990.

**Statutory Authority:** §§ 36-98, 36-98.3 and 36-137 of the Code of Virginia.

**Public Hearing Date:** September 14, 1992 - 10 a.m.  
(See Calendar of Events section for additional information)

### Summary:

*The 1990 edition of the Virginia Amusement Device Regulations is a mandatory, statewide regulation which provides for the administration and enforcement of uniform standards for the construction, maintenance, operation and inspection of amusement devices, whether mobile or affixed to a site. The regulation supplements the provisions of the Uniform Statewide Building Code for the purpose of protecting the health, safety and welfare of amusement device users. The technical requirements of the regulation are based on*

*standards developed by the American Society for Testing and Materials (ASTM). Provisions are included in the regulations for the inspection of amusement devices, reports and investigation of accidents, certification and conduct of operators, and an administrative appeals system is established for the resolution of disagreements between amusement device owners or operators and building officials.*

*The proposed amendments to this regulation are a result of statutory changes made during the 1991 session of the General Assembly and a review of public comment submitted to the Board of Housing and Community Development since the effective date of the 1990 edition of the regulation. The definition of "kiddie ride" is proposed to be split into Types A and B to differentiate between those rides that require partial or complete reassembly and those which require little or none. A definition of "passenger tramway" was added to be consistent with new provisions in state law which include passenger tramways as amusement devices. Section 400.1 of the regulation includes tramways within the scope of the regulation. A proposed change to § 1000.3(2) will limit the acceptability of a certificate of inspection for a ride moved from location to location to only a Type A kiddie ride. Section 1100.1 is amended to require owners and operators of amusement rides to notify the locality immediately when an accident involving a serious injury or fatality occurs, and new provisions in §§ 1100.3 and 1500.3 require action by the building official prior to resuming service and a new certificate of inspection to be issued after an accident. Appendix A, which lists the referenced standards, has a proposed change to include the ANSI B77.1-90 standard for use in inspecting passenger tramways.*

VR 394-01-4. Virginia Amusement Device Regulations/1990.

1990 EDITION.

VIRGINIA AMUSEMENT DEVICE REGULATIONS.

SECTION 100.0. GENERAL.

100.1. Title: These regulations shall be known as the Virginia Amusement Device Regulations ("VADR"). Except as otherwise indicated, VADR and regulations, as used herein, shall mean the Virginia Amusement Device Regulations.

100.2. Authority: The VADR is adopted under authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia. The VADR is intended to supplement the provisions of the Virginia Uniform Statewide Building Code (USBC).

100.3. Adoption: The 1990 edition of the VADR was adopted by order of the Board of Housing and Community

Development on November 19, 1990. This order was prepared according to requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.4. Effective date: The 1990 edition of the VADR shall become effective on March 1, 1991. The construction of any amusement device that was subject to a previous edition of the USBC when constructed, shall remain subject to the edition of the USBC in effect at the time of construction. Subsequent reconstruction, reassembly, maintenance, operation and inspection of such devices shall be subject to the pertinent provisions of the VADR in effect at the time of such action.

100.5. Application: The VADR shall govern the construction, maintenance, operation and inspection of amusement devices, whether mobile or permanently fixed to a site including kiddie rides defined by § 200.0 of these regulations. These regulations do not apply to any single passenger coin-operated ride, manually, mechanically, or electrically operated, which customarily is placed, singularly or in groups, in a public location and which does not normally require the supervision or service of an amusement ride operator and is not considered a kiddie ride for the purpose of these regulations, or to nonmechanized playground equipment, including swings, stationary spring-mounted animal features, rider propelled merry-go-rounds, climbers, slides, trampolines, swinging gates, and physical fitness devices except where an admission fee is charged for usage or an admission fee is charged to areas where such equipment is located. To the extent they are not superseded by the provisions of these regulations, all other state and local laws and regulations shall apply to amusement devices. The VADR does not supersede zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the construction, maintenance, operation and inspection of amusement devices.

## SECTION 200.0. DEFINITIONS.

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

*"Amusement attraction"* means any building or structure around, over or through which people may move or walk, without the aid of any moving device integral to the building structure, that provides amusement, pleasure, thrills, or excitement.

*"Amusement device"* means a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion.

*"Amusement park"* means a tract or area used principally as a location for amusement devices permanently fixed to the site.

*"ANSI"* means American National Standards Institute.

*"ASTM"* means American Society for Testing and Materials.

*"Board"* means the Board of Housing and Community Development.

*"Carnival"* means an itinerant enterprise consisting principally of portable amusement devices temporarily situated at a site.

*"Certificate of inspection"* means a certificate issued by the building official, pursuant to § 1500.0 of these regulations.

*"Committee"* means the Amusement Device Technical Advisory Committee.

*"Construction"* means the initial construction or manufacture of amusement devices. "Construction" does not include reassembly of existing devices.

*"Director"* means the Director of the Department of Housing and Community Development or his designee.

*"Fair"* means an enterprise principally devoted to the periodic and recurring exhibition of products of agriculture, industry, education, science, religion, or the arts that has one or more amusement devices, either portable or permanently fixed to the site, operated in conjunction with the exhibition.

*"First aid"* means the one time treatment or subsequent observation of scratches, cuts not requiring stitches, burns, splinters, or a diagnostic procedure, including examination and X-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed professional personnel.

*"Inspector"* means a person authorized by the building official to perform the inspections required herein.

*"Kiddie ride (Type A)"* means an amusement ride designed primarily for use by children up to 12 years of age, that requires simple little or no reassembly procedures prior to operation; and that does not require complex inspections prior to operation.

*Examples:*

1. Trailer-mounted self-contained rides
2. Moon/space walks

*"Kiddie ride (Type B)"* means an amusement ride designed primarily for the use by children up to 12 years of age that requires partial or complete reassembly/assembly procedures prior to operation.

*Examples:*

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1. Merry-go-rounds
2. Hampton type rides
3. Swings

"Major modification" means any change in either the structural or operational characteristics of the ride or device which will alter its performance or structural integrity from that specified in the manufacturer's design criteria.

"Minor injury" means sprains, abrasions, bruises, and lacerations less than three inches.

"Operator" means any person or persons actually engaged in or directly controlling the operation of an amusement device.

"Owner" means a person who owns an amusement device, including the state or its political subdivision, or in the event the amusement device is leased, the lessee, or the agent of either.

"Passenger tramway" means a device used to transport passengers, suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans.

"Permit" means written authorization given by the local building official to construct, reassemble or locate an amusement device so as to make ready for operation. Issuance of a permit does not give authority to operate without a certificate of inspection.

"Reassembly" means the act of placing the component parts of an existing device into a configuration which allows its use and operation.

"Review board" means the State Building Code Technical Review Board as established by § 36-108 of the Code of Virginia.

"Serious injury" means an injury that requires medical treatment by a physician other than minor injuries or first aid.

## SECTION 300.0. TECHNICAL ADVISORY COMMITTEE.

300.1. Membership: In appointing an Amusement Device Technical Advisory Committee, the board shall include representatives from the following groups:

1. Ride manufacturers,
2. Owners or operators of carnivals, amusement parks and fairs,
3. Mechanical or structural engineers,
4. Insurance underwriters, and

5. Members of the general public.

300.2. Term of membership: The members of the Technical Advisory Committee established by § 36-98.3(C) of the Code of Virginia, shall each serve for initial staggered terms of two and three years. Thereafter, appointments shall be for three years, with a provision for reappointment at the pleasure of the board.

## SECTION 400.0. REFERENCE STANDARDS.

400.1. Adoption of standards: The construction, maintenance, operation and inspection of amusement devices and passenger tramways shall be done in accordance with the applicable referenced standards adopted by ASTM and which are set forth in Appendix A.

If a ride was manufactured prior to the development of the ASTM standards (1978), the information listed in the referenced edition of ASTM 698, §§ 3.1 through 3.6, shall be available at the time of inspection.

Where differences occur between provisions of the VADR and the referenced standards, the provisions of the VADR shall apply.

## SECTION 500.0. ENFORCEMENT.

500.1. Responsibility of local governments: Enforcement of these regulations shall be the responsibility of the local building department in accordance with § 36-105 of the Code of Virginia. Inspections under these regulations shall be performed by:

1. The local building official or his representative when such official or representative has been certified by the board to inspect amusement devices pursuant to § 36-137(6) of the Code of Virginia; or, at the option of the owner or lessee or agent of either.

2. Persons from other departments of state government, local government, or private industry, when such personnel have been certified by the board to inspect amusement devices pursuant to § 36-137(6) of the Code of Virginia; or

3. Employees of insurance companies providing coverage for claims arising out of the use of the amusement device being inspected, when such personnel have been certified by the board to inspect amusement devices pursuant to § 36-137(6) of the Code of Virginia.

500.2. Qualifications of inspectors:

1. Any person seeking to become qualified to perform amusement device inspections pursuant to § 500.1 of these regulations shall successfully complete certification requirements in accordance with Part V of the Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen.

(VR 394-01-02).

2. Notwithstanding any regulation to the contrary, no exemption shall be permitted from the requirements for certification for any person including local building officials and their representatives to inspect amusement devices.

500.3. Credentials: The building official, state personnel, or any certified inspector shall carry proper credentials of authorization provided by the Department of Housing and Community Development when enforcing any provision of these regulations.

## SECTION 600.0. DUTIES AND POWERS OF THE BUILDING OFFICIAL.

600.1. General: The building official shall enforce the provisions of the VADR as provided herein, and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

600.2. Applications and permits: The building official shall receive applications and issue permits for the construction, reassembly, operation and inspection of amusement devices.

600.3. Notices and orders: The building official shall issue necessary notices or orders to remove unsafe conditions, to require the necessary safeguards during construction or reassembly and to ensure compliance with all the VADR requirements for the health, safety and general welfare of the public.

600.4. Inspections: The building official shall make or cause the required inspections to be conducted in accordance with § 1000.0 of these regulations, or shall accept reports of inspection by individuals certified to perform amusement device inspections when the owner or lessee of the amusement device has exercised the option of using private inspectors. Reports of such inspections shall be in writing and signed by the certified individual.

600.5. Delegation of duties and powers: The building official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with the VADR.

600.6. Fees: Fees may be levied by the local governing body in order to defray the cost of enforcement and appeals in accordance with § 36-105 of the Code of Virginia.

600.6.1. Fee schedule: A schedule of fees shall be established by the local government and shall be made available to the public upon request. The fee schedule adopted by the local government shall not exceed the fee schedule set by the Board of Housing and Community Development. The board shall review the fee schedule at least tri-annually and shall adjust the fee schedule as

proven necessary. The fees shall be based on the actual cost of administrative activities and inspections performed by local government personnel. The local government shall not establish a fee schedule resulting in fees that exceed the actual costs of the activities performed by local government personnel. The fee schedule shall have provisions for fee reduction if private inspectors are utilized by the owner or lessee. When an inspector not an employee of the local governing body is retained by an owner, the owner shall pay the inspector's fees directly. When an inspector not an employee of the local governing body is retained by the local building department, that department shall pay the inspector's fees.

## SECTION 700.0. APPLICATION FOR PERMIT.

700.1. When permit is required: Written application shall be made to the building official when a permit is required. A permit shall be issued by the building official before any of the following actions subject to the VADR may be commenced:

1. Constructing and operating an amusement device permanently fixed to a site.
2. Reassembling and operating any portable amusement device.

700.2. Who may apply for a permit: Application for a permit shall be made by the owner or lessee of the amusement device or agent of either.

700.3. Information for application: The application for a permit shall be submitted on forms supplied by the building official. The forms shall require the following information:

1. Name of the owner, lessee, or agent of either.
2. Identification of the person(s) authorized to accept service of process on behalf of the owner or lessee.
3. A general description of the amusement devices, their location, and the work or operation proposed.
4. Proof of financial responsibility in a minimum amount of \$300,000 per occurrence. Such proof may be demonstrated by a bond or cash reserve, or certificate or policy of insurance providing coverage for liability arising out of the use or operation of the amusement device.

## SECTION 800.0. MODIFICATION.

800.1. Modifications: If an owner or operator finds that compliance with the amusement device regulations or decision of the local building official presents a practical difficulty or undue hardship, the owner or operator may apply to the local building official for a modification of the regulation or decision. Such modification may be granted provided the spirit and intent of these regulations



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are observed, and public health, welfare and safety are assured.

800.2. Alternative design, materials, and equipment: Where there is an alternative design, material or equipment, the owner may apply to the local building official for a modification of the VADR relating to such design, material or equipment. Upon application of the owner, the building official may modify the provisions of the VADR relating to amusement device design or building materials, equipment, devices or assemblies provided the proposed alternatives are satisfactory and comply with the intent of the VADR and the standards incorporated therein, and are, for the purposes intended, at least the equivalent of that prescribed in the VADR for quality, strength, effectiveness, durability and safety.

800.3. Records: The application for modification and the final decision of the building official shall be in writing and shall be officially recorded with the copy of the certificate of inspection in the permanent records of the local building department.

## SECTION 900.0. AMUSEMENT DEVICE PERMITS.

900.1. Action on application: The building official shall examine all applications for permits within five days after filing. If the application does not conform to the requirements of the VADR, the building official shall reject such application in writing, stating the reasons for rejection. If the building official is satisfied that the proposed work or operation conforms to the requirements of the VADR and all applicable laws and ordinances, a permit shall be issued as soon as practicable. For purposes of coordination, the local governing body may require reports to the building official by other departments as a condition for issuance of a permit and certificate of inspection. Such reports shall be based upon review of the application or inspection of the project as determined by the local governing body.

Note: Before issuing a permit, the building official should consider the effects of any applicable regulations of other governmental agencies so that proper coordination may be achieved before the work is commenced.

900.2. Signature on permit: The signature of the building official or his authorized representative shall be attached to every permit.

900.3. Annual permit: Instead of an individual permit for each reassembly of an already approved amusement device, the building official may issue an annual permit.

900.4. Revocation of permits: The building official may revoke a permit or approval issued under the provisions of the VADR in case of any false statement or misrepresentation of fact in the application on which the permit or approval was based.

## SECTION 1000.0. INSPECTIONS.

1000.1. Preliminary inspection: Before issuing a permit, the building official may examine all sites for which an application has been filed for a permit to construct, reassemble or operate an amusement device.

1000.2. Required inspections: After issuing a permit, the building official shall conduct inspections from time to time during construction or reassembly or shall accept inspection reports from independent private inspectors employed by the owner or lessee, and may conduct inspections of the operation of amusement devices or may require the owner or lessee to provide reports from private inspectors for inspections conducted during operation of the amusement device(s). A record of such inspections shall be maintained by the building official.

1000.2.1. Right of entry: The building official may inspect amusement devices for the purpose of enforcing the VADR in accordance with the authority granted by §§ 36-105 and 36-98.3(D) of the Code of Virginia.

1000.3. Minimum inspections: As part of their inspections, inspectors shall perform, but are not limited to the following actions:

1. Inspect all amusement devices permanently fixed to a site,
  - a. Prior to each seasonal operation; and
  - b. Prior to operation following any major modification; and
  - c. At least once during the operating season.
2. Inspect all portable amusement devices after each reassembly and prior to operation except that the inspector may accept a valid certificate of inspection which was issued with respect to a *Type A* "kiddie ride" by another inspector certified in Virginia. If an inspector chooses to inspect a kiddie ride which has a valid certificate of inspection, no fee shall be charged. If upon inspection, the inspector finds that a device is not in compliance with applicable standards, the certificate of inspection may be declared invalid.
3. Verify that nondestructive testing has been conducted by a recognized testing agency as prescribed by the device manufacturer and in accordance with ASTM.
4. At the discretion of the inspector, verify that the operation and maintenance of amusement devices is in accordance with the requirements of these regulations and the standards referenced therein.
5. Inspect any amusement device upon the request of the director or local building official following a report or other notification that the device or one of

substantially similar design and construction has been involved in an accident resulting in a fatality or serious injury.

6. Investigate any report or other notification of a problem or a defect with respect to an amusement device and inspect the device at the request of the director or the building official to determine whether it poses a hazard or threat of injury to the public.

7. Upon completion of the amusement device, and before issuance of the certificate of inspection, a final inspection shall be made to ensure that the device conforms with the VADR.

1000.4. Notice of readiness for inspection: Every owner or operator of an amusement device shall notify the local building official when an amusement device or one that has undergone major modifications is scheduled to be ready and available for inspection.

In addition, every owner or operator of an amusement park shall notify the local building official when each amusement device located within the park is scheduled to be ready for inspection prior to its seasonal operation.

Every owner or operator of a carnival or fair shall notify the local building official of the date each amusement device is scheduled to be reassembled and ready for inspection on a site.

Note: Although no requirements are imposed on owners or operators with respect to time for giving notice of readiness for inspection, owners and operators are cautioned to refer to §§ 900.1 and 1000.5 of these regulations which require the building official to perform certain duties within five days of application or notice. Owners or operators failing to give at least five days notice of readiness for inspection will only be inspected by the building official or his authorized representative at their pleasure or convenience.

1000.5. Inspections to be prompt: The inspector shall respond to inspection requests without unreasonable delay. When given at least five days notice of readiness for inspection, the inspector shall inspect on the date designated by the owner or operator. The inspector shall approve the device or give written notice of defects to the owner or operator. Such defects shall be corrected and the amusement device reinspected before operation or proceeding with any work that would conceal the defects.

## SECTION 1100.0. ACCIDENTS.

1100.1. Owner/operator to suspend operation: An owner or operator shall immediately suspend operation of any amusement device which is involved in an accident resulting in fatality or serious injury. *The local authority as indicated on the certificate of inspection (see § 1500.4) shall be notified immediately.*

1100.2. Reports: Every owner or operator of an amusement device shall report to the director and the local building official the details of any accident involving an amusement device which results in a fatality or serious injury. The report shall be submitted in writing to the local building official within 24 hours, and to the director the next working day. Such report shall include but is not limited to the following information:

1. A description of the amusement device including the name of the manufacturer, the serial number and the date the device was originally constructed, if available.
2. A description of the accident including the number of people involved, number and type of injuries, number of fatalities.
3. Cause of accident if determined.

1100.3. ~~Owner's~~ Authority to resume operation: The owner, lessee or agent of either may resume operation of an amusement device following suspension of operation under this section if, after ~~conducting~~ an investigation ; ~~the owner, lessee, or agent determines has been completed,~~ *the local official determines* that the incident was in no way the result of a failure or malfunction of the device or any of its operating or safety equipment. Any investigation conducted under this section shall include (i) examination of the accident scene, (ii) interviews with witnesses, if any, (iii) review of statements made by the injured person, if any, and (iv) trial operation and inspection of the amusement device. A written record of such investigation shall be made and submitted to the local building official or his designee.

The decision of the owner or operator not to resume operation of the amusement device shall not be construed as an admission that the incident was caused by the failure or malfunction of the device. Nothing in this section shall be construed to waive the requirements of notification of the occurrence set forth in § 1100.2.

## SECTION 1200.0. QUALIFICATION OF OPERATORS.

1200.1. Minimum age: No amusement device shall be operated by a person under 16 years of age, except that this provision shall not apply to a child under 16 years of age employed by his parents in an occupation not declared hazardous by the Commissioner of Labor and Industry.

1200.2. Requirements:

1. An operator may not operate more than one amusement device at a time unless the devices are within the sight of the operator and are operated by a common control panel or station, except that in the case of kiddie rides, two rides may be operated in unison under the continuous and common control of one operator provided that the farthest point of

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operation of either device is no more than 35 feet and the control is equipped with a positive pressure switch.

2. An amusement device shall be attended by an operator at all times during operation.

## 1200.3. Conduct; authority:

1. No amusement device shall be operated by an operator while under the influence of alcohol.

2. No amusement device shall be operated by an operator while under the influence of drugs which may affect the operator's judgment or ability to assure patrons' safety.

3. The operator has the authority to prohibit use of amusement devices by individuals who may present a safety threat to others or to themselves.

1200.4. Training: The ride operator shall be trained in the proper use and operation of the ride as required by ASTM F770 and ASTM F853 listed in Appendix A.

## SECTION 1300.0. SUSPENSION OF OPERATION.

1300.1. When director or local building official may order: The director or local building official shall order, in writing, a temporary suspension of operation of an amusement device if the director or local building official has reason to believe that the device is hazardous or unsafe, or if the director or local building official receives a report or is otherwise notified that the amusement device has been involved in an accident resulting in fatality or serious injury.

The director or local building official may order, in writing, a temporary suspension of operation of an amusement device if (i) the director or local building official receives a report or is otherwise notified that an amusement device or one of substantially similar design has been involved in an accident resulting in a fatality or serious injury; and (ii) an inspection conducted in accordance with § 1000.0 of these regulations reveals that the ride is hazardous or poses a threat to the safety of the public.

1300.2. When operation to resume: When the operation of an amusement device has been suspended under this section, such operation shall not resume until any hazardous or unsafe condition has been corrected and a certificate of inspection has been issued with respect to such device.

## SECTION 1400.0. VIOLATIONS.

1400.1. Code violations prohibited: No person, firm or corporation shall construct, reassemble, maintain, operate or inspect any amusement device regulated by the VADR, or cause same to be done in conflict with or in violation of any of the provisions of the VADR.

1400.2. Notice of violation: The building official shall serve a notice of violation on the person responsible for the construction, reassembly, maintenance, operation or inspection of any amusement device in violation of the provisions of the VADR, or in violation of plans and specifications approved thereunder, or in violation of a permit or certificate issued under the provisions of the VADR. Such order shall direct the discontinuance and abatement of the violation.

1400.3. Prosecution of violation: If the notice of violation is not complied with promptly, the building official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation or to require the removal or termination of the use of any amusement device in violation of the provisions of the VADR.

1400.4. Violation penalties: Violations are a misdemeanor in accordance with § 36-106 of the Code of Virginia. Violators, upon conviction, may be punished by a fine of not more than \$1,000.

1400.5. Abatement of violation: Conviction of a violation of the VADR shall not preclude the institution of appropriate legal action to prevent other violations or recurring violations of the VADR relating to construction, reassembly, maintenance, operation or inspection of any amusement device.

## SECTION 1500.0. CERTIFICATES OF INSPECTION.

1500.1. When certificate required: No amusement device shall be operated unless a certificate of inspection has been issued with respect to that device. A copy of the certificate shall be affixed to the entrance of the device in plain view of riders or patrons.

1500.2. Requirements: A certificate of inspection shall be issued to an owner or operator after an inspection conducted pursuant to § 1000.0 of these regulations indicates that the device is in satisfactory working order and poses no hazard or threat to the safety of the public.

1500.3. Term: A certificate of inspection will be valid:

1. Until the device is disassembled except that a certificate of inspection issued with respect to a Type A portable kiddie ride shall be valid for one year after the issue date, regardless of whether the device is disassembled; or

2. Until any major modification or alteration is made to the device; or

3. Until the inspection required by § 1000.0 is conducted on fixed site devices; or

4. Until termination of the proof of financial responsibility required by § 1600.0 ; or

5. *Until the device is involved in an accident that results in a serious injury or a fatality.*

1500.4. Contents of the certificate of inspection: When an amusement device is entitled thereto, the building official shall issue a certificate of inspection. When the certificate is issued, the device shall be deemed in compliance with the VADR. The certificate shall specify the use of the amusement device, the type of construction, the occupancy load of the device, the date on which the certificate was issued, the term of the certificate, and any special stipulations and conditions. The certificate shall also include the name of the building official or his representative and a telephone number where they may be reached in case of an emergency or accident.

## SECTION 1600.0. FINANCIAL RESPONSIBILITY.

1600.1. Proof of financial responsibility: The owner shall provide proof of financial responsibility in a minimum amount of \$300,000 per occurrence. Such proof shall be demonstrated by a bond or cash reserve, or certificate of insurance providing coverage for liability arising out of the use or operation of the amusement device.

1600.2. Termination of financial responsibility: Each owner or operator of an amusement device shall report immediately to the director and to the local building official that the proof of financial responsibility required by this section will be terminated and shall include in the report the date of such termination.

## SECTION 1700.0. APPEALS.

1700.1. Assistance from director: An owner of an amusement device aggrieved by a decision of the building official may request the director to assist the building official and the owner in resolving any questions arising from the interpretation and application of these regulations. The director may request advice or assistance from members of the Technical Advisory Committee in resolving any questions.

1700.2. Appeal to review board: When the questions cannot be resolved with the assistance of the director, the owner may appeal to the State Building Code Technical Review Board. Application for review shall be made to the review board within 15 days of the decision of the building official. The review board may request advice or assistance from members of the Technical Advisory Committee when rendering a decision.

1700.3. Enforcement of decision: Upon receipt of the written decision of the State Building Code Technical Review Board, the building official shall take immediate action in accordance with the decision.

1700.4. Court review: Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board may be presented to the

court of the original jurisdiction in accordance with the provisions of the Administrative Process Act.

## SECTION 1800.0. CONTINUATION OF COMPLIANCE.

1800.1. Continued compliance required: Amusement devices constructed or manufactured before the effective date of the VADR shall be maintained, reassembled, operated and inspected in accordance with the provisions of the VADR. The construction and manufacture of such devices shall remain subject to the previous edition of the USBC in effect at the time the device was constructed or manufactured.

## APPENDIX A Referenced Standards

The following is a listing of the standards referenced in this code, the date of the applicable edition of the standard, and the promulgating agency of the standard.

ANSI - American National Standards Institute  
1430 Broadway  
New York, N.Y. 10018

B77.1-90

ASTM - American Society of Testing and Materials  
1916 Race Street  
Philadelphia, Pennsylvania 19103

F 698-88 Specification for Physical Information to be Provided for Amusement Rides and Devices

F 747-86 Definitions of Terms Relating to Amusement Rides and Devices

F 770-88 Practice for Operation Procedures for Amusement Rides and Devices

F 846-86 Guide for Testing Performance of Amusement Rides and Devices

F 853-86 Practice for Maintenance Procedures for Amusement Rides and Devices

F 893-87 Guide for Inspection of Amusement Rides and Devices

F 1159-88 Practice for the Design and Manufacture of Amusement Rides and Devices

F 1193-88 Practice for an Amusement Ride and Device Manufacturer Quality Assurance Program

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Title of Regulation: VR 394-01-06. Virginia Statewide Fire Prevention Code/1990.

# Proposed Regulations

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

Public Hearing Date: September 14, 1992 - 10 a.m.  
(See Calendar of Events section  
for additional information)

Summary:

*The 1990 edition of the Virginia Statewide Fire Prevention Code is a mandatory, statewide regulation that must be complied with for the protection of life and property from the hazards of fire or explosion. Technical requirements of the Statwide Fire Prevention Code are based on the BOCA National Fire Prevention Code, a companion document to the BOCA National Building Code which is incorporated by the Uniform Statewide Building Code. The Fire Prevention Code supersedes all fire prevention regulations heretofore adopted by local government or other political subdivisions. Local governments are empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure. Local enforcement of this code is optional. The State Fire Marshal shall have authority to enforce the Fire Prevention Code in those jurisdictions in which the local governments do not enforce the code. An administrative appeals system is established for resolution of disagreements between the aggrieved party and the enforcing agency.*

*The proposed amendments are to § F-102.0. A change to § F-102.1 requires a local governing body electing to locally enforce the SFPC to take official action to do so, and to provide notification by copy of the adopting ordinance or resolution to the State Fire Marshal's office. The existing modification provision for the Public Building Safety Regulations will be deleted and replaced by a general modification section applicable to any provision of the regulation. A new requirement for documentation of the modification and making it part of the records of the enforcing agency are also included. These proposed changes are similar to provisions already contained in both Volume I and Volume II of the Uniform Statewide Building Code.*

VR 394-01-06. Virginia Statewide Fire Prevention Code/1990.

ARTICLE 1.  
ADMINISTRATION AND ENFORCEMENT.

SECTION F-100.0.  
GENERAL.

F-100.1. Title. These regulations shall be known as the Virginia Statewide Fire Prevention Code. Except as otherwise indicated, SFPC or code shall mean the 1990 edition of the Virginia Statewide Fire Prevention Code.

F-100.2. Authority. The SFPC is adopted according to regulatory authority granted the Board of Housing and Community Development by the Statewide Fire Prevention Code Act, Chapter 9, Title 27, §§ 27-94 through 27-101 of the Code of Virginia.

F-100.3. Adoption. The SFPC was adopted by order of the Board of Housing and Community Development on January 28, 1991. This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development and is available for public inspection.

F-100.4. Effective date. The SFPC shall become effective on April 15, 1991.

F-100.5. Effect on other codes. The SFPC shall apply to all buildings and structures as defined in the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia. The SFPC shall supersede the fire prevention regulations previously adopted by local government or other political subdivisions. When any provision of this code is found to be in conflict with the Uniform Statewide Building Code, OSHA, or applicable laws of the Commonwealth, that provision of the SFPC shall become invalid. Wherever the words "building code" appear, it shall mean the building code in effect at the time of construction.

F-100.6. Purpose. The purpose of the SFPC is to provide statewide standards for optional local enforcement to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling and use of substances, materials and devices, including explosives and blasting agents, wherever located.

F-100.7. Application to post-Uniform Statewide Building Code (USBC) buildings. Egress facilities, fire protection, built-in fire protection equipment, and other fire safety features in such buildings shall be maintained in accordance with the requirements of the USBC in effect at the time the building or structure was constructed.

F-100.8. Application to pre-Uniform Statewide Building Code (USBC) buildings. Pre-USBC buildings are those buildings that were not subject to the USBC when constructed. Such buildings shall be maintained in accordance with the Virginia Public Building Safety Regulations (VR 394-01-05) which are hereby incorporated into this code by reference, and other applicable requirements of this code.

Note: The Virginia Public Building Safety Regulations (VR 394-01-05), which were formerly contained in Addendum 2 of this code, are available from the Professional Services Office (DHCD), 205 North Fourth Street, Richmond, VA 23219-1747.

F-100.9. Special provisions. The fire official shall require that buildings subject to the requirements of Section 109.0 of the Uniform Statewide Building Code, Volume II - Building Maintenance Code, 1990 Edition, shall comply with the provisions of that section.

F-100.10. Exemptions for farm structures. Farm structures not used for residential purposes shall be exempt from the provisions of the SFPC.

## SECTION F-101.0. REFERENCED STANDARDS AND AMENDMENTS.

F-101.1. Adoption of model code. The following model code, as amended by Sections F-101.2 and F-101.3, is hereby adopted and incorporated in the SFPC.

The BOCA National Fire Prevention Code/1990 Edition, published by: Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, IL 60477.

F-101.2. Administrative and enforcement amendments to the referenced model code. All requirements of the referenced model code and standards that relate to administrative and enforcement matters are deleted and replaced by Article 1 of the SFPC.

F-101.3. Other amendments to the referenced model code. The amendments noted in Addendum 1 shall be made to the specified articles and sections of the BOCA National Fire Prevention Code/1990 Edition.

F-101.4. Limitation of application of model code. No provision of the model code shall affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure.

## SECTION F-102.0. ENFORCEMENT AUTHORITY.

F-102.1. Enforcement. Any local government may enforce the SFPC *after official action*. The local governing body may assign responsibility for enforcement of the SFPC to the local agency or agencies of its choice. The State Fire Marshal shall have authority to enforce the SFPC in jurisdictions in which the local governments do not enforce the code. The State Fire Marshal's office shall be notified by the local government *in writing* when the fire official has been appointed *and shall provide a copy of the resolution or ordinance adopting the enforcement provisions of the SFPC*. The terms "enforcing agency" and "fire official" apply to the agency or agencies responsible for enforcement. The terms "building official" or "building department" apply only to the local building official or building department.

*F-102.1.1. Modifications. The fire official may grant modifications to any provisions of the Statewide Fire Prevention Code upon application of the owner or the owner's representative, provided that the spirit and intent*

*of the code is observed and public health, welfare and safety are assured.*

*F-102.1.1.1. Records. The application for modification and the final decision of the fire official shall be in writing and shall be officially recorded.*

*F-102.1.2. Modifications to the Virginia Public Building Safety Regulations. In those localities enforcing the SFPC, the fire official shall have the same authority to grant modifications of the Virginia Public Building Safety Regulations as is delegated to the Chief Fire Marshal.*

*F-102.2. Alternative methods and materials. The provisions of this code are not intended to prevent the use of any material or method of work not specifically prescribed by this code, provided that such alternative shall comply with the intent of the provisions of this code. The material, method or work offered shall be, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fireresistance, durability and safety.*

*F-102.2.1. Supporting data. The fire official shall require that sufficient technical data be submitted to substantiate the proposed use of any material or assembly. If it is determined that the evidence presented is satisfactory proof of performance for the use intended, the fire official shall approve the use of such alternative subject to the requirements of this code. Supporting data, when required by the fire official to assist in the approval of all materials or assemblies not specifically provided for in this code, shall consist of duly authenticated research reports from approved sources.*

*F-102.2. F-102.3. Qualifications. The local government shall establish qualifications for the fire official and assistants.*

Note: It is recommended that the fire official have at least five years of fire prevention experience. The certification programs offered by the Department of Housing and Community Development, Department of Fire Programs, and ETS/NFPA should be considered when establishing qualifications.

*F-102.3. F-102.4. Maintenance inspections. The fire official may inspect all buildings, structures and premises to assure compliance with this code or any other ordinance affecting fire safety.*

Exceptions:

1. Single family dwellings.
2. Dwelling units in multi-family dwellings.

*F-102.4. F-102.5. Right of entry. The fire official may enter any structure or premises when there is reasonable cause to believe that an unsafe condition exists. Proper credentials shall be presented before entering occupied structures or premises. Legal assistance may be requested*

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if entry is refused.

**F-102.5. F-102.6.** Coordinated inspections. The fire official shall coordinate inspections and administrative orders with any other state and local agencies having related inspection authority, and shall coordinate with the local building department on those inspections required by the USBC, Volume I, for new construction, when involving provisions of the BOCA National Fire Prevention Code, so that the owners and occupants will not be subjected to numerous inspections or conflicting orders. Whenever the fire official or an authorized representative observes an apparent or actual violation of the provisions of another law, ordinance or code, not within the inspector's authority to enforce, the inspector shall report the findings to the official having jurisdiction in order that such official may institute the necessary measures.

Note: Section 110.6 of the USBC, Volume I, requires the building official to coordinate those inspections with the local fire official.

**F-102.6. F-102.7.** Records. The local fire official shall keep records of fires, inspections, notices, orders issued, and other matters as directed by the local government. Fire records shall include information as to the cause, origin and the extent of damage. Records may be disposed of in accordance with the provisions of the Virginia Public Records Act, (a) after twenty years in the case of arson fires, (b) after five years in nonarson fires, and (c) after three years in the case of all other reports, notices, and orders issued.

**F-102.7. F-102.8.** Relief from personal responsibility. The local enforcing agency personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as an employee. The fire official or his subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the SFPC as a result of any act required or permitted in the discharge of official duties while assigned to the enforcing agency as an employee, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed in the discharge of the SFPC may be defended by the enforcing agency's legal representative. The State Fire Marshal or his subordinates shall not be personally liable for damages or costs sustained by any person when the State Fire Marshal or his subordinates are enforcing this code as part of their official duties under Section F-102.1.

**F-102.8. F-102.9.** Local regulations. Local governments may adopt fire prevention regulations that are more restrictive or more extensive in scope than the SFPC provided such regulations are not more restrictive than the USBC and do

not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure.

**F-102.9. F-102.10.** Procedures or requirements. The local governing body may establish such procedures or requirements as may be necessary for the enforcement of the SFPC.

**F-102.10. F-102.11.** Control of conflict of interest. The minimum standards of conduct for officials and employees of the enforcing agency shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 40.1 (§ 2.1-639.1 et seq.) of Title 2.1 of the Code of Virginia.

## SECTION F-103.0. DUTIES AND POWERS OF THE FIRE OFFICIAL.

**F-103.1.** General. The fire official shall enforce the provisions of the SFPC as provided herein and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

**F-103.2.** Notices and orders. The fire official shall issue all necessary notices or orders to ensure compliance with the SFPC.

**F-103.3.** Delegation of duties and powers. The fire official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with this code.

## SECTION F-104.0. PERMITS.

**F-104.1.** General. The fire official may require notification prior to activities involving the handling, storage or use of substances, materials or devices regulated by the SFPC; or to conduct processes which produce conditions hazardous to life or property; or to establish a place of assembly.

**F-104.1.1.** State permits. The State Fire Marshal will not issue permits under the SFPC except that annual permits shall be issued under Article 26, Explosives, Ammunition and Blasting Agents.

**F-104.1.2.** Local permits. In those jurisdictions that enforce the SFPC, the Fire Official shall issue permits as required by Article 26, Explosives, Ammunition and Blasting Agents.

**F-104.2.** Permits required. The local fire official may require permits to be obtained as specified in the model code. Permits shall be made available to the fire official upon request.

**F-104.3.** Application for permit. Application for a permit shall be made on forms prescribed by the local fire official.

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F-104.4. Issuance of permits. Before a permit is issued, the local fire official shall make such inspections or tests as are necessary to assure that the use and activities for which application is made complies with the provisions of this code.

F-104.5. Conditions of permit. A permit shall constitute permission to store or handle materials, or to conduct processes in accordance with the SFPC and shall not be construed as authority to omit or amend any of the provisions of this code. Permits shall remain in effect until revoked, or for such period of time specified on the permit. Permits are not transferable.

F-104.6. Approved plans. Plans approved by the fire official are approved with the intent that they comply in all respects to this code. Any omissions or errors on the plans do not relieve the applicant of complying with all applicable requirements of this code.

F-104.7. Revocation of permit. The local fire official may revoke a permit or approval issued under the SFPC if conditions of the permit have been violated, or if the approved application, data or plans contain misrepresentation as to material fact.

F-104.8. Suspension of permit. A permit shall become invalid if the authorized activity is not commenced within six months after issuance of the permit, or if the authorized activity is suspended or abandoned for a period of six months after the time of commencement.

F-104.9. Fees. Fees may be levied by the enforcing agency in order to defray the cost of enforcement and appeals. The fees listed in Table F-104.9 shall be levied on those permits issued in accordance with F-104.1.1.

Table F-104.9.

FEE SCHEDULE FOR EXPLOSIVES PERMITS ISSUED BY THE STATE FIRE MARSHAL	
Type of Permit	Fee
To possess, store or dispose of explosives or blasting agents	\$50.00 per year
To use explosives or blasting agents	\$75.00 per year

### SECTION F-105.0. LOCAL BOARD OF APPEALS.

F-105.1. Local board of appeals. Each local government shall have a local board of appeals as required by § 27-98 of the Code of Virginia, or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a state agency, approved by the Department of Housing and Community Development to act on appeals.

F-105.2. Membership. The local board of appeals shall

consist of at least five members appointed by the local government. Members may be reappointed.

Note: In order to provide continuity, it is recommended that the terms of the local board members be staggered so that less than half of the terms expire in any one year.

F-105.3. Qualifications of board members. Board members shall be qualified by experience and training to rule on matters pertaining to building construction and fire prevention. Employees or officials of the local government appointing the board shall not serve as board members.

F-105.4. Officers of the board. The board shall select one of its members to serve as chairman. The agency enforcing the SFPC shall designate an employee from its agency to serve as secretary to the board. The secretary shall keep a detailed record of all proceedings in accordance with Section F-102.6.

F-105.5. Alternates and absence of members. The local government may appoint alternate members who may sit on the board in the absence of any regular members of the board and, while sitting on the board, shall have the full power and authority of the regular member. A procedure shall be established for use of alternate members in case of absence of regular members.

F-105.6. Control of conflict of interest. A member of the board shall not vote on any question involving their business or personal interests.

F-105.7. Notice of meeting. The board shall meet upon notice of the chairman or at stated periodic meetings if warranted by the volume of work. The board shall meet within 30 calendar days of the filing of an appeal.

F-105.8. Application for appeal. The owner or occupant of any building, structure or premises may appeal a decision of the fire official, by submitting written application within 10 calendar days of the decision, when it is claimed that:

1. The fire official has refused to grant a modification of the provisions of the code;
2. The intent of the code has been incorrectly interpreted;
3. The provisions of the code do not fully apply;
4. The use of a form of compliance that is equal to or better than that specified in the code has been denied.

F-105.9. Hearing open to public. All hearings shall be open to the public and conducted in accordance with the applicable provisions of the Administrative Process Act, § 9-6.14:1 of the Code of Virginia.

F-105.10. Postponement of hearing. When a quorum (over



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50%) of the board, as represented by members or alternates, is not present to consider a specific appeal, either the appellant, the fire official or their representatives may, prior to the start of the hearing, request a single postponement of the hearing of up to 14 calendar days.

F-105.11. Decision. A vote equivalent to a majority of the quorum of the board is required to reverse or modify the decision of the fire official. Every action of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the fire official.

F-105.12. Enforcement of decision. The fire official shall take immediate action in accordance with the decision of the board.

## SECTION F-106.0. APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

F-106.1. Appeal to the State Building Code Technical Review Board. Any person aggrieved by a decision of the local Board of Appeals who was a party to the appeal may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 15 days of receipt of the decision of the local appeals board by the aggrieved party.

F-106.2. Appeal of decision of State Fire Marshal. Appeals concerning the application of the code by the State Fire Marshal shall be made directly to the State Building Code Technical Review Board.

F-106.3. Control of conflict of interests. A member of the board shall not vote on any question involving his business or personal interests.

F-106.4. Enforcement of decision. Upon receipt of the written decision of the State Building Code Technical Review Board, the fire official shall take immediate action in accordance with the decision.

F-106.5. Court review. Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board may be presented to the court of the original jurisdiction in accordance with the provisions of the Administrative Process Act, Article 4 (§ 9-6.14:15 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia.

## SECTION F-107.0. UNSAFE CONDITIONS.

F-107.1. General. The fire official shall order the following dangerous or hazardous conditions or materials to be removed or remedied in accordance with the SFPC:

1. Dangerous conditions which are liable to cause or

contribute to the spread of fire in or on said premises, building or structure or endanger the occupants thereof.

2. Conditions which would interfere with the efficiency and use of any fire protection equipment.

3. Obstructions to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with the egress of occupants or the operation of the fire department in case of fire.

4. Accumulations of dust or waste material in air conditioning or ventilating systems or grease in kitchen or other exhaust ducts.

5. Accumulations of grease on kitchen cooking equipment, or oil, grease or dirt upon, under or around any mechanical equipment.

6. Accumulations of rubbish, waste, paper, boxes, shavings, or other combustible materials, or excessive storage of any combustible material.

7. Hazardous conditions arising from defective or improperly used or installed electrical wiring, equipment or appliances.

8. Hazardous conditions arising from defective or improperly used or installed equipment for handling or using combustible, explosive or otherwise hazardous materials.

9. Dangerous or unlawful amounts of combustible, explosive or otherwise hazardous materials.

10. All equipment, materials, processes or operations which are in violation of the provisions and intent of this code.

F-107.2. Maintenance. The owner shall be responsible for the safe and proper maintenance of any building, structure, premises or lot. In all new and existing buildings and structures, the fire protection equipment, means of egress, alarms, devices and safeguards required by the USBC shall be maintained in a safe and proper operating condition.

Note: Also see Sections F-501.4 and F-501.4.1 of this code for further information.

F-107.3. Occupant responsibility. If an occupant of a building creates conditions in violation of this code, by virtue of storage, handling and use of substances, materials, devices and appliances, the occupant shall be held responsible for the abatement of said hazardous conditions.

F-107.4. Unsafe buildings. All buildings and structures that are or shall hereafter become unsafe or deficient in adequate exit facilities or which constitute a fire hazard,

or are otherwise dangerous to human life or the public welfare, or by reason of illegal or improper use, occupancy or maintenance or which have sustained structural damage by reason of fire, explosion, or natural disaster shall be deemed unsafe buildings or structures. A vacant building, or portion of a building, unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this code. Unsafe buildings shall be reported to the building or maintenance code official who shall take appropriate action under the provisions of the USBC, Volume I - New Construction Code or Volume II - Building Maintenance Code, to secure abatement by repair and rehabilitation or by demolition.

F-107.5. Evacuation. When, in the opinion of the fire official, there is actual and potential danger to the occupants or those in the proximity of any building, structure or premises because of unsafe structural conditions or inadequacy of any means of egress, the presence of explosives, explosive fumes or vapors, or the presence of toxic fumes, gases or materials, the fire official may order the immediate evacuation of the building, structure or premises. All notified occupants shall immediately leave the building, structure or premises, and no person shall enter until authorized to do so by the fire official.

F-107.6. Unlawful continuance. It is deemed a violation of the SFPC for any person to refuse to leave, interfere with the evacuation of the other occupants or continue any operation after having been given an evacuation order except such work as that person is directed to perform to remove a violation or unsafe condition.

F-107.7. Notice of violation. Whenever the fire official observes a violation of this code or ordinance under the fire official's jurisdiction, the fire official shall prepare a written notice of the violation describing the condition deemed unsafe and specifying time limits for the required repairs or improvements to be made to render the building, structure or premises safe and secure. The written notice of violation of this code shall be served upon the owner, a duly authorized agent or upon the occupant or other person responsible for the conditions under violation. Such notice of violation shall be served either by delivering a copy of same to such persons by mail to the last known post office address, by delivering it in person, by delivering it to and leaving it in the possession of any person in charge of the premises, or, in case such person is not found upon the premises, by affixing a copy thereof in a conspicuous place at the entrance door or avenue of access; such procedure shall be deemed the equivalent of personal notice.

F-107.8. Failure to correct violations. If the notice of violation is not complied with in the time specified by the fire official, the fire official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate any notice of violation which is not complied with in the specified time or require removal or termination of the unlawful use of

the building or structure. The local law enforcement agency of the jurisdiction shall be requested by the fire official to make arrests for any offense against this code or orders of the fire official affecting the immediate safety of the public when the fire official is not certified in accordance with § 27-34.2 of the Code of Virginia.

F-107.9. Issuing summons for violation. If certified in accordance with § 27-34.2 of the Code of Virginia, the fire official may issue a summons in lieu of the notice of violation.

F-107.10. Penalty for violation. Violations are a Class 1 misdemeanor in accordance with § 27-100 of the Code of Virginia. Each day that a violation continues, after a service of notice as provided for in this code, shall be deemed a separate offense.

F-107.11. Abatement of violation. Conviction of a violation of the SFPC shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of the SFPC relating to use of the building or premises.

## ADDENDUM 1. AMENDMENTS TO THE BOCA NATIONAL FIRE PREVENTION CODE/1990 EDITION.

As provided in Section F-101.3 of the SFPC, the amendments noted in this addendum shall be made to the BOCA National Fire Prevention Code/1990 Edition for use as part of the SFPC.

### ARTICLE 1. ADMINISTRATION AND ENFORCEMENT.

1. Article 1, Administration and Enforcement, is deleted in its entirety and replaced with Article 1 of the SFPC.

### ARTICLE 2. DEFINITIONS.

1. Change Section F-200.3 to read:

F-200.3. Terms defined in the other codes. Where terms are not defined in this code and are defined in the USBC, they shall have the meanings defined by the USBC.

2. Change the following definitions in Section F-201.0, General Definitions, to read:

*"Blasting agent"* means any explosive material that has been tested and approved in accordance with the provisions of DOT 49 CFR which includes that the finished product, as mixed for use and shipment, cannot be detonated by a No. 8 test blasting cap when unconfined.

*"Building code official"* means the designated authority charged with the administration and enforcement of the

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USBC, Volume I - New Construction Code.

"Code official" means the designated authority charged with the administration and enforcement of the USBC, Volume II - Building Maintenance Code.

Note: When "code official" appears in the BOCA National Fire Prevention Code, it shall mean "fire official".

"Explosive" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. The term "explosive" includes all materials classified as Class A, Class B, or Class C explosives by DOT regulations and includes, but is not limited to, dynamite, black powder, pellet powders, smokeless powder, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse igniters, fuse lighters, squibs, cordeau detonate fuse, instantaneous fuse, igniter cord and igniters.

"Fireworks" means any item known as firecracker, torpedo, skyrocket, or other substance or thing, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known, as fireworks and which explodes, rises into the air or travels laterally, or fires projectiles into the air. The term "fireworks" does not include auto flares, caps for pistols, pinwheels, sparklers, fountains or Pharaoh's Serpents provided, however, these permissible items may only be used, ignited or exploded on private property with the consent of the owner of such property.

"Structure" means an assembly of materials forming a construction for use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature. The word structure shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

3. Add these new definitions to Section F-201.0, General Definitions:

"Agricultural blasting" means any blasting operation which is conducted on no less than five acres of real estate devoted to agricultural or horticultural use as defined in § 58.1-3230 of the Code of Virginia.

"Blaster" or "shot firer" means that qualified person in charge of, and responsible for, the loading and firing of an explosive or blasting agent.

"Building Code" means the building code in effect at the time of construction.

"Fire official" means the designated authority charged with the administration and enforcement of the SFPC.

"Peak particle velocity" means the maximum component of the three mutually perpendicular components of motion at a given point.

"Propellant-actuated power device" means any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge. (See special industrial explosive device.)

"Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight (and that of its own load) rests upon or is carried by another vehicle.

"Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

"Transport" or "transportation" means any movement of property by any mode, and any packing, loading, unloading, identification, marking, placarding, or storage incidental thereto.

4. Delete the following definitions from Section F-201.0, General Definitions:

Liquefied petroleum gas (LP-gas or LPG)

Liquefied petroleum gas equipment

## ARTICLE 3.

### GENERAL PRECAUTIONS AGAINST FIRE.

1. Change Section F-301.1 to read:

F-301.1. General. Open burning shall be allowed in accordance with the laws and regulations set forth by the State Air Pollution Control Board, the Department of Forestry, and as regulated by the locality.

2. Delete Section F-318.0, Fire Safety During Construction, Alteration and Demolition.

## ARTICLE 4.

### HAZARD ABATEMENT IN EXISTING BUILDINGS.

1. Delete Article 4, Hazard Abatement in Existing Buildings, as it is covered by Sections F-100.7 and F-100.8 of the SFPC and Volume I and Volume II of the USBC.

## ARTICLE 5.

### FIRE PROTECTION SYSTEMS.

1. Add new Section F-518.0, Smoke Detectors for the Deaf and Hearing-impaired, to read:

#### SECTION F-518.0.

#### SMOKE DETECTORS FOR THE DEAF AND

## HEARING-IMPAIRED.

F-518.1. Audible and visual alarms. Audible and visual alarms, meeting the requirements of UL Standard 1638, and installed in accordance with NFPA/ANSI 72G, shall be provided in occupancies housing the hard of hearing, as required by § 36-99.5 of the Code of Virginia; however, all visual alarms shall provide a minimum intensity of 100 candela. Portable alarms meeting these requirements shall be acceptable.

## ARTICLE 7. EMERGENCY PLANNING AND PREPAREDNESS.

1. Add new Section F-706.4, Fire Exit Drills, to read:

F-706.4. Fire exit drills. Fire exit drills shall be conducted annually by building staff personnel or the owner of the building in accordance with the fire safety plan and shall not affect other current occupants.

## ARTICLE 16. OIL AND GAS PRODUCTION.

1. Delete Article 16, Oil and Gas Production, as it is covered by the Virginia Gas and Oil Act, Title 45.1, Chapter 22.1 of the Code of Virginia.

## ARTICLE 26. EXPLOSIVES, AMMUNITION AND BLASTING AGENTS.

1. Article 26, Explosives, Ammunition and Blasting Agents, is deleted in its entirety and replaced with Article 26 of the SFPC, as follows:

### SECTION F-2600.0. GENERAL.

F-2600.1. Scope. The equipment, processes and operations involving the manufacture, possession, storage, sale, transportation and use of explosives and blasting agents shall comply with the applicable requirements of this code and the provisions of this article and shall be maintained in accordance with NFPA 495, NFPA 498, and DOT 49CFR listed in Appendix A except as herein specifically exempted or where provisions of this article do not specifically cover conditions and operations, and with the Institute of Makers of Explosives (IME) Safety Library Publications, with Regulations Governing the Transportation of Hazardous Materials as promulgated by the Virginia Waste Management Board, and with the Virginia Motor Carrier Regulations.

F-2600.2. Exceptions. Nothing in this article shall be construed as applying to the following explosive uses:

1. The Armed Forces of the United States or of a state.
2. Explosives in forms prescribed by the official

United States Pharmacopoeia.

3. The sale or use of fireworks which are regulated by Article 27.

4. Laboratories engaged in testing explosive materials.

5. The possession, storage and use of not more than five pounds (2.27 kg) of smokeless powder, black powder, and 1000 small arms primers for hand loading of small arms ammunition for personal use.

6. The manufacture, possession, storage and use of not more than five pounds (2.27 kg) of explosives or blasting agents in educational, governmental or industrial laboratories for instructional or research purposes when under the direct supervision of experienced, competent persons.

7. The transportation and use of explosives or blasting agents by the United States Department of Alcohol, Tobacco and Firearms, the United States Bureau of Mines, the Federal Bureau of Investigation, the United States Secret Service, the Virginia Department of State Police, or qualified fire and law enforcement officials acting in their official capacity in the discharge of their duties; nor to the storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1 of the Code of Virginia (Department of Mines, Minerals and Energy).

F-2600.3. Permit required. A permit shall be obtained from the code official for any of the following conditions or operations:

1. To possess, store, or otherwise dispose of explosives or blasting agents.
2. To use explosives or blasting agents:
  - a. A permit shall be issued for each project.
  - b. The permit shall specify the type of blasting and any special conditions. To the extent that blasting will occur within any waters of the Commonwealth or in any of the waters under its jurisdiction, evidence of a valid Marine Resources Commission permit, or "no permit necessary" authorization, will be required.
3. To operate a terminal for handling explosives or blasting agents.
4. To manufacture explosives or blasting agents, providing the following conditions are met:
  - a. Registration with the Department of Housing and Community Development;
  - b. Valid license from the Bureau of Alcohol, Tobacco and Firearms; and

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c. Valid license to do business in the Commonwealth of Virginia.

5. To sell explosives and blasting agents, providing the following conditions are met:

a. Registration with the Department of Housing and Community Development;

b. Valid license from the Bureau of Alcohol, Tobacco and Firearms; and

c. Valid license to do business in the Commonwealth of Virginia.

Exception: Annual permits for the use of explosives shall be issued to any state regulated public utility.

F-2600.3.1. Prohibited permits. Permits as required above shall not be issued for:

1. Liquid nitroglycerin and nitrate esters.

2. Dynamite (except gelatin dynamite) containing over 60% of liquid explosive ingredient.

3. Leaking, damaged, or defective packages or containers of high explosives.

4. Nitrocellulose in a dry and uncompressed condition to be shipped or transported.

5. Fulminate of mercury in a dry condition and fulminate of all other metals in any condition.

Exception. Fulminate of metals which is a component of manufactured articles not otherwise forbidden.

6. Explosive compositions that ignite spontaneously or undergo marked decomposition, rendering the products or their use more hazardous, when subjected for 48 consecutive hours or less to a temperature of 167°F (75°C).

7. New explosives until approved by DOT 49CFR listed in Appendix A, except for permits issued to educational, governmental or industrial laboratories for instructional or research purposes.

8. Explosives forbidden by DOT 49CFR listed in Appendix A.

9. Explosives not packed or marked in accordance with the requirements of DOT 49CFR listed in Appendix A.

10. Explosives containing an ammonium salt and a chlorate.

F-2600.4. Certification required. The use of explosive materials shall be conducted or supervised on-site by

blasters certified in accordance with Part IV of the Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen. The blaster shall carry proof of certification during the loading or firing of explosive materials.

Exception: Individuals conducting agricultural blasting operations on their own property.

F-2600.4.1. Certification fee. The Department of Housing and Community Development shall charge a \$20 fee to applicants for certification as a blaster.

F-2600.5. Liability insurance. The company or individual applying for a permit to blast, manufacture, or sell explosives shall provide proof of insurance in an amount determined by the fire official but in no case less than \$500,000.

Exception: Liability insurance shall not be required with an agricultural blasting permit when the blast is conducted on the applicant's personal property.

## SECTION F-2601.0. GENERAL REQUIREMENTS.

F-2601.1. Storage. The storage of explosives and blasting agents is prohibited within the legal geographic boundaries of any district where such storage is prohibited by the authority having jurisdiction.

Exception: Temporary storage for use in connection with approved blasting operations; provided, however, this prohibition shall not apply to wholesale and retail stocks of small arms ammunition, explosive bolts, explosive rivets or cartridges for explosive actuated power tools in quantities involving less than 500 pounds (227 kg) of explosive material.

F-2601.2. Sale and display. Explosives shall not be sold, given, delivered, or transferred to any person or company not in possession of a valid permit. A person shall not sell or display explosives or blasting agents on highways, sidewalks, public property or in places of public assembly or education.

## SECTION F-2602.0. STORAGE OF EXPLOSIVE MATERIALS.

F-2602.1. General. Explosives, including special industrial high explosive materials, shall be stored in magazines which meet the requirements of this article. This shall not be construed as applying to wholesale and retail stocks of small arms ammunition, explosive bolts, explosive rivets or cartridges for explosive-actuated power tools in quantities involving less than 500 pounds (227 kg) of explosive material. Magazines shall be in the custody of a competent person at all times who shall be at least 21 years of age, and who shall be held responsible for compliance with all safety precautions.

F-2602.2. Control in wholesale and retail stores. Explosive materials shall not be stored within wholesale or retail stores. The storage of explosives for wholesale and retail sales shall be in approved outdoor magazines except that not more than 50 pounds of black or smokeless powder may be stored in a Type 4 indoor magazine.

F-2602.3. Magazine clearances. Magazines shall be located away from inhabited buildings, passenger railways, public highways and other magazines in conformance with Table F-2602, except as provided in Section F-2602.2.

Table F-2602

TABLE OF DISTANCES FOR STORAGE OF EXPLOSIVES

DISTANCES IN FEET						1,600	1,800	490	980	180	360
QUANTITY OF EXPLOSIVE MATERIALS (Notes 1,2,3,4)						1,800	2,000	505	1,010	185	370
Inhabited Buildings (Note 9)						2,000	2,500	545	1,090	190	380
Public Highways Class A to D (Note 11)						2,500	3,000	580	1,160	195	390
Pounds Over	Pounds Not Over	Barri-caded (6,7,8)	Unbarri-caded	Barri-caded (6,7,8)	Unbarri-caded	3,000	4,000	635	1,270	210	420
2	5	70	140	30	60	4,000	5,000	685	1,370	225	450
5	10	90	180	35	70	5,000	6,000	730	1,460	235	470
10	20	110	220	45	90	6,000	7,000	770	1,540	245	490
20	30	125	250	50	100	7,000	8,000	800	1,600	250	500
30	40	140	280	55	110	8,000	9,000	835	1,670	255	510
40	50	150	300	60	120	9,000	10,000	865	1,730	260	520
50	75	170	340	70	140	10,000	12,000	875	1,750	270	540
75	100	190	380	75	150	12,000	14,000	885	1,770	275	550
100	125	200	400	80	160	14,000	16,000	900	1,800	280	560
125	150	215	430	85	170	16,000	18,000	940	1,800	285	570
150	200	235	470	95	190	18,000	20,000	975	1,950	290	580
200	250	255	510	105	210	20,000	25,000	1,055	2,000	315	630
250	300	270	540	110	220	25,000	30,000	1,130	2,000	340	680
300	400	295	590	120	240	30,000	35,000	1,205	2,000	360	720
400	500	320	640	130	260	35,000	40,000	1,275	2,000	380	760
500	600	340	680	135	270	40,000	45,000	1,340	2,000	400	800
600	700	355	710	145	290	45,000	50,000	1,400	2,000	420	840
700	800	375	750	150	300	50,000	55,000	1,460	2,000	440	880
800	900	390	780	155	310	55,000	60,000	1,515	2,000	455	910
900	1,000	400	800	160	320	60,000	65,000	1,565	2,000	470	940
1,000	1,200	425	850	165	330	65,000	70,000	1,610	2,000	485	970
1,200	1,400	450	900	170	340	70,000	75,000	1,655	2,000	500	1,000
1,400	1,600	470	940	175	350	75,000	80,000	1,695	2,000	510	1,020
						80,000	85,000	1,730	2,000	520	1,040
						85,000	90,000	1,760	2,000	530	1,060
						90,000	95,000	1,790	2,000	540	1,080
						95,000	100,000	1,815	2,000	545	1,090
						100,000	110,000	1,835	2,000	550	1,100
						110,000	120,000	1,855	2,000	555	1,110
						120,000	130,000	1,875	2,000	560	1,120
						130,000	140,000	1,890	2,000	565	1,130
						140,000	150,000	1,900	2,000	570	1,140
						150,000	160,000	1,935	2,000	580	1,160
						160,000	170,000	1,965	2,000	590	1,180
						170,000	180,000	1,990	2,000	600	1,200
						180,000	190,000	2,010	2,000	605	1,210
						190,000	200,000	2,030	2,000	610	1,220
						200,000	210,000	2,055	2,000	620	1,240
						210,000	230,000	2,100	2,100	635	1,270

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QUANTITY OF EXPLOSIVE MATERIALS (Notes 1,2,3,4)		Passenger Railways Public Highways with Traffic Volume of more than 3,000 Vehicles/Day (Notes 10,11)		Separation of Magazines (Note 12)							
Pounds Over	Pounds Not Over	Barri-caded (6,7,8)	Unbarri-caded	Barri-caded (6,7,8)	Unbarri-caded						
230,000	250,000	2,155	2,155	650	1,300	8,000	9,000	624	1,248	75	150
250,000	275,000	2,215	2,215	670	1,340	9,000	10,000	645	1,290	78	156
275,000	300,000	2,275	2,275	690	1,380	10,000	12,000	687	1,374	82	164
						12,000	14,000	723	1,446	87	174
						14,000	16,000	756	1,512	90	180
						16,000	18,000	786	1,572	94	188
						18,000	20,000	813	1,626	98	196
						20,000	25,000	876	1,752	105	210
						25,000	30,000	933	1,866	112	224
						30,000	35,000	981	1,962	119	238
						35,000	40,000	1,026	2,000	124	248
						40,000	45,000	1,068	2,000	129	258
2	5	51	102	6	12	45,000	50,000	1,104	2,000	135	270
5	10	64	128	8	16	50,000	55,000	1,140	2,000	140	280
10	20	81	162	10	20	55,000	60,000	1,173	2,000	145	290
20	30	93	186	11	22	60,000	65,000	1,206	2,000	150	300
30	40	103	206	12	24	65,000	70,000	1,236	2,000	155	310
40	50	110	220	14	28	70,000	75,000	1,263	2,000	160	320
50	75	127	254	15	30	75,000	80,000	1,293	2,000	165	330
75	100	139	278	16	32	80,000	85,000	1,317	2,000	170	340
100	125	150	300	18	36	85,000	90,000	1,344	2,000	175	350
125	150	159	318	19	38	90,000	95,000	1,368	2,000	180	360
150	200	175	350	21	42	95,000	100,000	1,392	2,000	185	370
200	250	189	378	23	46	100,000	110,000	1,437	2,000	195	390
250	300	201	402	24	48	110,000	120,000	1,479	2,000	205	410
300	400	221	442	27	54	120,000	130,000	1,521	2,000	215	430
400	500	236	476	29	58	130,000	140,000	1,557	2,000	225	450
500	600	253	506	31	62	140,000	150,000	1,593	2,000	235	470
600	700	266	532	32	64	150,000	160,000	1,629	2,000	245	490
700	800	278	556	33	66	160,000	170,000	1,662	2,000	255	510
800	900	289	578	35	70	170,000	180,000	1,695	2,000	265	530
900	1,000	300	600	36	72	180,000	190,000	1,725	2,000	275	550
1,000	1,200	318	636	39	78	190,000	200,000	1,755	2,000	285	570
1,200	1,400	336	672	41	82	200,000	210,000	1,782	2,000	295	590
1,400	1,600	351	702	43	86	210,000	230,000	1,836	2,000	315	630
1,600	1,800	366	732	44	90	230,000	250,000	1,890	2,000	335	670
1,800	2,000	378	756	45	90	250,000	275,000	1,950	2,000	360	720
2,000	2,500	408	816	49	98	275,000	300,000	2,000	2,000	385	770
2,500	3,000	432	864	52	104						
3,000	4,000	474	948	58	116						
4,000	5,000	513	1,026	61	122						
5,000	6,000	546	1,092	65	130						
6,000	7,000	573	1,146	68	136						
7,000	8,000	600	1,200	72	144						

Numbers in ( ) refer to explanatory notes

NOTE 1 - "Explosive materials" means explosives, blasting agents and detonators.

NOTE 2 - "Explosives" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. A list of explosives determined to be

within the coverage of "18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials" is issued at least annually by the Director of the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury. For quantity and distance purposes, detonating cord of 50 grains per foot should be calculated as equivalent to eight pounds of high explosives per 1,000 feet. Heavier or lighter core loads should be rated proportionately.

NOTE 3 - "Blasting agents" means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive, provided that the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined.

NOTE 4 - "Detonator" means any device containing any initiating or primary explosive that is used for initiating detonation. A detonator may not contain more than 10 grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord delay connectors, and nonelectric instantaneous and delay blasting caps which use detonating cord, shock tube, or any other replacement for electric leg wires. All types of detonators in strengths through No. 8 cap should be rated at 1 1/2 lbs. of explosives per 1,000 caps. For strengths higher than No. 8 cap, consult the manufacturer.

NOTE 5 - "Magazine" means any building, structure, or container, other than an explosives manufacturing building, approved for the storage of explosive materials.

NOTE 6 - "Natural barricade" means natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

NOTE 7 - "Artificial barricade" means an artificial mound or revetted wall of earth of a minimum thickness of three feet.

NOTE 8 - "Barricaded" means the effective screening of a building containing explosive materials from the magazine or other building, railway, or highway by a natural or an artificial barrier. A straight line from the top of any sidewall of the building containing explosive materials to the eave line of any magazine or other building or to a point 12 feet above the center of a railway or highway shall pass through such barrier.

NOTE 9 - "Inhabited building" means a building regularly occupied in whole or part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosive materials.

NOTE 10 - "Railway" means any steam, electric, or other railroad or railway which carries passengers for hire.

NOTE 11 - "Highway" means any public street, public alley, or public road. "Public highways Class A to D" are highways with average traffic volume of 3,000 or less vehicles per day as specified in "American Civil Engineering Practice" (Abbett, Vol. 1, Table 46, Sec. 3-74, 1956 Edition, John Wiley and Sons).

NOTE 12 - When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways, and highways, and, in addition, they should be separated from

each other by not less than the distances shown for "Separation of Magazines," except that the quantity of explosive materials contained in detonator magazines shall govern in regard to the spacing of said detonator magazines from magazines containing other explosive materials. If any two or more magazines are separated from each other by less than the specified "Separation of Magazines" distances, then such two or more magazines, as a group, must be considered as one magazine, and the total quantity of explosive materials stored in such group must be treated as if stored in a single magazine located on the site of any magazine of the group and must comply with the minimum of distances specified from other magazines, inhabited buildings, railways, and highways.

NOTE 13 - Storage in excess of 300,000 lbs. of explosive materials, in one magazine is generally not required for commercial enterprises.

NOTE 14 - This table applies only to the manufacture and permanent storage of commercial explosive materials. It is not applicable to transportation of explosives or any handling or temporary storage necessary or incident thereto. It is not intended to apply to bombs, projectiles, or other heavily encased explosives.

F-2602.4. Magazine construction. Magazines shall be constructed and maintained in accordance with IME publication No. 1.

Note: Refer to Section F-2600.4 for the use of magazines.

F-2602.4.1. Magazine heat and light. Magazines shall not be provided with artificial heat or light, except that if artificial light is necessary, an approved electric safety flashlight or safety lantern shall be used.

F-2602.5. Safety precautions. Smoking, matches, open flames, spark producing devices and firearms shall be prohibited inside or within 50 feet (15.24m) of magazines. Combustible materials shall not be stored within 50 feet (15.24m) of magazines.

F-2602.5.1. Surrounding terrain. The land surrounding magazines shall be kept clear of brush, dried grass, leaves, trash and debris for a distance of at least 25 feet (7.62 m).

F-2602.5.2. Locking security. Magazines shall be kept locked except when being inspected or when explosives are being placed therein or being removed therefrom.

F-2602.5.3. Magazine housekeeping. Magazines shall be kept clean, dry and free of grit, paper, empty packages or rubbish.

F-2602.5.4. Separation of detonators and explosives. Blasting caps, electric blasting caps, detonating primers and primed cartridges shall not be stored in the same magazine with other explosives.

F-2602.5.5. Explosive unpacking. Metal or wooden packages of explosives shall not be unpacked or repacked in a



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magazine nor within 50 feet (15.24m) of a magazine.

F-2602.5.6. Magazine contents. Magazines shall not be used for the storage of any metal tools or of any commodity except explosives, but this restriction shall not apply to the storage of blasting agents, blasting supplies and oxidizers used in compound blasting agents.

F-2602.6. Unstable explosives. When an explosive has deteriorated to an extent that it is in an unstable or dangerous condition, or if liquid leaks from any explosive, then the person in possession of such explosive shall immediately report that fact to the code official and upon his approval shall proceed to destroy such explosives and clean floors stained with nitroglycerin or other such liquids in accordance with the instructions of the manufacturer. Only qualified, experienced persons shall do the work of destroying explosives.

Note: Disposal of explosives as "waste" should be in accordance with the Department of Waste Management regulations.

F-2602.7. Class I magazine warnings. Property upon which Class I magazines are located shall be posted with signs reading "Explosives - Keep Off." Such signs shall be located so as to minimize the possibility of a bullet traveling in the direction of the magazine if anyone shoots at the sign.

F-2602.8. Class II magazine warnings. Class II magazines shall be painted red and shall bear lettering in white, on all sides and top at least three inches (76 mm) high, "Explosives - Keep Fire Away."

## SECTION F-2603.0. TRANSPORTATION OF EXPLOSIVES.

F-2603.1. General. The transportation of explosive materials shall comply with applicable provisions of the Regulations Governing the Transportation of Hazardous Materials as promulgated by the Virginia Waste Management Board.

F-2603.2. Enforcement. The Department of State Police, together with all law enforcement and peace officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation, Research and Special Programs, and Office of Hazardous Materials Transportations, in federal safety regulations and safety inspections procedures pertaining to the transportation of hazardous materials, shall enforce the provisions of this section. Those officers shall annually receive in-service training in current federal safety standards and safety inspection procedures pertaining to the transportation of hazardous materials.

## SECTION F-2604.0. STORAGE OF BLASTING AGENTS AND SUPPLIES.

F-2604.1. General. Blasting agents or oxidizers, when stored

in conjunction with explosives, shall be stored in the manner set forth in Section F-2602.0 for explosives. The quantity of blasting agents and one half the quantity of oxidizers shall be included when computing the total quantity of explosives for determining distance requirements.

F-2604.2. Storage location. Buildings used for storage of blasting agents separate from explosives shall be located away from inhabited buildings, passenger railways and public highways in accordance with Table F-2602.

F-2604.3. Storage housekeeping. The interior of buildings used for the storage of blasting agents shall be kept clean and free from debris and empty containers. Spilled materials shall be cleaned up promptly and safely removed. Combustible materials, flammable liquids, corrosive acids, chlorates, nitrates other than ammonium nitrate or similar materials shall not be stored in any building containing blasting agents unless separated therefrom by construction having a fire-resistance rating of not less than one hour. The provisions of this section shall not prohibit the storage of blasting agents together with nonexplosive blasting supplies.

F-2604.4. Trailer storage requirements. Semitrailers or full trailers used for temporarily storing blasting agents shall be located away from inhabited buildings, passenger railways and public highways, in accordance with Table F-2602. Trailers shall be provided with substantial means for locking and trailer doors shall be kept locked except during the time of placement or removal of blasting agents.

F-2604.5. Oxidizers and fuels. Piles of oxidizers and buildings containing oxidizers shall be adequately separated from readily combustible fuels.

F-2604.6. Oxidizer handling. Caked oxidizer, either in bags or in bulk, shall not be loosened by blasting.

## SECTION F-2605.0. HANDLING OF EXPLOSIVES.

F-2605.1. Mixing blasting agents. Buildings or other facilities used for mixing blasting agents shall be located away from inhabited buildings, passenger railways and public highways, in accordance with Table F-2602.

F-2605.2. Quantity of mixing agents. Not more than one day's production of blasting agents or the limit determined by Table F-2602, whichever is less, shall be permitted in or near the building or other facility used for mixed blasting agents. Larger quantities shall be stored in separate buildings or magazines.

F-2605.3. Compounding standards. Compounding and mixing of recognized formulations of blasting agents shall be conducted in accordance with NFPA 495 and DOT 49CFR listed in Appendix A.

F-2605.4. Ignition protection. Smoking or open flames shall not be permitted within 50 feet (15.24m) of any building or facility used for the mixing of blasting agents.

F-2605.4.1. Unpacking tools. Tools used for opening packages of explosives shall be constructed of nonsparking materials.

Exception. Metal slitters may be used for opening paper and fiberboard containers.

F-2605.5. Waste disposal. Empty oxidizer bags shall be disposed of daily by burning in a safe manner (in an open area and at a safe distance from buildings or combustible materials).

F-2605.5.1. Packing material disposal. Empty boxes and paper and fiber packing materials which have previously contained high explosives shall not be used again for any purpose, but shall be destroyed by burning at an approved, isolated location out-of-doors, and any person shall not be closer than 100 feet (30.48 m) during the course of said burning.

F-2605.6. Control. Explosives shall not be abandoned.

## SECTION F-2606.0. BLASTING.

F-2606.1. Time. Blasting operations shall be conducted during daylight hours except when otherwise approved.

F-2606.2. Personnel. The handling and firing of explosives shall be performed by the person certified as a blaster under Section F-2600.2.3 of this code or by employees under that person's direct on-site supervision who are at least 21 years old.

1. A person shall not handle explosives while under the influence of intoxicants or narcotics.

2. A person shall not smoke or carry matches while handling explosives or while in the vicinity thereof.

3. An open flame light shall not be used in the vicinity of explosives.

F-2606.3. Clearance at site. At the site of blasting operations, Class II magazines shall be located as far away as practicable from neighboring inhabited buildings, railways, highways, and other magazines.

F-2606.4. Notice. Whenever blasting is being conducted within 200 feet of gas, electric, water, fire, alarm, telephone, telegraph or steam utilities, the blaster shall notify the appropriate representatives of such utilities at least 24 hours in advance of blasting, specifying the location and intended time of such blasting. Verbal notice shall be confirmed with written notice. This time limit shall not be waived except in an emergency as determined by the code official.

F-2606.5. Responsibility. Before a blast is fired, the person in charge shall make certain that all surplus explosives are in a safe place, all persons and vehicles are at a safe distance or under sufficient cover, and a warning signal has been sounded.

F-2606.6. Precautions. Due precautions shall be taken to prevent accidental discharge of electric blasting caps from current induced by radio or radar transmitters, lightning, adjacent power lines, dust storms or other sources of extraneous electricity. These precautions shall include:

1. *The* suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electrical storm;

2. *The* posting of signs warning against the use of mobile radio transmitters on all roads within 350 feet (106.75m) of the blasting operations; and

3. Compliance with NFPA 495 listed in Appendix A when blasting within 1-1/2 miles (2.41 km) of broadcast or highpower short wave radio transmitters.

4. Misfires shall be handled as directed by equipment manufacturers with no one entering the blasting site, except the blaster, until the loaded charges have been made to function or have been removed.

F-2606.7. Congested areas. As required by the fire official, when blasting is done in congested areas or in close proximity to a building, structure, railway, highway or any other installation susceptible to damage, the blast shall be covered before firing, with a mat or earth, or both, so that it is capable of preventing rock from being thrown into the air out of the blast area.

F-2606.8. Blast records. A record of each blast shall be kept and retained for at least three years and shall be available for inspection by the fire official. These records shall contain the following minimum data:

1. Name of contractor.

2. Location and time of blast.

3. Name of certified blaster in charge.

4. Type of material blasted.

5. Number of holes bored and spacing.

6. Diameter and depth of holes.

7. Type and amount of explosives.

8. Amount of explosives per delay of eight milliseconds or greater.

9. Method of firing and type of circuit.

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10. Direction and distance in feet to nearest dwelling, public building, school, church, commercial or institutional building.

11. Weather conditions.

12. Whether or not mats or other precautions were used.

13. Type of detonators and delay periods.

14. Type and height of stemming.

15. Seismograph records where indicated.

## SECTION F-2607.0. STANDARDS FOR CONTROL OF AIRBLAST AND GROUND VIBRATION.

F-2607.1. Airblast. This section shall apply to airblast effects as recorded at the location of any private dwelling, public building, school, church, and community or institutional building not owned or leased by the person conducting or contracting for the blasting operation. If requested by a property owner registering a complaint and deemed necessary by the fire official, measurements of three consecutive blasts, using approved instrumentation, shall be made near the structure in question.

F-2607.1.1. Maximum airblast. The maximum airblast at any inhabited building, resulting from blasting operations, shall not exceed 130 decibels peak, or 140 decibels peak at any uninhabited building, when measured by an instrument having a flat frequency response (+3 decibels) over a range of at least six to 200 Hertz.

F-2607.2. Ground vibration. This section shall provide for limiting ground vibrations at structures that are neither owned nor leased by the person conducting or contracting for the blasting operation. Engineered structures may safely withstand higher vibration levels based on an approved engineering study upon which the fire official may then allow higher levels for such engineered structures.

Note: Each Table, F-2607A to F-2607C, has an increasing degree of sophistication and each can be implemented either by the fire official as a result of complaints or by the contractor to determine site specific vibration limits. The criteria in Tables F-2607 A, B, and C and Section F-2607.3 are intended to protect low-rise structures including dwellings.

F-2607.2.1. Blasting without instrumentation. Where no seismograph is used to record vibration effects, the explosive charge weight per delay (eight milliseconds or greater) shall not exceed the limits shown in Table F-2607A. When charge weights per delay on any single delay period exceed 520 lbs., then ground vibration limits for structures shall comply with Tables F-2607B, F-2607C, or Section F-2607.3.

Table 2607 A(a)  
CHARGE WEIGHT PER DELAY DEPENDENT ON  
DISTANCE

Distance to a Building		Weight of Explosives per Delay	Distance to a Building		Weight of Explosives per Delay
Feet over	Feet not over	Pounds	Feet over	Feet not over	Pounds
0	5	1/4	250	260	45
5	10	1/2	260	280	49
10	15	3/4	280	300	55
15	60	Note (b)	300	325	61
60	70	6	325	350	69
70	80	7 1/4	350	375	79
80	90	9	375	400	85
90	100	10 1/2	400	450	98
100	110	12	450	500	115
110	120	13 3/4	500	550	135
120	130	15 1/2	550	600	155
130	140	17 1/2	600	650	175
140	150	19 1/2	650	700	195
150	160	21 1/2	700	750	220
160	170	23 1/4	750	800	240
170	180	25	800	850	263
180	190	28	850	900	288
190	200	30 1/2	900	950	313
200	220	34	950	1000	340
220	240	39	1000	1100	375
240	250	42	1100	1200	435
			1200	1300	493

Note a. Over 60 feet this table is based upon the formula:

$$W = D 1.5/90$$

Note b. One tenth of the pound of explosive per foot of distance to a building.

F-2607.2.2. Monitoring with instrumentation. Where a blaster determines that the charge weights per delay given in Table F-2607A are too conservative, he may choose to monitor (at the closest conventional structure) each blast with an approved seismograph and conform to the limits set by Tables F-2607B, F-2607C, or Section F-2607.3.

Note: From this point on, the explosive charge weight per delay may be increased, but the vibration levels

detailed in Tables F-2607B, F-2607C, or Section F-2607.3 shall not be exceeded.

**Table 2607 B  
PEAK PARTICLE VELOCITY DEPENDENT ON  
DISTANCE**

Velocity Component/a/	Distance	Peak Particle of Any One
Feet over	feet not over	Inches per second
0	100	2.00
100	500	1.50
500	1000	1.00
over	1000	0.75

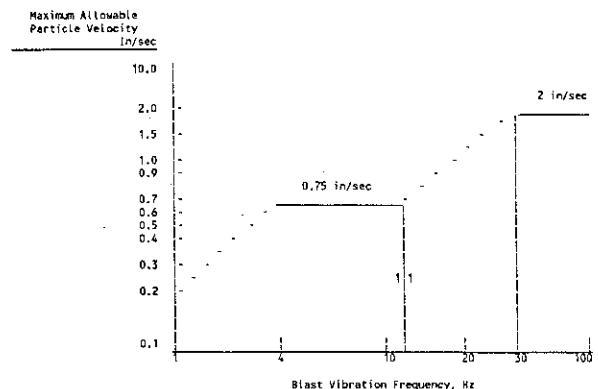
Note a. The instrument's transducer shall be firmly coupled to the ground.

F-2607.3. Response spectra. A relative velocity of 1.5 inches per second or less, within the 4 to 12 Hertz range of natural frequencies for low rise structures, shall be recorded as determined from an approved response spectra.

F-2607.4. Instrumentation. A direct velocity recording seismograph capable of recording the continuous wave form of the three mutually perpendicular components of motion, in terms of particle velocity, shall be used and shall have the following characteristics:

1. Each seismograph shall have a frequency response from two to 150 Hertz or greater and a velocity range from 0.0 to 2.0 inches per second or greater, and shall adhere to design criteria for portable seismographs outlined in U.S. Bureau of Mines RI 5708, RI 6487, and RI 8506.
2. All field seismographs shall be capable of internal dynamic calibration and shall be calibrated according to the manufacturers' specifications at least once per year.
3. All seismographs shall be operated by competent people trained in their correct use and seismographs records shall be analyzed and interpreted as may be required by the fire official.

**Table 2607 C  
PARTICLE VELOCITY CRITERIA DEPENDENT ON FREQUENCY CONTENT**



Note: This criteria is derived from the U.S. Bureau of Mines - RI 8507 (Appendix B) and provides a continuously variable particle velocity criteria dependent on the frequency content of the ground motion. The method of analysis shall be approved by the fire official and shall provide an analysis showing all the frequencies present over the 1-50 hertz range.

F-2607.5. Seismographic records. A record of each blast shall be kept. All records, including seismograph reports, shall be retained for at least three years and shall be available for inspection. Records shall include the following information:

1. Name of company or contractor.
2. Location, date and time of blast.
3. Name, signature and social security number of blaster in charge.
4. Type of material blasted.
5. Number of holes bored and spacing.
6. Diameter and depth of holes.
7. Type of explosives used.
8. Total amount of explosives used.
9. Maximum amount of explosives per delay period of eight milliseconds or greater.
10. Method of firing and type of circuit.
11. Direction and distance in feet to nearest dwelling house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blasting.
12. Weather conditions including such factors as wind direction, etc.
13. Height or length of stemming.
14. Type of protection, such as mats, that were used

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to prevent flyrock.

15. Type of detonators used and delay period used.

16. The exact location of the seismograph and the distance of the seismograph from the blast.

17. Seismograph readings, where required, shall contain:

a. Name and signature of person operating the seismograph.

b. Name of person analyzing the seismograph records.

c. Seismograph reading.

18. The maximum number of holes per delay period of eight milliseconds or greater.

## SECTION F-2608.0.

### THEFT OR DISAPPEARANCE OF EXPLOSIVES.

F-2608.1. Reports of stolen explosives. Pursuant to § 27-97.1 of the Code of Virginia, any person holding a permit for the manufacture, storage, handling, use or sale of explosives issued in accordance with this code shall report to the State Police and the local law enforcement agency any theft or other disappearance of any explosives or blasting devices from their inventory. In addition, notification shall be made to the fire official having issued the permit.

F-2608.2. Reports of injuries or property damage. The fire official shall be immediately notified of injuries to any person or damage to any property as a result of the functioning of the explosive.

F-2608.3. Relationship of local fire official and State Fire Marshal. The local fire official shall relay information obtained from reports required by Sections F-2608.1 and F-2608.2 to the Office of the State Fire Marshal.

## ARTICLE 27. FIREWORKS.

1. Change Section F-2700.1 to read:

F-2700.1. Scope. The manufacture, transportation, display, sale or discharge of fireworks shall comply with the requirements of Chapter 11 of Title 59 of the Code of Virginia.

2. Delete Section F-2701.1, General.

3. Delete Section F-2701.3, Exemptions.

## ARTICLE 28. FLAMMABLE AND COMBUSTIBLE LIQUIDS.

1. Change Section F-2803.5 to read as follows:

F-2803.5. Fuel dispensing outside the building. Fuel dispensers outside the building shall be located a minimum of 10 feet (3048 mm) from the lot line and five feet (1524 mm) from any building opening. Where fuel is dispensed to motor vehicles, the motor vehicle being served shall be located on the premises.

## ARTICLE 30. LIQUEFIED PETROLEUM GASES.

1. Change Section F-3000.1 as follows and delete the remainder of Article 30:

F-3000.1 Scope. The equipment, processes and operation for storage, handling, transporting by tank truck or tank trailer, and utilizing LP gases for fuel purposes, and for odorization of LP gases shall comply with the Virginia Liquefied Petroleum Gas Regulations in effect at the time of construction as provided for in Chapter 7 of Title 27 of the Code of Virginia.

\* \* \* \* \*

Title of Regulation: VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1990.

Statutory Authority: §§ 36-98, 36-99 and 36-102 of the Code of Virginia.

Public Hearing Date: September 14, 1992 - 10 a.m.  
(See Calendar of Events section for additional information)

### Summary:

*The 1990 edition of the Uniform Statewide Building Code, Volume I - New Construction Code is a mandatory, statewide uniform regulation which must be complied with in all buildings or additions hereafter constructed, altered, repaired, or converted to another use group. Its purpose is to protect the health, safety, and welfare of building users, and to provide for energy conservation, water conservation, and accessibility for the physically handicapped and aged. The technical provisions of the regulation are adopted by reference from the BOCA National Building Code/1990 and the CABO One- and Two-Family Dwelling Code/1989 with 1990 Amendments. The New Construction Code specifies the enforcement procedures to be used by local governments. Enforcement by local governments is mandatory. Provisions are made for modifications by the building official when alternate means will provide equivalent health and safety. An administrative appeals system is provided for resolution of disagreements between the building owners or their agents and the building officials.*

*The proposed amendments to this regulation are result of statutory changes made during the 1991 and 1992 sessions of the General Assembly and a review of public comment submitted to the Board of Housing and Community Development since the effective date of the 1990 edition of the regulation. Section 105.6 has been amended to contain more specific requirements for plans review response; § 112.3 is changed to require the building official to prosecute a person who has been served notices of violation for failure to obtain a construction permit three or more times within the same calendar year; § 112.4 sets the penalty for violations in accordance with state law; an amendment to § 115.6 authorizes the building official to revoke a certificate of occupancy under certain conditions, and §§ 120.1 and 120.3 add provisions by which certain structures deemed to be either unsafe buildings or public nuisances may be abated or removed. Changes to the BOCA and CABO Codes are proposed in Addenda 1 and 2 of the regulation including new definitions proposed to § 201.0 for family day care homes, small family day care homes, and public nuisances. A new § 309.4.1.1 is added to classify as Use Group R-3 family day care homes and small family day care homes licensed or registered by the Department of Social Services. A proposed exception to § 512.2 would exempt from handicapped accessibility requirements buildings used exclusively for religious or private club activities; and a new § 512.2.1 is added to specify accessible parking space identification requirements mandated by state law. Section 1300.4 identifies .06% by weight as the level of lead content in lead based paint not to be exceeded in new paint applications; amendments to §§ 2700.5 and R-220 require two-pair twisted wire cable to be used in prewiring for telephone jacks. Amendments to P-1503.8 (Addendum 1) and P-2301 (Addendum 2) provide alternative standards for elective local enforcement where water conservation plumbing fixtures and fittings are necessary due to a lack of present or future water supply; and P-2206.8.2 is amended to add specific requirements for grinder pumps.*

VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1990.

## ARTICLE 1.

### ADOPTION, ADMINISTRATION AND ENFORCEMENT.

#### SECTION 100.0. GENERAL.

100.1. Title. These regulations shall be known as Volume I - New Construction Code of the 1990 edition of the Virginia Uniform Statewide Building Code. Except as otherwise indicated, USBC, and code, as used herein, shall mean Volume I - New Construction Code of the 1990 edition of the Virginia Uniform Statewide Building Code.

Note: See Volume II - Building Maintenance Code for

maintenance regulations applying to existing buildings.

100.2. Authority. The USBC is adopted under authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia.

100.3. Purpose and scope. The purpose of the USBC is to ensure safety to life and property from all hazards incident to building design, construction, use, repair, removal or demolition. Buildings shall be permitted to be constructed at the least possible cost consistent with nationally recognized standards for health, safety, energy conservation, water conservation, adequate egress facilities, sanitary equipment, light and ventilation, fire safety, structural strength, and physically handicapped and aged accessibility. As provided in the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia, the USBC supersedes the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies, relating to any construction, reconstruction, alterations, conversion, repair or use of buildings and installation of equipment therein. The USBC does not supersede zoning ordinances or other land use controls that do not effect the manner of construction or materials to be used in the construction, alteration or repair of a building.

100.4. Adoption. The 1990 edition of the USBC was adopted by order of the Board of Housing and Community Development on November 19, 1990. This order was prepared according to requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.5. Effective date. The 1990 edition of the USBC shall become effective on March 1, 1991.

100.6. Application. The USBC shall apply to all buildings, structures and associated equipment which are constructed, altered, repaired or converted in use after March 1, 1991. Buildings and structures that were designed within one year prior to March 1, 1991, shall be subject to the previous edition of the code provided that the permit application is submitted by March 1, 1992. This provision shall also apply to subsequent amendments to this edition of the code based on the effective date of the amendments.

Exception: Buildings and structures for which a permit application is submitted after February 1, 1992, shall comply with applicable provisions of Section 512.0.

100.6.1. Industrialized buildings and manufactured homes. Industrialized buildings registered under the Virginia Industrialized Building Safety Law and manufactured homes labeled under the Federal Manufactured Housing Construction and Safety Standards shall be exempt from the USBC; however, the building official shall be responsible for issuing permits, inspecting the site work

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and installation of industrialized buildings and manufactured homes, and issuing certificates of occupancy for such buildings when all work is completed satisfactorily.

100.7. Exemptions. The following buildings, structures and equipment are exempted from the requirements of the USBC:

1. Farm buildings and structures not used for residential purposes; however, such buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to the applicable flood proofing or mudslide regulations.
2. Equipment installed by a provider of publicly regulated utility service and electrical equipment used for radio and television transmission. The exempt equipment shall be under the exclusive control of the public service agency and located on property by established rights; however, the buildings, including their service equipment, housing such public service agencies shall be subject to the USBC.
3. Manufacturing and processing machines and equipment; however, the buildings, including service equipment, housing such machinery and equipment shall be subject to the USBC.
4. Parking lots and sidewalks; however, parking lots and sidewalks which form part of an accessible route, as defined by ANSI A117.1 - 1986 shall comply with the requirements of Section 512.0.
5. Recreational equipment such as swing sets, sliding boards, climbing bars, jungle gyms, skateboard ramps, and similar equipment when such equipment is a residential accessory use not regulated by the Virginia Amusement Device Regulations.

## SECTION 101.0.

### REFERENCE STANDARDS AND AMENDMENTS.

101.1. Adoption of model codes and standards. The following model building codes and all portions of other model codes and standards that are referenced in this Code are hereby adopted and incorporated in the USBC. Where differences occur between provisions of the USBC and the referenced model codes or standards, the provisions of the USBC shall apply. Where differences occur between the technical provisions of the model codes and their referenced standards, the provisions of the model code shall apply.

The referenced model codes are:

THE BOCA NATIONAL BUILDING CODE/1990 EDITION

(also referred to herein as BOCA Code)

Published by:

Building Officials and Code Administrators  
International, Inc.  
4051 West Flossmoor Road  
Country Club Hills, Illinois 60478-5795  
Telephone No. (708) 799-2300

Note: The following major subsidiary model codes are among those included by reference as part of the BOCA National Building Code/1990 Edition:

BOCA National Plumbing Code/1990 Edition

BOCA National Mechanical Code/1990 Edition

NFIPA National Electrical Code/1990 Edition

The permit applicant shall have the option to select as an acceptable alternative for detached one and two family dwellings and one family townhouses not more than three stories in height and their accessory structures the following standard:

CABO ONE AND TWO FAMILY DWELLING CODE/1989 EDITION and 1990 Amendments (also referred to herein as One and Two Family Dwelling Code)

Jointly published by:

Building Officials and Code Administrators  
International, Inc.

Southern Building Code Congress and International  
Conference of Building Officials.

101.2. General administrative and enforcement amendments to referenced codes. All requirements of the referenced model codes that relate to fees, permits, certification of fitness, unsafe notices, unsafe conditions, maintenance, disputes, condemnation, inspections, existing buildings, existing structures, certification of compliance, approval of plans and specifications and other procedural, administrative and enforcement matters are deleted and replaced by the provisions of Article 1 of the USBC.

Note: The purpose of this provision is to eliminate overlap, conflict and duplication by providing a single standard for administration and enforcement of the USBC.

101.3. Amendments to the BOCA Code. The amendments noted in Addendum 1 of the USBC shall be made to the specified articles and sections of the BOCA National Building Code/1990 Edition for use as part of the USBC.

101.4. Amendments to the One and Two Family Dwelling Code. The amendments noted in Addendum 2 of the USBC shall be made to the indicated chapters and sections of the One and Two Family Dwelling Code/1989 Edition and 1990 Amendments for use as part of the USBC.

## SECTION 102.0. LOCAL BUILDING DEPARTMENTS.

102.1. Responsibility of local governments. Enforcement of the USBC Volume I shall be the responsibility of the local building department in accordance with § 36-105 of the Code of Virginia. Whenever a local government does not have such a building department, it shall enter into an agreement with another local government or with some other agency, or a state agency approved by the Virginia Department of Housing and Community Development for such enforcement. The local building department and its employees may be designated by such names or titles as the local government considers appropriate.

102.2. Building official. Each local building department shall have an executive official in charge, hereinafter referred to as the building official.

102.2.1. Appointment. The building official shall be appointed in a manner selected by the local government having jurisdiction. After appointment, he shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. The local government shall notify the Office of Professional Services within 30 days of the appointment or release of the building official. The building official must complete an orientation course approved by the Department of Housing and Community Development within 90 days after appointment.

102.2.2. Qualifications. The building official shall have at least five years of building experience as a licensed professional engineer or architect, building inspector, contractor or superintendent of building construction, with at least three years in responsible charge of work, or shall have any combination of education and experience which would confer equivalent knowledge and ability. The building official shall have general knowledge of sound engineering practice in respect to the design and construction of buildings, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

102.2.3. Certification. The building official shall be certified in accordance with Part III of the Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen within three years after the date of employment.

Exception: An individual employed as the building official in any locality in Virginia prior to April 1, 1983, shall be exempt from certification while employed as the building official in that jurisdiction. This exemption shall not apply to subsequent employment as the building official in another

jurisdiction.

102.3. Qualifications of technical assistants. A technical assistant shall have at least three years of experience in general building construction. Any combination of education and experience which would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The local governing body may establish additional qualification requirements.

102.3.1. Certification of technical assistants. Any person employed by, or under contract to, a local governing body for determining compliance with the USBC shall be certified in their trade field within three years after the date of employment in accordance with Part III of the Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen.

Exception: An individual employed as the building, electrical, plumbing, mechanical, fire protection systems inspector or plans examiner in Virginia prior to March 1, 1988, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment as a technical assistant in another jurisdiction.

102.4. Relief from personal responsibility. The local building department personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees. The building official or subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the USBC as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the discharge of official duties and under the provisions of the USBC may be defended by the department's legal representative.

102.5. Control of conflict of interests. The minimum standards of conduct for building officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 40.1 (§ 2.1-639.1 et seq.) of Title 2.1 of the Code of Virginia.

## SECTION 103.0. DUTIES AND POWERS OF THE BUILDING OFFICIAL.

103.1. General. The building official shall enforce the provisions of the USBC as provided herein and as



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interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

103.2. Modifications. The building official may grant modifications to any of the provisions of the USBC upon application by the owner or the owner's agent provided the spirit and intent of the USBC are observed and public health, welfare and safety are assured.

Note: The current editions of many nationally recognized model codes and standards are referenced by the Uniform Statewide Building Code. Future amendments do not automatically become part of the USBC; however, the building official should give consideration to such amendments in deciding whether a requested modification should be granted. See State Building Code Technical Review Board Interpretation Number 64/81 issued November 16, 1984.

103.2.1. Supporting data. The building official may require the application to include architectural and engineering plans and specifications that include the seal of a professional engineer or architect. The building official may also require and consider a statement from a professional engineer, architect or other competent person as to the equivalency of the proposed modification.

103.2.2. Records. The application for modification and the final decision of the building official shall be in writing and shall be officially recorded with the copy of the certificate of use and occupancy in the permanent records of the local building department.

103.3. Delegation of duties and powers. The building official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with the USBC.

103.4. Department records. The building official shall keep records of applications received, permits and certificates issued, reports of inspections, notices and orders issued and such other matters as directed by the local government. A copy of the certificate of use and occupancy and a copy of any modification of the USBC issued by the building official shall be retained in the official records, as long as the building to which it relates remains in existence. Other records may be disposed of in accordance with the provisions of the Virginia Public Records Act, (i) after one year in the case of buildings under 1,000 square feet in area and one and two family dwellings of any area, or (ii) after three years in the case of all other buildings.

## SECTION 104.0. FEES.

104.1. Fees. Fees may be levied by the local governing body in order to defray the cost of enforcement and appeals in accordance with § 36-105 of the Code of Virginia.

104.2. When payable. A permit shall not be issued until the fees prescribed by the local government have been paid to the authorized agency of the jurisdiction, nor shall an amendment to a permit be approved until any required additional fee has been paid. The local government may authorize delayed payment of fees.

104.3. Fee schedule. The local government shall establish a fee schedule. The schedule shall incorporate unit rates which may be based on square footage, cubic footage, cost of construction or other appropriate criteria.

104.4. Refunds. In the case of a revocation of a permit or abandonment or discontinuance of a building project, the local government shall provide fee refunds for the portion of the work which was not completed.

104.5. Fee levy. Local governing bodies shall charge each permit applicant an additional 1.0% (levy) of the total fee for each building permit. This additional 1.0% levy shall be transmitted quarterly to the Department of Housing and Community Development and shall be used to support the training programs of the Virginia Building Code Academy.

Exception: Localities which maintain training academies that are accredited by the Department of Housing and Community Development may retain such levy.

104.5.1. Levy adjustment. The Board of Housing and Community Development shall annually review the percentage of this levy and may adjust the percentage not to exceed 1.0%. The annual review shall include a study of the operating costs for the previous year's Building Code Academy, the current balance of the levy collected, and the operational budget projected for the next year of the Building Code Academy.

104.5.2. Levy cap. Annual collections of this levy which exceed \$500,000, or any unobligated fund balance greater than one-third of that fiscal year's collections shall be credited against the levy to be collected in the next fiscal year.

## SECTION 105.0. APPLICATION FOR CONSTRUCTION PERMIT.

105.1. When permit is required. Written application shall be made to the building official when a construction permit is required. A permit shall be issued by the building official before any of the following actions subject to the USBC may be commenced:

1. Constructing, enlarging, altering, repairing, or demolishing a building or structure.
2. Changing the use of a building either within the same use group or to a different use group when the new use requires greater degrees of structural strength, fire protection, exit facilities or sanitary provisions.

3. Installing or altering any equipment which is regulated by this code.

4. Removing or disturbing any asbestos containing materials during demolition, alteration, renovation of or additions to buildings or structures.

**Exceptions:**

1. Ordinary repairs which do not involve any violation of the USBC shall be exempt from this provision. Ordinary repairs shall not include the removal, addition or relocation of any wall or partition, or the removal or cutting of any structural beam or bearing support, or the removal, addition or relocation of any parts of a building affecting the means of egress or exit requirements. Ordinary repairs shall not include the removal, disturbance, encapsulation, or enclosure of any asbestos containing material. Ordinary repairs shall not include additions, alterations, replacement or relocation of the plumbing, mechanical, or electrical systems, or other work affecting public health or general safety. The term "ordinary repairs" shall mean the replacement of the following materials with like materials:

- a. Painting.
- b. Roofing when not exceeding 100 square feet of roof area.
- c. Glass when not located within specific hazardous locations as defined in Section 2203.2 of the BOCA Code and all glass repairs in Use Group R-3 and R-4 buildings.
- d. Doors, except those in fire-rated wall assemblies or exitways.
- e. Floor coverings and porch flooring.
- f. Repairs to plaster, interior tile work, and other wall coverings.
- g. Cabinets installed in residential occupancies.
- h. Wiring and equipment operating at less than 50 volts.

2. A permit is not required to install wiring and equipment which operates at less than 50 volts provided the installation is not located in a noncombustible plenum, or is not penetrating a fire-resistance rated assembly.

3. Detached utility sheds 150 square feet or less in area and 8 feet 6 inches or less in height when accessory to Use Group R-3 or R-4 buildings.

105.1.1. Authorization of work. The building official may authorize work to commence pending receipt of written

application.

105.2. Who may apply for a permit. Application for a permit shall be made by the owner or lessee of the building or agent of either, or by the licensed professional engineer, architect, contractor or subcontractor (or their respective agents) employed in connection with the proposed work. If the application is made by a professional engineer, architect, contractor or subcontractor (or any of their respective agents), the building official shall verify that the applicant is either licensed to practice in Virginia, or is exempt from licensing under the Code of Virginia. The full names and addresses of the owner, lessee and the applicant, and of the responsible officers if the owner or lessee is a corporate body, shall be stated in the application. The building official shall accept and process permit applications through the mail. The building official shall not require the permit applicant to appear in person.

105.3. Form of application. The application for a permit shall be submitted on forms supplied by the building official.

105.4. Description of work. The application shall contain a general description of the proposed work, its location, the use of all parts of the building, and of all portions of the site not covered by the building, and such additional information as may be required by the building official.

105.5. Plans and specifications. The application for the permit shall be accompanied by not less than two copies of specifications and of plans drawn to scale, with sufficient clarity and dimensional detail to show the nature and character of the work to be performed. Such plans and specifications shall include the seal and signature of the architect or engineer under whose supervision they were prepared, or if exempt under the provisions of state law, shall include the name, address, and occupation of the individual who prepared them. When quality of materials is essential for conformity to the USBC, specific information shall be given to establish such quality. In cases where such plans and specifications are exempt under state law, the building official may require that they include the signature and seal of a professional engineer or architect.

**Exceptions:**

1. The building official may waive the requirement for filing plans and specifications when the work involved is of a minor nature.

2. Detailed plans may be waived by the building official for buildings in Use Group R-4, provided specifications and outline plans are submitted which satisfactorily indicate compliance with the USBC.

Note: Information on the types of construction exempted from the requirement for a professional engineer's or architect's seal and signature is included

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in Addenda 4 and 10.

105.5.1. Site plan. The application shall also contain a site plan showing to scale the size and location of all the proposed new construction and all existing buildings on the site, distances from lot lines, the established street grades and the proposed finished grades. The building official may require that the application contain the elevation of the lowest floor of the building. It shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing buildings and construction that are to remain on the site. In the case of alterations, renovations, repairs and installation of new equipment, the building official may waive submission of the site plan or any parts thereof.

105.6. Plans review. The building official shall examine all plans and applications for permits within a reasonable time after filing. If the application or the plans do not conform to the requirements of the USBC, the building official shall reject such application in writing, stating the reasons for rejection. *Plans review comments requiring additional information, engineering details, or stating reasons for rejection of plans and specifications, shall be made in writing either by letter or a plans review form from the building official's office, in addition to notations or markings on the plan.*

105.7. Approved plans. The building official shall stamp "Approved" or provide an endorsement in writing on both sets of approved plans and specifications. One set of such approved plans shall be retained by the building official. The other set shall be kept at the building site, open to inspection by the building official at all reasonable times.

105.8. Approval of partial plans. The building official may issue a permit for the construction of foundations or any other part of a building before the plans and specifications for the entire building have been submitted, provided adequate information and detailed statements have been filed indicating compliance with the pertinent requirements of the USBC. The holder of such permit for the foundations or other part of a building shall proceed with construction operations at the holder's risk, and without assurance that a permit for the entire building will be granted.

105.9. Engineering details. The building official may require adequate details of structural, mechanical, plumbing, and electrical work to be filed, including computations, stress diagrams and other essential technical data. All engineering plans and computations shall include the signature of the professional engineer or architect responsible for the design. Plans for buildings more than two stories in height shall indicate where floor penetrations will be made for pipes, wires, conduits, and other components of the electrical, mechanical and plumbing systems. The plans shall show the material and methods for protecting such openings so as to maintain the

required structural integrity, fireresistance ratings, and firestopping affected by such penetrations.

105.10. Asbestos inspection in buildings to be renovated or demolished. A local building department shall not issue a building permit allowing a building for which an initial building permit was issued before January 1, 1978, to be renovated or demolished until the local building department receives a certification from the owner or the owner's agent that the building has been inspected for asbestos, in accordance with standards developed pursuant to subdivision 1 of subsection A of § 2.1-526.14:1 of the Code of Virginia that response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR 61, Subpart M) the management standards for asbestos-containing materials prepared by the Department of General Services in accordance with § 2.1-526.14:2 of the Code of Virginia, and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.58).

Exceptions:

1. Single family dwellings.
2. Residential housing with four or fewer units.
3. Farm buildings.
4. Buildings less than 3,500 square feet in area.
5. Buildings with no central heating system.
6. Public utilities required by law to give notification to the Commonwealth of Virginia and to the United States Environmental Protection Agency prior to removing asbestos in connection with the renovation or demolition of a building.

105.10.1. Replacement of roofing, floorcovering, or siding materials. To meet the inspection requirements of Section 105.10 except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floorcovering, or siding materials may be satisfied by:

1. A statement that the materials to be repaired or replaced are assumed to contain asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor or a licensed asbestos roofing, flooring, siding contractor; or
2. A certification by the owner that sampling of the material to be renovated was accomplished by an RFS inspector as defined in § 54.1-500 of the Code of Virginia and analysis of the sample showed no asbestos to be present.

105.11. Amendments to application. Amendments to plans

specifications or other records accompanying the application for permit may be filed at any time before completion of the work for which the permit is issued. Such amendments shall be considered part of the original application and shall be filed as such.

105.12. Time limitation of application. An application for a permit for any proposed work shall be considered to have been abandoned six months after notification by the building official that the application is defective unless the applicant has diligently sought to resolve any problems that are delaying issuance of the permit; except that for reasonable cause, the building official may grant one or more extensions of time.

## SECTION 106.0. PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES.

106.1. Special professional services; when required. The building official may require representation by a professional engineer or architect for buildings and structures which are subject to special inspections as required by Section 1308.0.

106.2. Attendant fees and costs. All fees and costs related to the performance of special professional services shall be the responsibility of the building owner.

## SECTION 107.0. APPROVAL OF MATERIALS AND EQUIPMENT.

107.1. Approval of materials; basis of approval. The building official shall require that sufficient technical data be submitted to substantiate the proposed use of any material, equipment, device or assembly. If it is determined that the evidence submitted is satisfactory proof of performance for the use intended, the building official may approve its use subject to the requirements of the USBC. In determining whether any material, equipment, device or assembly complies with the USBC, the building official shall approve items listed by nationally recognized research, testing and product certification organizations or may consider the recommendations of engineers and architects certified in this state.

107.2. Used materials and equipment. Used materials, equipment and devices may be used provided they have been reconditioned, tested or examined and found to be in good and proper working condition and approved for use by the building official.

107.3. Approved materials and equipment. All materials, equipment, devices and assemblies approved for use by the building official shall be constructed and installed in accordance with the conditions of such approval.

## SECTION 108.0. INTERAGENCY COORDINATION - FUNCTIONAL DESIGN.

108.1. Functional design approval. Pursuant to § 36-98 of the Code of Virginia, certain state agencies have statutory authority to approve functional design and operation of building related activities not covered by the USBC. The building official may refuse to issue a permit until the applicant has supplied certificates of functional design approval from the appropriate state agency or agencies. State agencies with functional design approval are listed in Addendum 5. For purposes of coordination, the local governing body may require reports to the building official by other departments as a condition for issuance of a building permit or certificate of use and occupancy. Such reports shall be based upon review of the plans or inspection of the project as determined by the local governing body.

## SECTION 109.0. CONSTRUCTION PERMITS.

109.1. Issuance of permits. If the building official is satisfied that the proposed work conforms to the requirements of the USBC and all applicable laws and ordinances, a permit shall be issued as soon as practicable. The building official may authorize work to commence prior to the issuance of the permit.

109.2. Signature on permit. The signature of the building official or authorized representative shall be attached to every permit.

109.3. Separate or combined permits. Permits for two or more buildings on the same lot may be combined. Permits for the installation of equipment such as plumbing, electrical or mechanical systems may be combined with the structural permit or separate permits may be required for the installation of each system. Separate permits may also be required for special construction considered appropriate by the local government.

109.4. Annual permit. The building official may issue an annual permit for alterations to an already approved equipment installation.

109.4.1. Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of all alterations to an approved equipment installation made under such annual permit. Such records shall be accessible to the building official at all times or shall be filed with the building official when so requested.

109.5. Posting of permit. A copy of the building permit shall be posted on the construction site for public inspection until the work is completed.

109.6. Previous permits. No changes shall be required in the plans, construction or designated use of a building for which a permit has been properly issued under a previous edition of the USBC, provided the permit has not been revoked or suspended in accordance with Section 109.7 or 109.8.

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109.7. Revocation of permits. The building official may revoke a permit or approval issued under the provisions of the USBC in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based.

109.8. Suspension of permit. Any permit issued shall become invalid if the authorized work is not commenced within six months after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work; however, permits issued for building equipment such as plumbing, electrical and mechanical work shall not become invalid if the building permit is still in effect. Upon written request the building official may grant one or more extensions of time not to exceed six months per extension.

109.9. Compliance with code. The permit shall be a license to proceed with the work in accordance with the application and plans for which the permit has been issued and any approved amendments thereto and shall not be construed as authority to omit or amend any of the provisions of the USBC, except by modification pursuant to Section 103.2.

## SECTION 110.0. INSPECTIONS.

110.1. Right of entry. The building official may inspect buildings for the purpose of enforcing the USBC in accordance with the authority granted by § 36-105 of the Code of Virginia. The building official and assistants shall carry proper credentials of office when inspecting buildings and premises in the performance of duties under the USBC.

Note: Section 36-105 of the Code of Virginia provides, pursuant to enforcement of the USBC, that any building may be inspected at any time before completion. It also permits local governments to provide for the reinspection of buildings.

110.2. Preliminary inspection. Before issuing a permit, the building official may examine all buildings and sites for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, demolish or change the use thereof.

110.3. Minimum inspections. Inspections shall include but are not limited to the following:

1. The bottom of footing trenches after all reinforcement steel is set and before any concrete is placed.
2. The installation of piling. The building official may require the installation of pile foundations be supervised by the owner's professional engineer or architect or by such professional service as approved by the building official.

3. Reinforced concrete beams, or columns and slabs after all reinforcing is set and before any concrete is placed.

4. Structural framing and fastenings prior to covering with concealing materials.

5. All electrical, mechanical and plumbing work prior to installation of any concealing materials.

6. Required insulating materials before covering with any materials.

7. Upon completion of the building, and before issuance of the certificate of use and occupancy, a final inspection shall be made to ensure that any violations have been corrected and all work conforms with the USBC.

110.3.1. Special inspections. Special inspections required by this code shall be limited to only those required by Section 1308.0.

110.4. Notification by permit holder. It shall be the responsibility of the permit holder or the permit holder's representative to notify the building official when the stages of construction are reached that require an inspection under Section 110.3 and for other inspections as directed by the building official. All ladders, scaffolds and test equipment required to complete an inspection or test shall be provided by the property owner, permit holder or their representative.

110.5. Inspections to be prompt. The building official shall respond to inspection requests without unreasonable delay. The building official shall approve the work or give written notice of defective work to the permit holder or the agent in charge of the work. Such defects shall be corrected and reinspected before any work proceeds that would conceal them.

Note: A reasonable response time should normally not exceed two working days.

110.6. Approved inspection agencies. The building official may accept reports from individuals or inspection agencies which satisfy qualifications and reliability requirements, and shall accept such reports under circumstances where the building official is unable to make the inspection by the end of the following working day. Inspection reports shall be in writing and shall be certified by the individual inspector or by the responsible officer when the report is from an agency. An identifying label or stamp permanently affixed to the product indicating that factory inspection has been made shall be accepted instead of the written inspection report, if the intent or meaning of such identifying label or stamp is properly substantiated.

110.7. In-plant inspections. When required by the provisions of this code, materials or assemblies shall be inspected at the point of manufacture or fabrication. The building

official shall require the submittal of an evaluation report of each prefabricated assembly, indicating the complete details of the assembly, including a description of the assembly and its components, the basis upon which the assembly is being evaluated, test results, and other data as necessary for the building official to determine conformance with this code.

110.8. Coordination with other agencies. The building official shall cooperate with fire, health and other state and local agencies having related maintenance, inspection or functional design responsibilities, and shall coordinate required inspections for new construction with the local fire official whenever the inspection involves provisions of the BOCA National Fire Prevention Code.

## SECTION 111.0. WORKMANSHIP.

111.1. General. All construction work shall be performed and completed so as to secure the results intended by the USBC.

## SECTION 112.0. VIOLATIONS.

112.1. Code violations prohibited. No person, firm or corporation shall construct, alter, extend, repair, remove, demolish or use any building or equipment regulated by the USBC, or cause same to be done, in conflict with or in violation of any of the provisions of the USBC.

112.2. Notice of violation. The building official shall serve a notice of violation on the person responsible for the construction, alteration, extension, repair, removal, demolition or use of a building in violation of the provisions of the USBC, or in violation of plans and specifications approved thereunder, or in violation of a permit or certificate issued under the provisions of the USBC. Such order shall reference the code section that serves as the basis for the violation and direct the discontinuance and abatement of the violation. Such notice of violation shall be in writing and be served by either delivering a copy of the notice to such persons by mail to the last known address, delivered in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place at the entrance door or accessway if such person cannot be found on the premises.

112.3. Prosecution of violation. If the notice of violation is not complied with, the building official shall request, in writing, the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation or to require the removal or termination of the use of the building in violation of the provisions of the USBC. *Compliance with a notice of violation notwithstanding, the building official shall proceed with prosecution when a person, firm or corporation is served with three or more notices of violation within one calendar year for failure to obtain a required construction*

*permit prior to commencement of work regulated under the USBC.*

112.4. Violation penalties. Violations are a misdemeanor in accordance with § 36-106 of the Code of Virginia. Violators, upon conviction, may be punished by a fine of not more than ~~\$1,000~~ \$2,500 .

112.5. Abatement of violation. Conviction of a violation of the USBC shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of the USBC relating to construction and use of the building or premises.

## SECTION 113.0. STOP WORK ORDER.

113.1. Notice to owner. When the building official finds that work on any building is being executed contrary to the provisions of the USBC or in a manner endangering the general public, an order may be issued to stop such work immediately. The stop work order shall be in writing. It shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. It shall state the conditions under which work may be resumed. No work covered by a stop work order shall be continued after issuance, except under the conditions stated in the order.

113.2. Application of order limited. The stop work order shall apply only to the work that was being executed contrary to the USBC or in a manner endangering the general public, provided other work in the area would not cause concealment of the work for which the stop work order was issued.

## SECTION 114.0. POSTING BUILDINGS.

114.1. Use group and form of sign. Prior to its use, every building designed for Use Groups B, F, H, M or S shall be posted by the owner with a sign approved by the building official. It shall be securely fastened to the building in a readily visible place. It shall state the use group, the live load, the occupancy load, and the date of posting.

114.2. Occupant load in places of assembly. Every room constituting a place of assembly or education shall have the approved occupant load of the room posted on an approved sign in a conspicuous place, near the main exit from the room. Signs shall be durable, legible, and maintained by the owner or the owner's agent. Rooms or spaces which have multiple-use capabilities shall be posted for all such uses.

114.3. Street numbers. Each structure to which a street number has been assigned shall have the number displayed so as to be readable from the public right of way.

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## SECTION 115.0. CERTIFICATE OF USE AND OCCUPANCY.

115.1. When required. Any building or structure constructed under this code shall not be used until a certificate of use and occupancy has been issued by the building official.

115.2. Temporary use and occupancy. The holder of a permit may request the building official to issue a temporary certificate of use and occupancy for a building, or part thereof, before the entire work covered by the permit has been completed. The temporary certificate of use and occupancy may be issued provided the building official determines that such portion or portions may be occupied safely prior to full completion of the building.

115.3. Contents of certificate. When a building is entitled thereto, the building official shall issue a certificate of use and occupancy. The certificate shall state the purpose for which the building may be used in its several parts. When the certificate is issued, the building shall be deemed to be in compliance with the USBC. The certificate of use and occupancy shall specify the use group, the type of construction, the occupancy load in the building and all parts thereof, the edition of the USBC under which the building permit was issued, and any special stipulations, conditions and modifications.

115.4. Changes in use and occupancy. A building hereafter changed from one use group to another, in whole or in part, whether or not a certificate of use and occupancy has heretofore been issued, shall not be used until a certificate for the changed use group has been issued.

115.5. Existing buildings. A building constructed prior to the USBC shall not be prevented from continued use. The building official shall issue a certificate of use and occupancy upon written request from the owner or the owner's agent, provided there are no violations of Volume II of the USBC and the use of the building has not been changed.

*115.6. Suspension or revocation of certificate of occupancy: The building official may suspend or revoke the certificate of occupancy for failure to correct flagrant or habitually repeated violations in apparent disregard for the provisions of the USBC.*

## SECTION 116.0. LOCAL BOARD OF BUILDING CODE APPEALS.

116.1. Local board of building code appeals. Each local government shall have a local board of building code appeals to act on applications for appeals as required by § 36-105 of the Code of Virginia; or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a State agency approved by the Virginia Department of Housing and Community Development, to act on appeals.

116.1.1. Separate divisions. The local board of building code appeals may be divided into separate divisions to consider appeals relating to separate areas of regulation of the USBC. When separate divisions are created, the scope of each shall be clearly stated. The local board of appeals may permit appeals from a division to be submitted directly to the State Building Code Technical Review Board. Each division shall comply with the membership requirements and all other requirements of the USBC relating to the local board of building code appeals.

116.2. Membership. The local board of building code appeals shall consist of at least five members appointed by the local government. Members may be reappointed.

Note: In order to provide continuity, it is recommended that the terms of local board members be staggered so that less than half of the terms expire in any one year.

116.2.1. Qualifications of board members. Board members shall be selected by the local government on the basis of their ability to render fair and competent decisions regarding application of the code, and shall, to the extent possible, represent different occupational or professional fields. Employees or officials of the local government appointing the board shall not serve as board members.

Note: At least one member should be an experienced builder. At least one other member should be a licensed professional engineer or architect.

116.3. Officers of the board. The board shall select one of its members to serve as chairman. The building official shall designate an employee from the department to serve as secretary to the board. The secretary shall keep a detailed record of all proceedings on file in the local building department.

116.4. Alternates and absence of members. The local government may appoint alternate members who may sit on the board in the absence of any regular members of the board and, while sitting on the board, shall have the full power and authority of the regular member. A procedure shall be established for use of alternate members in case of absence of regular members.

116.5. Control of conflict of interest. A member of the board shall not vote on any appeal in which that member is currently engaged as contractor or material dealer, has prepared the plans or specifications, or has any personal interest.

116.6. Notice of meeting. The board shall meet upon notice of the chairman or at stated periodic meetings if warranted by the volume of work. The board shall meet within 30 calendar days of the filing of an appeal.

116.7. Application for appeal. The owner of a building, the owner's agent, or any other person, firm or corporation directly involved in the design or construction of a

building or structure may appeal to the local building code board of appeals within 90 calendar days from a decision of the building official when it is claimed that:

1. The building official has refused to grant a modification which complies with the intent of the provisions of the USBC; or
2. The true intent of the USBC has been incorrectly interpreted; or
3. The provisions of the USBC do not fully apply; or
4. The use of a form of construction that is equal to or better than that specified in the USBC has been denied.

116.7.1. Form of application. Applications for appeals shall be submitted in writing to the local building code board of appeals.

116.8. Hearing open to public. All hearings shall be public and conducted in accordance with the applicable provisions of the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

116.9. Postponement of hearing. When a quorum (more than 50%) of the board, as represented by members or alternates, is not present to consider a specific appeal, either the appellant, the building official or their representatives may, prior to the start of the hearing, request a single postponement of the hearing of up to 14 calendar days.

116.10. Decision. A vote equivalent to a majority of the quorum of the board is required to reverse or modify the decision of the building official. Every action of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the building official.

116.11. Enforcement of decision. The building official shall take immediate action in accordance with the decision of the board.

116.12. Appeal by State Fire Marshal. This section shall apply only to buildings subject to inspection by § 36-139.3 of the Code of Virginia. The State Fire Marshal, appointed pursuant to § 36-139.2 of the Code of Virginia, shall have the right to inspect applications for building permits or conversions of use group. The State Fire Marshal may appeal to the local building code board of appeals from the decision of the building official when it is claimed that the true intent of the USBC has been incorrectly interpreted as applied to the proposed construction or conversion. Such appeals shall be filed before the required permits are issued. The State Fire Marshal may also inspect the building during construction, repair or alteration and may appeal to the local building code board of appeals from the decision of the building official when it is claimed that the construction, repairs or alterations do not comply with the approved plans. Such appeals shall

be filed prior to the issuance of the new or revised certificate of occupancy. Copies of all appeals shall be furnished to the building official and to the applicant for the building permit.

Note: The building official is encouraged to have plans submitted to the State Fire Marshal for buildings subject to state licensure in order to prevent delays in construction.

## SECTION 117.0. APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

117.1. Appeal to the State Building Code Technical Review Board. Any person aggrieved by a decision of the local board of building code appeals who was a party to the appeal may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 21 calendar days of receipt of the decision of the local appeals board by the aggrieved party.

117.2. Control of conflict of interest. A member of the State Technical Review Board shall not vote on any appeal in which that member is currently engaged as contractor or material dealer, has prepared plans or specifications, or has any personal interest.

117.3. Enforcement of decision. Upon receipt of the written decision of the State Building Code Technical Review Board, the building official shall take immediate action in accordance with the decision.

117.4. Court review. Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board may be presented to the court of the original jurisdiction in accordance with the provisions of the Administrative Process Act, Article 4 (§ 9-6.14:15 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia.

## SECTION 118.0. EXISTING BUILDINGS AND STRUCTURES.

118.1. Additions, alterations, and repairs. Additions, alterations or repairs to any structure shall conform to that required of a new structure without requiring the existing structure to comply with all of the requirements of this code. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building plus new additions shall not exceed the height, number of stories and area specified for new buildings. Alterations or repairs to an existing structure which are structural or adversely affect any structural member or any part of the structure having a fire-resistance rating shall be made with materials required for a new structure.

Exception: Existing materials and equipment may be



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replaced with materials and equipment of a similar kind or replaced with greater capacity equipment in the same location when not considered a hazard.

Note 1: Alterations after construction may not be used by the building official as justification for requiring any part of the old building to be brought into compliance with the current edition of the USBC. For example, replacement of worn exit stair treads that are somewhat deficient in length under current standards does not, of itself, mean that the stair must be widened. It is the intent of the USBC that alterations be made in such a way as not to lower existing levels of health and safety.

Note 2: The intent of this section is that when buildings are altered by the addition of equipment that is neither required nor prohibited by the USBC, only those requirements of the USBC that regulate the health and safety aspects thereof shall apply. For example, a partial automatic alarm system may be installed when no alarm system is required provided it does not violate any of the electrical safety or other safety requirements of the code.

118.1.1. Damage, restoration or repair in flood hazard zones. Buildings located in any flood hazard zone which are altered or repaired shall comply with the floodproofing requirements applicable to new buildings in the case of damages or cost of reconstruction or restoration which equals or exceeds 50% of the market value of the building before either the damage occurred or the start of construction of the improvement.

#### Exceptions:

1. Improvements required under Volume II of the USBC necessary to assure safe living conditions.
2. Alterations of historic buildings provided the alteration would not preclude the building's continued designation as an historic building.

118.1.2. Requirements for accessibility. Buildings and structures which are altered or to which additions are added shall comply with applicable requirements of Section 512.0.

118.2. Conversion of building use. No change shall be made in the use of a building which would result in a change in the use group classification unless the building complies with all applicable requirements for the new use group classification in accordance with Section 105.1(2). An application shall be made and a certificate of use and occupancy shall be issued by the building official for the new use. Where it is impractical to achieve exact compliance with the USBC the building official shall, upon application, consider issuing a modification under the conditions of Section 103.2 to allow conversion.

118.3. Alternative method of compliance. Compliance with

the provisions of Article 32 for repair, alteration, change of use of, or additions to existing buildings shall be an acceptable method of complying with this code.

## SECTION 119.0. MOVED BUILDINGS.

119.1. General. Any building moved into or within the jurisdiction shall be brought into compliance with the USBC unless it meets the following requirements after relocation.

1. No change has been made in the use of the building.
2. The building complies with all state and local requirements that were applicable to it in its previous location and that would have been applicable to it if it had originally been constructed in the new location.
3. The building has not become unsafe during the moving process due to structural damage or for other reasons.
4. Any alterations, reconstruction, renovations or repairs made pursuant to the move have been done in compliance with the USBC.

119.2. Certificate of use and occupancy. Any moved building shall not be used until a certificate of use and occupancy is issued for the new location.

## SECTION 120.0. UNSAFE BUILDINGS.

120.1. Right of condemnation before completion. Any building under construction that fails to comply with the USBC through deterioration, improper maintenance, faulty construction, or for other reasons, and thereby becomes unsafe, unsanitary, or deficient in adequate exit facilities, and which constitutes a fire hazard, or is otherwise dangerous to human life or the public welfare, shall be deemed *either a public nuisance or an unsafe building*. Any such unsafe building shall be made safe through compliance with the USBC or shall be taken down and removed, as the building official may deem necessary.

120.1.1. Inspection of unsafe buildings; records. The building official shall examine every building reported as unsafe and shall prepare a report to be filed in the records of the department. In addition to a description of unsafe conditions found, the report shall include the use of the building, and nature and extent of damages, if any, caused by a collapse or failure.

120.1.2. Notice of unsafe building. If a building is found to be unsafe the building official shall serve a written notice on the owner, the owner's agent or person in control, describing the unsafe condition and specifying the required repairs or improvements to be made to render the building safe, or requiring the unsafe building or portion

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thereof to be taken down and removed within a stipulated time. Such notice shall require the person thus notified to declare without delay to the building official the acceptance or rejection of the terms of the notice.

120.1.3. Posting of unsafe building notice. If the person named in the notice of unsafe building cannot be found after diligent search, such notice shall be sent by registered or certified mail to the last known address of such person. A copy of the notice shall be posted in a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

120.1.4. Disregard of notice. Upon refusal or neglect of the person served with a notice of unsafe building to comply with the requirement of the notice to abate the unsafe condition, the legal counsel of the jurisdiction shall be advised of all the facts and shall be requested to institute the appropriate legal action to compel compliance.

120.1.5. Vacating building. When, in the opinion of the building official, there is actual and immediate danger of failure or collapse of a building, or any part thereof, which would endanger life, or when any building or part of a building has fallen and life is endangered by occupancy of the building, the building official may order the occupants to vacate the building forthwith. The building official shall cause a notice to be posted at each entrance to such building reading as follows. "This Structure is Unsafe and its Use or Occupancy has been Prohibited by the Building Official." No person shall thereafter enter such a building except for one of the following purposes: (i) to make the required repairs; (ii) to take the building down and remove it; or (iii) to make inspections authorized by the building official.

120.1.6. Temporary safeguards and emergency repairs. When, in the opinion of the building official, there is immediate danger of collapse or failure of a building or any part thereof which would endanger life, or when a violation of this code results in a fire hazard that creates an immediate, serious and imminent threat to the life and safety of the occupants, he shall cause the necessary work to be done to the extent permitted by the local government to render such building or part thereof temporarily safe, whether or not legal action to compel compliance has been instituted.

120.2. Right of condemnation after completion. Authority to condemn unsafe buildings on which construction has been completed and a certificate of occupancy has been issued, or which have been occupied, may be exercised after official action by the local governing body pursuant to § 36-105 of the Code of Virginia.

*120.3. Abatement or removal: Whenever the owner of a building that has been deemed to be a public nuisance, pursuant to Section 120.1 or Section 120.2, fails to comply with the requirements of the notice to abate; the building official may cause the building to be razed or removed. For purposes of coordination and compliance, and*

*pursuant to § 15.1-29.21 of the Code of Virginia, the local governing body may abate, raze or remove such public nuisance and bring action against the owner or responsible party to recover the costs incurred for such razing and removal.*

## SECTION 121.0. DEMOLITION OF BUILDINGS.

121.1. General. Demolition permits shall not be issued until the following actions have been completed:

1. The owner or the owner's agent has obtained a release from all utilities having service connections to the building stating that all service connections and appurtenant equipment have been removed or sealed and plugged in a safe manner.
2. Any certificate required by Section 105.10 has been received by the building official.
3. The owner or owner's agent has given written notice to the owners of adjoining lots and to the owners of other lots affected by the temporary removal of utility wires or other facilities caused by the demolition.

121.2. Hazard prevention. When a building is demolished or removed, the established grades shall be restored and any necessary retaining walls and fences shall be constructed as required by the provisions of Article 30 of the BOCA Code.

## ADDENDUM 1. AMENDMENTS TO THE BOCA NATIONAL BUILDING CODE/1990 EDITION.

As provided in Section 101.3 of the Virginia Uniform Statewide Building Code, the amendments noted in this addendum shall be made to the BOCA National Building Code/1990 Edition for use as part of the USBC.

## ARTICLE 1. ADMINISTRATION AND ENFORCEMENT.

(A) Entire article is deleted and replaced by Article 1, Adoption, Administration and Enforcement, of the Virginia Uniform Statewide Building Code.

## ARTICLE 2. DEFINITIONS.

(A) Change the following definitions in Section 201.0, General Definitions, to read:

*"Building"* means a combination of any materials, whether portable or fixed, that forms a structure for use or occupancy by persons or property; provided, however, that farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from the provisions

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of the USBC, but such buildings lying within a flood plain or in a mudslide regulations, as applicable. The word building shall be construed as though followed by the words "or part or parts and fixed equipment thereof" unless the context clearly requires a different meaning. The word "building" includes the word "structure."

## Dwellings:

*"Boarding house"* means a building arranged or used for lodging, with or without meals, for compensation and not occupied as a single family unit.

*"Dormitory"* means a space in a building where group sleeping accommodations are provided for persons not members of the same family group, in one room, or in a series of closely associated rooms.

*"Hotel"* means any building containing six or more guest rooms, intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

*"Multi-family apartment house"* means a building or portion thereof containing more than two dwelling units and not classified as a one- or two-family dwelling.

*"One-family dwelling"* means a building containing one dwelling unit.

*"Two-family dwelling"* means a building containing two dwelling units.

*"Jurisdiction"* means the local governmental unit which is responsible for enforcing the USBC under state law.

*"Mobile unit"* means a structure of vehicular, portable design, built on a chassis and designed to be moved from one site to another, subject to the Industrialized Building and Manufactured Home Safety Regulations, and designed to be used without a permanent foundation.

*"Owner"* means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a building.

*"Structure"* means an assembly of materials forming a construction for use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature. The word structure shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

(B) Add these new definitions to Section 201.0, General Definitions:

*"Family"* means an individual or married couple and the children thereof with not more than two other persons related directly to the individual or married couple by blood or marriage; or a group of not more than eight unrelated persons, living together as a single housekeeping unit in a dwelling unit.

*"Family day-care home"* means any private family home in which more than five children, except children related by blood or marriage to the person who maintains the home, are received in care, protection or guidance during only a part of the 24-hour day, except (i) homes which accept children exclusively from local department of welfare or social services, (ii) homes which have been approved by a licensed day-care system, or (iii) homes which accept up to 10 children, at least five of whom are of school age and are not in the home for longer than three hours immediately before and three hours immediately after school hours each day.

*"Farm building"* means a structure located on a farm utilized for the storage, handling or production of agricultural, horticultural and floricultural products normally intended for sale to domestic or foreign markets and buildings used for the maintenance, storage or use of animals or equipment related thereto.

*"Historic building"* means any building that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Federal Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on the Virginia Department of Historic Resources' inventory of historic places; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the Virginia Department of Historic Resources.

*"Local government"* means any city, county or town in this state, or the governing body thereof.

*"Manufactured home"* means a structure subject to federal regulations, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent

chassis; is designed to be used as a single family dwelling, with or without a permanent foundation when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

*"Night club"* means a place of assembly that provides exhibition, performance or other forms of entertainment; serves food or alcoholic beverages or both; and provides music and space for dancing.

*"Plans"* means all drawings that together with the specifications, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

*"Public nuisance"* means, for the purposes of this code, any public or private building, wall or structure deemed to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation, occupancy or use, or the condition of which constitutes a menace to the health and safety of the occupants thereof or to the public.

*"Skirting"* means a weather-resistant material used to enclose the space from the bottom of a manufactured home to grade.

*"Small family day-care home"* means any private family home in which no more than five children, except children related by blood or marriage to the person who maintains the home, are received for care, protection, and guidance during only a part of the day.

*"Specifications"* means all written descriptions, computations, exhibits, test data and other documents that together with the plans, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

## ARTICLE 3. USE GROUP CLASSIFICATION.

(A) Change Section 307.2 to read as follows:

307.2. Use Group I-1. This use group shall include buildings and structures, or parts thereof, which house six or more individuals who, because of age, mental disability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Where accommodating persons of the above description, the following types of facilities shall be classified as I-1 facilities: board and care facilities, half-way houses, group homes, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or less occupants shall be classified as a residential use group.

Exception: Group homes licensed by the Virginia

Department of Mental Health, Mental Retardation and Substance Abuse Services which house no more than eight mentally ill, mentally retarded, or developmentally disabled persons, with one or more resident counselors, shall be classified as Use Group R-3.

(B) Change Section 309.4 to read as follows:

309.4. Use Group R-3 structures. This use group shall include all buildings arranged for the use of one- or two-family dwelling units and multiple single-family dwellings where each unit has an independent means of egress and is separated by a two-hour fire separation assembly (see Section 909.0).

Exception: In multiple single-family dwellings which are equipped throughout with an approved automatic sprinkler system installed in accordance with Section 1004.2.1 or 1004.2.2, the fire-resistance rating of the dwelling unit separation shall not be less than one hour. Dwelling unit separation walls shall be constructed as fire partitions (see Section 910.0).

(C) Add subsection 309.4.1.1 to read as follows:

309.4.1.1. Family day care homes: Family day-care homes and small family day-care homes which are licensed or registered, respectively, by the Virginia Department of Social Services shall be classified as Use Group R-3.

## ARTICLE 4. TYPES OF CONSTRUCTION CLASSIFICATION.

(A) Add the following to line 5 of Table 401.

Dwelling unit separations for buildings of Type 2C, 3B and 5B construction shall have fire-resistance ratings of not less than one-half hour in buildings sprinklered throughout in accordance with Section 1004.2.1 or 1004.2.2.

## ARTICLE 5. GENERAL BUILDING LIMITATIONS.

(A) Change Section 502.3 to read:

502.3. Automatic sprinkler system. When a building of other than Use Group H is equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2, the area limitation specified in Table 501 shall be increased by 200% for one- and two-story buildings and 100% for buildings more than two stories in height. An approved limited area sprinkler system is not considered as an automatic sprinkler system for the purpose of this section.

(B) Change Section 503.1 to read:

503.1. Automatic sprinkler system. When a building is equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, the building height

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limitation specified in Table 501 shall be increased one story and 20 feet (6096mm). This increase shall not apply to buildings of Use Group I-2 of Types 2C, 3A, 4 and 5A construction nor to buildings of Use Group H. An approved limited-area sprinkler system is not considered an automatic sprinkler system for the purpose of this section. The building height limitations for buildings of Use Group R specified in Table 501 shall be increased one story and 20 feet, but not to exceed a height of four stories and 60 feet, when the building is equipped with an automatic sprinkler system in accordance with Section 1004.2.2.

(C) Replace Section 512.0, Physically Handicapped and Aged with the following new section:

## SECTION 512.0. ACCESSIBILITY FOR DISABLED.

512.1. General. This section establishes requirements for accessibility by individuals with disabilities to be applied during the design, construction and alteration of buildings and structures.

512.2. Where required. The provisions of this section shall apply to all buildings and structures, including their exterior sites and facilities.

Exceptions:

1. Buildings of Use Group R-3 and accessory structures and their associated site and facilities.
2. Buildings and structures classified as Use Group U.
3. Those buildings or structures or portions thereof which are expressly exempted in the standards incorporated by reference in this section.
4. *Those buildings or structures or portions thereof which are used exclusively for either private club or religious worship activities.*

512.2.1. *Identification of parking spaces. All spaces reserved for the use of handicapped persons shall be identified by an above grade sign with the bottom edge no lower than four feet nor higher than seven feet above the parking surface.*

512.3. Referenced standards. The following standards or parts thereof are hereby incorporated by reference for use in determining compliance with this section:

1. Title 24 Code of Federal Regulations, Chapter 1 - Fair Housing Accessibility Guidelines, Sections 2 through 5, 56 F.R. 9499-9515 (March 6, 1991).
2. Title 28 Code of Federal Regulations, Part 36 - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Subpart A - General, § 36.104 Definitions and Subpart D - New Construction and Alterations, 56 F.R. 35593-35594 and

35599-35602 (July 26, 1991).

## ARTICLE 6. SPECIAL USE AND OCCUPANCY REQUIREMENTS.

(A) Change Section 610.2.1 to read as follows:

610.2.1. Waiting areas. Waiting areas shall not be open to the corridor, except where all of the following criteria are met:

1. The aggregate area of waiting areas in each smoke compartment does not exceed 600 square feet (56 m<sup>2</sup>);
2. Each area is located to permit direct visual supervision by facility staff;
3. Each area is equipped with an automatic fire detection system installed in accordance with Section 1017.0;
4. Each area is arranged so as not to obstruct access to the required exits; and
5. The walls and ceilings of the space are constructed as required for corridors.

(B) Delete Section 610.2.2, Waiting areas on other floors, but do not renumber remaining sections.

(C) Change Section 610.2.3 to read as follows:

610.2.3. Waiting areas of unlimited area. Spaces constructed as required for corridors shall not be open to a corridor, except where all of the following criteria are met:

1. The spaces are not used for patient sleeping rooms, treatment rooms or specific use areas as defined in Section 313.1.4.1;
2. Each space is located to permit direct visual supervision by the facility staff;
3. Both the space and corridors that the space opens into in the same smoke compartment are protected by an automatic fire detection system installed in accordance with Section 1017.0; and
4. The space is arranged so as not to obstruct access to the required exits.

(D) Change Section 610.2.5 to read as follows:

610.2.5. Mental health treatment areas. Areas wherein only mental health patients who are capable of self-preservation are housed, or group meeting or multipurpose therapeutic spaces other than specific use areas as defined in Section 313.1.4.1, under continuous supervision by facility staff, shall not be open to the corridor, except where all of the following criteria are met:

1. Each area does not exceed 1,500 square feet (140 m<sup>2</sup>);
2. The area is located to permit supervision by the facility staff;
3. The area is arranged so as not to obstruct any access to the required exits;
4. The area is equipped with an automatic fire detection system installed in accordance with Section 1017.0;
5. Not more than one such space is permitted in any one smoke compartment; and
6. The walls and ceilings of the space are constructed as required for corridors.

(E) Change Section 610.3 and subsection 610.3.1 to read as follows:

610.3. Corridor walls. Corridor walls shall form a barrier to limit the transfer of smoke. The walls shall extend from the floor to the underside of the floor or roof deck above or to the underside of the ceiling above where the ceiling membrane is constructed to limit the transfer of smoke.

610.3.1. Corridor doors. All doors shall conform to Section 916.0. Corridor doors, other than those in a wall required to be rated by Section 313.1.4.1 or for the enclosure of a vertical opening, shall not have a required fire resistance rating, but shall provide an effective barrier to limit the transfer of smoke.

(F) Change Section 610.5 to read as follows:

610.5. Automatic fire detection. An automatic fire detection system shall be provided in corridors and common spaces open to the corridor as permitted by Section 610.2.

(G) Delete Section 610.5.1, Rooms, and Section 610.5.2, Corridors.

(H) Add new Section 618.10 to read as follows:

## SECTION 618.10. MAGAZINES.

618.10. Magazines. Magazines for the storage of explosives, ammunition and blasting agents shall be constructed in accordance with the Statewide Fire Prevention Code as adopted by the Board of Housing and Community Development.

(I) Change Section 619.1 to read as follows:

619.1. Referenced codes. The storage systems for flammable and combustible liquids shall be in accordance with the mechanical code and the fire prevention code

listed in Appendix A.

Exception: Aboveground tanks which are used to store or dispense motor fuels, aviation fuels or heating fuels at commercial, industrial, governmental or manufacturing establishments shall be allowed when in compliance with NFPA 30, 30A, 31 or 407 listed in Appendix A.

(J) Change Section 620.0 to read as follows:

## SECTION 620.0. MOBILE UNITS AND MANUFACTURED HOMES.

620.1. General. Mobile units, as defined in Section 201.0, shall be designed and constructed to be transported from one location to another and not mounted on a permanent foundation. Manufactured homes shall be designed and constructed to comply with the Federal Manufactured Housing Construction and Safety Standards and used with or without a permanent foundation.

620.2. Support and anchorage of mobile units. The manufacturer of each mobile unit shall provide with each unit specifications for the support and anchorage of the mobile unit. The manufacturer shall not be required to provide the support and anchoring equipment with the unit. Mobile units shall be supported and anchored according to the manufacturer's specifications. The anchorage shall be adequate to buildings and structures, based upon the size and weight of the mobile unit.

620.3. Support and anchorage of manufactured homes. The manufacturer of the home shall provide with each manufactured home printed instructions specifying the location, required capacity and other details of the stabilizing devices to be used with or without a permanent foundation (i.e., tiedowns, piers, blocking, footings, etc.) based upon the design of the manufactured home. Manufactured homes shall be supported and anchored according to the manufacturer's printed instructions or supported and anchored by a system conforming to accepted engineering practices designed and engineered specifically for the manufactured home. Footings or foundations on which piers or other stabilizing devices are mounted shall be carried down to the established frost lines. The anchorage system shall be adequate to resist wind forces, sliding and uplift as imposed by the design loads.

620.3.1. Hurricane zone. Manufactured homes installed or relocated in the hurricane zone shall be of Hurricane and Windstorm Resistive design in accordance with the Federal Manufactured Housing Construction and Safety Standards and shall be anchored according to the manufacturer's specifications for the hurricane zone. The hurricane zone includes the following counties and all cities located therein, contiguous thereto, or to the east thereof. Accomack, King William, Richmond, Charles City, Lancaster, Surry, Essex, Mathews, Sussex, Gloucester, Middlesex, Southampton, Greenville, Northumberland,

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Westmoreland, Isle of Wight, Northampton, York, James City, New Kent, King & Queen and Prince George.

620.3.2. Flood hazard zones. Manufactured homes and mobile units which are located in a flood hazard zone shall comply with the requirements of Section 2101.6.

Exception: Manufactured homes installed on sites in an existing manufactured home park or subdivision shall be permitted to be placed no less than 36 inches above grade in lieu of being elevated at or above the base flood elevation provided no manufactured home at the same site has sustained flood damage exceeding 50% of the market value of the home before the damage occurred.

620.4. Used mobile/manufactured homes. When used manufactured homes or used mobile homes are being installed or relocated and the manufacturer's original installation instructions are not available, installations complying with the applicable portions of NCSBCS/ANSI A225.1 listed in Appendix A shall be accepted as meeting the USBC.

620.5. Skirting. Manufactured homes installed or relocated after July 1, 1990, shall have skirting installed within 60 days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of 18 inches in any dimension and not less than three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the USBC.

(K) Add new Section 627.0 to read as follows:

## SECTION 627.0. UNDERGROUND STORAGE TANKS.

627.1. General. The installation, upgrade, or closure of any underground storage tanks containing an accumulation of regulated substances, shall be in accordance with the Underground Storage Tank Regulations adopted by the State Water Control Board. Underground storage tanks containing flammable or combustible liquids shall also comply with the applicable requirements of Section 619.0.

## ARTICLE 7. INTERIOR ENVIRONMENTAL REQUIREMENTS.

(A) Add new Section 706.2.3 as follows:

706.2.3. Insect screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(B) Change Section 714.0 to read as follows:

## SECTION 714.0. SOUND TRANSMISSION CONTROL IN RESIDENTIAL BUILDINGS.

714.1. Scope. This section shall apply to all common interior walls, partitions and floor/ceiling assemblies between adjacent dwellings or between a dwelling and adjacent public areas such as halls, corridors, stairs or service areas in all buildings of Use Group R.

714.2. Airborne noise. Walls, partitions and floor/ceiling assemblies separating dwellings from each other or from public or service areas shall have a sound transmission class (STC) of not less than 45 for airborne noise when tested in accordance with ASTM E90 listed in Appendix A. This requirement shall not apply to dwelling entrance doors, but such doors shall be tight fitting to the frame and sill.

714.3. Structure borne sound. Floor/ceiling assemblies between dwellings and between a dwelling and a public or service area within the structures shall have an impact insulation class (IIC) rating of not less than 45 when tested in accordance with ASTM E492 listed in Appendix A.

714.4. Tested assemblies. Where approved, assemblies of building construction listed in GA 600, NCMA TEK 69A and BIA TN 5A listed in Appendix A shall be accepted as having the STC and IIC ratings specified therein for determining compliance with the requirements of this section.

(C) Add new Section 715.0 to read as follows:

## SECTION 715.0. HEATING FACILITIES.

715.1. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

715.2. Other structures. Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupant thereof; and every occupant of any structure or part thereof who rents or leases said structure or part thereof on terms, either express or implied, to supply its own heat, shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C), during all working hours in all enclosed spaces or rooms where persons are employed and working. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

**Exceptions:**

1. Processing, storage and operations areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

**ARTICLE 8.  
MEANS OF EGRESS.**

(A) Change Exception 6 of Section 813.4.1 to read as follows:

6. Devices such as double cylinder dead bolts which can be used to lock doors to prevent egress shall be permitted on egress doors in Use Groups B, F, M or S. These doors may be locked from the inside when all of the following conditions are met:

- a. The building is occupied by employees only and all employees have ready access to the unlocking device.
- b. The locking device is of a type that is readily distinguished as locked, or a "DOOR LOCKED" sign with red letters on white background is installed on the locked doors. The letters shall be six inches high and 3/4 of an inch wide.
- c. A permanent sign is installed on or adjacent to lockable doors stating "THIS DOOR TO REMAIN UNLOCKED DURING PUBLIC OCCUPANCY." The sign shall be in letters not less than one-inch high on a contrasting background.

(B) Add new Exception 7 to Section 813.4.1 to read as follows:

**Exception**

7. Locking arrangements conforming to Section 813.4.5.

(C) Add new Section 813.4.5 to read as follows:

813.4.5. Building entrance doors. In Use Groups A, B, E, M, R-1 and R-2, the building entrance doors in a means of egress are permitted to be equipped with an approved entrance and egress control system which shall be installed in accordance with items 1 through 6 below.

1. A sensor shall be provided on the egress side arranged to detect an occupant approaching the doors. The doors shall be arranged to unlock by a signal from or loss of power to the sensor.

2. Loss of power to that part of the access control system which locks the doors shall automatically unlock the doors.

3. The doors shall be arranged to unlock from a manual exit device located 48 inches (1219 mm) vertically above the floor and within five feet (1524 mm) of the secured doors. The manual exit device shall be readily accessible and clearly identified by a sign. When operated, the manual exit device shall result in direct interruption of power to the lock – independent of the access control system electronics – and the doors shall remain unlocked for a minimum of 30 seconds.

4. Activation of the building fire protective signaling system, if provided, shall automatically unlock the doors, and the doors shall remain unlocked until the fire protective signaling system has been reset.

5. Activation of the building sprinkler or detection system, if provided, shall automatically unlock the doors. The doors shall remain unlocked until the fire protective signaling system has been reset.

6. The doors shall not be secured from the egress side in Use Groups A, B, E and M during periods when the building is accessible to the general public.

(D) Add new Section 826.0 to read as follows:

**SECTION 826.0.  
EXTERIOR DOORS.**

826.1. Swinging entrance doors. Exterior swinging doors of each dwelling unit in buildings of Use Group R-2 shall be equipped with a dead bolt lock, with a throw of not less than one inch, and shall be capable of being locked or unlocked by key from the outside and by turn-knob from the inside.

826.2. Exterior sliding doors. In dwelling units of Use Group R-2 buildings, exterior sliding doors which are one story or less above grade, or shared by two dwelling units, or are otherwise accessible from the outside, shall be equipped with locks. The mounting screws for the lock case shall be inaccessible from the outside. The lock bolt shall engage the strike in a manner that will prevent its



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being disengaged by movement of the door.

Exception: Exterior sliding doors which are equipped with removable metal pins or charlie bars.

826.3. Entrance doors. Entrance doors to dwelling units of Use Group R-2 buildings shall be equipped with door viewers with a field of vision of not less than 180 degrees.

Exception: Entrance doors having a vision panel or side vision panels.

## ARTICLE 10. FIRE PROTECTION SYSTEMS.

(A) Delete Section 1000.3.

(B) Change Section 1002.6 to read as follows:

1002.6. Use Group I. Throughout all buildings with a Use Group I fire area.

Exception: Use Group I-2 child care facilities located at the level of exit discharge and which accommodate 100 children or less. Each child care room shall have an exit door directly to the exterior.

(C) Change Section 1002.8 to read as follows:

1002.8. Use Group R-1. Throughout all buildings of Use Group R-1.

Exception: Use Group R-1 buildings where all guestrooms are not more than three stories above the lowest level of exit discharge of the exits serving the guestroom. Each guestroom shall have at least one door opening directly to an exterior exit access which leads directly to the exits.

(D) Change Section 1002.9 to read as follows:

1002.9. Use Group R-2. Throughout all buildings of Use Group R-2.

Exceptions 1.

Use Group R-2 buildings where all dwelling units are not more than one story above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit.

2. Use Group R-2 buildings where all dwelling units are not more than three stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit and every two dwelling units are separated from other dwelling units in the building by fire separation assemblies (see Sections 909.0 and 913.0) having a fire resistance rating of not less than two hours.

(E) Add new Section 1002.12 to read as follows:

1002.12. Use Group B, when more than 50 feet in height. Fire suppression systems shall be installed in buildings and structures of Use Group B, when more than 50 feet in height and less than 75 feet in height according to the following conditions:

1. The height of the building shall be measured from the point of the lowest grade level elevation accessible by fire department vehicles at the building or structure to the floor of the highest occupiable story of the building or structure.

2. Adequate public water supply is available to meet the needs of the suppression system.

3. Modifications for increased allowable areas and reduced fire ratings permitted by Sections 502.3, 503.1, 905.2.2, 905.3.1, 921.7.2, 921.7.2.2, 922.8.1, and any others not specifically listed shall be granted.

4. The requirements of Section 602.0 for high-rise buildings, such as, but not limited to voice alarm systems, central control stations, and smoke control systems, shall not be applied to buildings and structures affected by this section.

(F) Change Sections 1004.1 through 1004.2.2 to read as follows:

1004.1. General. Automatic sprinkler systems shall be approved and shall be designed and installed in accordance with the provisions of this code.

1004.2. Equipped throughout. Where the provisions of this code require that a building or portion thereof be equipped throughout with an automatic sprinkler system, the system shall be designed and installed in accordance with Section 1004.2.1, 1004.2.2 or 1004.2.3.

Exception: Where the use of water as an extinguishing agent is not compatible with the fire hazard (see Section 1003.2) or is prohibited by a law, statute or ordinance, the affected area shall be equipped with an approved automatic fire suppression system utilizing a suppression agent that is compatible with the fire hazard.

1004.2.1. NFIPA 13 systems. The systems shall be designed and installed in accordance with NFIPA 13 listed in Appendix A.

Exception: In Use Group R fire areas, sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area and are located within individual dwelling units or guestrooms.

1004.2.1.1. Quick response sprinklers. NFIPA 13 systems installed in Use Group I-2 fire areas shall use quick response sprinklers in patient sleeping rooms.

1004.2.2. NFIPA 13R systems. In buildings four stories or less in height, systems designed and installed in accordance with NFIPA 13R listed in Appendix A shall be permitted in Use Group I-1 fire areas in buildings with not more than 16 occupants, and in Use Group R fire areas.

Exception: Sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area and are located within individual dwelling units or guestrooms.

(G) Add new Section 1004.2.3 to read as follows:

1004.2.3. NFIPA 13D systems. In Use Group I-1 fire areas in buildings with not more than eight occupants, systems designed and installed in accordance with NFIPA 13D listed in Appendix A shall be permitted.

Exceptions:

1. Sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area.
2. A single fire protection water supply shall be permitted to serve not more than eight dwelling units.

(H) Add new Section 1018.3.5 to read as follows:

1018.3.5. Smoke detectors for the deaf and hearing impaired. Smoke detectors for the deaf and hearing impaired shall be provided as required by § 36-99.5 of the Code of Virginia.

## ARTICLE 12. FOUNDATION SYSTEMS.

(A) Add new provision to Section 1205.0, Depth of Footings:

1205.4. Small storage sheds. The building official may accept utility sheds without footings when they are used for storage purposes and do not exceed 150 square feet in gross floor area when erected or mounted on adequate supports.

## ARTICLE 13. MATERIALS AND TESTS.

(A) Add new Section 1300.4 to read as follows:

1300.4. Lead based paint. Lead based paint with a lead content of more than ~~0.5%~~ .06% by weight shall not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

(B) Change Section 1308.1 to read as follows:

1308.1. General. The permit applicant shall provide special inspections where application is made for construction as described in this section. The special inspectors shall be

provided by the owner and shall be qualified and approved for the inspection of the work described herein.

Exception: Special inspections are not required for buildings or structures unless the design involves the practice of professional engineering or architecture as required by §§ 54.1-401, 54.1-402 and 54.1-406 of the Code of Virginia.

(C) Delete Section 1308.8, Special cases.

## ARTICLE 17. WOOD.

(A) Change Section 1702.4.1 to read as follows:

1702.4.1. General. Where permitted for use as a structural element, fire-retardant treated wood shall be defined as any wood product which, when impregnated with chemicals by a pressure process in accordance with AWPA C20 or AWPA C27 listed in Appendix A or other means during manufacture, shall have, when tested in accordance with ASTM E84 listed in Appendix A, a flame spread rating not greater than 25 when the test is continued for a period of 30 minutes, without evidence of significant progressive combustion and the flame front shall not progress more than 10.5 feet (3200 mm) beyond the centerline of the burner at any time during the test. Fire-retardant treated wood shall be dried to a moisture content of 19% or less for lumber and 15% or less for plywood before use.

(B) Add new Sections 1702.4.1.1 and 1702.4.1.2 as follows:

1702.4.1.1. Strength modifications. Design values for untreated lumber, as specified in Section 1701.1, shall be adjusted when the lumber is pressure impregnated with fire-retardant chemicals. Adjustments to the design values shall be based upon an approved method of investigation which takes into consideration the effects of the anticipated temperature and humidity to which the fire-retardant treated wood will be subjected, the type of treatment, and the redrying procedures.

1702.4.1.2. Labeling. Fire-retardant treated lumber and plywood shall bear the label of an approved agency in accordance with Section 1307.3.2. Such label shall contain the information required by Section 1307.3.3.

## ARTICLE 21. EXTERIOR EQUIPMENT AND SYSTEMS.

(A) Delete Section 2101.6.9 Alterations and repairs, but do not renumber remaining sections.

## ARTICLE 25. MECHANICAL EQUIPMENT AND SYSTEMS.

(A) Change Section 2500.2 to read as follows:

2500.2. Mechanical code. All mechanical equipment and

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systems shall be constructed, installed and maintained in accordance with the mechanical code listed in Appendix A, as amended below:

1. Delete Article 17, Air Quality:
2. Add Note to M-2000.2 to read as follows:

Note: Boilers and pressure vessels constructed under this article shall be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

## ARTICLE 27. ELECTRIC WIRING AND EQUIPMENT.

- (A) Add Section 2700.5 to read as follows:

2700.5. Telephone outlets. Each dwelling unit shall be prewired with a minimum of two-pair twisted wire cable to provide at least one telephone outlet (jack). In multifamily dwellings, the telephone wiring shall terminate inside or outside of the building at a point prescribed by the telephone company.

## ARTICLE 28. PLUMBING SYSTEMS.

- (A) Change Section 2800.1 to read as follows:

2800.1. Scope. The design and installation of plumbing systems, including sanitary and storm drainage, sanitary facilities, water supplies and storm water and sewage disposal in buildings shall comply with the requirements of this article and the plumbing code listed in Appendix A (BOCA National Plumbing Code/1990) as amended below:

1. Change Section P-303.1 to read as follows:

P-303.1. General. The water distribution and drainage system of any building in which plumbing fixtures are installed shall be connected to public water main and sewer respectively, if available. Where a public water main is not available, an individual water supply shall be provided. Where a public sewer is not available, a private sewage disposal system shall be provided conforming to the regulations of the Virginia Department of Health.

2. Change Section P-303.2 to read as follows:

P-303.2. Public systems available. A public water supply system or public sewer system shall be deemed available to premises used for human occupancy if such premises are within (number of feet and inches as determined by the local government) measured along a street, alley, or easement, of the public water supply or sewer system, and a connection conforming with the standards set forth in the USBC may be made thereto.

3. Change Section P-308.3 to read as follows:

P-308.3. Freezing. Water service piping and sewers shall be installed below recorded frost penetration but not less than (number of feet and inches to be determined by the local government) below grade for water piping and (number of feet and inches to be determined by the local government) below grade for sewers. In climates with freezing temperatures, plumbing piping in exterior building walls or areas subjected to freezing temperatures shall be adequately protected against freezing by insulation or heat or both.

4. Delete Section P-311.0, Toilet Facilities for Workers.
5. Add new Section P-604.2.1 to read as follows:

P-604.2.1. Alarms. Malfunction alarms shall be provided for sewage pumps or sewage ejectors rated at 20 gallons per minute or less when used in Use Group R-3 buildings.

6. Add the following exception to Section P-1001.1:

4. A grease interceptor listed for use as a fixture trap may serve a single fixture or a combination sink of not more than three compartments when the vertical distance of the fixture drain to the inlet of the grease interceptor does not exceed 30 inches and the horizontal distance does not exceed 60 inches.

7. Change Note d of Table P-1202.1 to read:

Note d. For attached one and two family dwellings one automatic clothes washer connection shall be required per 20 dwelling units. Automatic clothes washer connections are not required for Use Group R-4.

8. Revise Table P-1202.1 for Building Use Groups A-1, A-3, A-4 and A-5.

Building Use Group (P1218.2)	Water Closets (Urinals see Section	
	Males	Females
A-1 Assembly, theaters	1 per 125	1 per 65
A-2 Assembly, nightclubs	1 per 40	1 per 40
A-3 Assembly, restaurants	1 per 75	1 per 75
A-3 Assembly, halls, museums, etc.	1 per 125	1 per 65
A-4 Assembly, churches(b)	1 per 150	1 per 75
A-5 Assembly, stadiums, pools, etc.	1 per 100	1 per 50

9. Add Note e to Table P-1202.1 to reference Use Group I-2 day nurseries to read as follows:

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Note e. Day nurseries shall only be required to provide one bathtub or shower regardless of the number of occupants.

10. Delete Section P-1203.0, Handicap Plumbing Facilities, but do not renumber the remaining sections in the article.

11. Add new Section P-1501.3:

P-1501.3. Public water supply and treatment. The approval, installation and inspection of raw water collection and transmission facilities, treatment facilities and all public water supply transmission mains shall be governed by the Virginia Waterworks Regulations. The internal plumbing of buildings and structures, up to the point of connection to the water meter shall be governed by this code. Where no meter is installed, the point of demarcation shall be at the point of connection to the public water main; or, in the case of an owner of both public water supply system and the building served, the point of demarcation is the point of entry into the building.

Note: See Memorandum of Agreement between the Board of Housing and Community Development and the Virginia Department of Health, signed July 21, 1980.

12. Add the following exception to P-1503.8:

*Exception: Pursuant to § 36-99.10 of the Code of Virginia, based upon the lack of present or future water supply, local government may elect to apply the provisions of Section P-1503.9 to all or a portion of their locality.*

13. Add new Section P-1503.9 to read as follows:

*P-1503.9. Maximum flow and water consumption: The maximum water consumption flow rates and quantities for all plumbing fixtures and fixture fittings shall be in accordance with Table P-1503.9. Water consumption for water closets listed in the exceptions below shall use a maximum of four gallons per flushing cycle. Water consumption for urinals listed in the exceptions below shall use a maximum of 1-1/2 gallons per flush.*

*Exceptions:*

1. Blowout design fixtures.
2. Penalware.
3. Clinical sinks.
4. Service sinks.
5. Emergency showers.
6. Water closets provided for public use in buildings

*of Use Groups A-1, A-2, A-3, and A-5.*

7. *Water closets provided for patients and residents in buildings of Use Group I-2.*

8. *Water closets provided for inmates and residents in buildings of Use Group I-3.*

*Table P-1503.9.*

*Maximum Flow Rates and Consumption for Plumbing Fixtures and Fixture Fittings.*

PLUMBING FIXTURE OR FIXTURE FITTING	MAXIMUM FLOW RATE OR QUANTITY
Water closet	1.6 gallon per cycle
Urinal	1.0 gallon per cycle
Shower head	2.5 gallon per minute at 80 psi
Lavatory nonpublic	2.2 gallon per minute at 60 psi
Lavatory public	0.5 gallon per minute at 80 psi
Lavatory public meeting self-closing	0.25 gallon per cycle
Sink faucet	2.2 gallon per minute at 60 psi

~~12.~~ 14. Add Note to P-1506.3 to read as follows:

Note: Water heaters which have a heat input of greater than 200,000 BTU per hour, a water temperature of over 210°F, or contain a capacity of more than 120 gallons shall be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

~~13.~~ 15. Delete Article 16, Individual Water Supply.

(B) Change Section 2804.3 to read as follows:

2804.3. Private water supply. When public water mains are not used or available, a private source of water supply may be used. The Health Department shall approve the location, design and water quality of the source prior to the issuance of the permit. The building official shall approve all plumbing, pumping and electrical equipment associated with the use of a private source of water.

(C) Change Section 2807.1 to read as follows:

2807.1. Private sewage disposal. When water closets or other plumbing fixtures are installed in buildings which are not located within a reasonable distance of a sewer, suitable provisions shall be made for disposing of the building sewage by some method of sewage treatment and disposal satisfactory to the administrative authority having jurisdiction. When an individual sewage system is required, the control and design of this system shall be as approved by the State Department of Health, which must approve the location and design of the system and septic tanks or other means of disposal. Approval of pumping and

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electrical equipment shall be the responsibility of the building official. Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of a building. Temporary recreational use buildings shall mean any building occupied intermittently for recreational purposes only.

## ARTICLE 29. SIGNS.

- (A) Delete Section 2901.1, Owner's consent.
- (B) Delete Section 2901.2, New signs.
- (C) Delete Section 2906.0, Bonds and Liability Insurance.

## ARTICLE 30. PRECAUTIONS DURING BUILDING OPERATIONS.

- (A) Change Section 3000.1 to read as follows:

3000.1. Scope. The provisions of this article shall apply to all construction operations in connection with the erection, alteration, repair, removal or demolition of buildings and structures. It is applicable only to the protection of the general public. Occupational health and safety protection of building-related workers are regulated by the Virginia Occupational Safety and Health Standards for the Construction Industry, which are issued by the Virginia Department of Labor and Industry.

## APPENDIX A. REFERENCED STANDARDS.

- (A) Add the following standards:

NCSBCS/ANSI A225.1-87

Manufactured Home Installations (referenced in Section 620.4).

NFIPA 13D-89

Installation of Sprinkler Systems in One- and Two-Family Dwellings and Mobile Homes (referenced in Section 1004.2.3)

NFIPA 30A-87

Automotive and Marine Service Station Code (referenced in Section 619.1).

NFIPA 31-87

Installation of Oil Burning Equipment (referenced in Section 619.1)

NFIPA 407-90

Aircraft Fuel Servicing (referenced in Section 619.1)

## ADDENDUM 2. AMENDMENTS TO THE CABO ONE AND TWO FAMILY DWELLING CODE/1989 EDITION AND 1990 AMENDMENTS.

As provided in Section 101.4 of the Virginia Uniform Statewide Building Code, the amendments noted in this addendum shall be made to the CABO One and Two Family Dwelling Code/1989 Edition and 1990 Amendments for use as part of the USBC.

## PART I. ADMINISTRATIVE.

### Chapter 1. Administrative.

- (A) Any requirements of Sections R-101 through R-113 that relate to administration and enforcement of the CABO One and Two Family Dwelling Code are superseded by Article 1, Adoption, Administration and Enforcement of the USBC.

## PART II. BUILDING PLANNING.

### Chapter 2. Building Planning.

- (A) Add Section R-203.5, Insect Screens:

R-203.5. Insect Screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

- (B) Change Section R-207 to read as follows:

## SECTION R-207. SANITATION.

Every dwelling unit shall be provided with a water closet, lavatory and a bathtub or shower.

Each dwelling unit shall be provided with a kitchen area and every kitchen area shall be provided with a sink of approved nonabsorbent material.

All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system.

All plumbing fixtures shall be connected to an approved water supply and provided with hot and cold running water, except water closets may be provided with cold water only.

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Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of the building.

(C) Add to Section R-212:

Key operation is permitted from a dwelling unit provided the key cannot be removed when the door is locked from the side from which egress is to be made.

(D) Change Section R-214.2 to read as follows:

R-214.2. Guardrails. Porches, balconies or raised floor surfaces located more than 30 inches above the floor or grade below shall have guardrails not less than 36 inches in height.

Required guardrails on open sides of stairways, raised floor areas, balconies and porches shall have intermediate rails or ornamental closures which will not allow passage of an object six inches or more in diameter.

(E) Change Section R-215.1 to read:

R-215.1. Smoke detectors required. Smoke detectors shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms and on each story of the dwelling, including basements and cellars, but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels, a smoke detector need be installed only on the upper level, provided the lower level is less than one full story below the upper level, except that if there is a door between levels then a detector is required on each level. All detectors shall be connected to a sounding device or other detectors to provide, when activated, an alarm which will be audible in all sleeping areas. All detectors shall be approved and listed and shall be installed in accordance with the manufacturers instructions. When one or more sleeping rooms are added or created in existing dwellings, the addition shall be provided with smoke detectors located as required for new dwellings.

(F) Add new Section ~~R-221~~ R-220 :

## SECTION ~~R-221~~ R-220 . TELEPHONE OUTLETS.

Each dwelling unit shall be prewired *with a minimum of two-pair twisted wire cable* to provide at least one wall telephone outlet (jack). The telephone wiring shall terminate on the exterior of the building at a point prescribed by the telephone company.

(G) Add new Section ~~R-222~~ R-221 :

## SECTION ~~R-222~~ R-221 . LEAD BASED PAINT.

~~Lead Based Paint.~~ Lead based paint with a lead content of

more than ~~0.5%~~ .06% by weight shall not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

## PART III. CONSTRUCTION.

### Chapter 3. Foundations.

(A) Add Section R-301.6 to read as follows:

R-301.6. Floodproofing. All buildings or structures located in areas prone to flooding as determined by the governing body having jurisdiction shall be floodproofed in accordance with the provisions of Section 2101.6 of the 1990 BOCA National Building Code.

### Chapter 9. Chimneys and Fireplaces.

(A) Add Section R-903.10 as follows:

R-903.10. Spark arrestor. Spark arrestor screens shown in Figure R-904 are optional unless specifically required by the manufacturer of the fireplace stove or other appliance utilizing a chimney.

## PART IV. MECHANICAL.

(A) Add new Section M-1101.1:

M-1101.1. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

## PART V. PLUMBING.

### Chapter 22. Plumbing, Drainage, Waste and Vent Systems (DWV).

(A) Change Section P-2206.8.2 to read as follows:

P-2206.8.2. Sewage ejectors or sewage pumps. A sewage

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ejector or , sewage pump or grinder pump receiving discharge of from a water closets closet shall have a minimum discharge capacity of 20 gallons per minute velocity of 1.9 feet per second throughout the discharge piping to the point of connection with a gravity building drain, gravity sewer or pressure sewer system . The ejector or A nongrinding pump or ejector shall be capable of passing a 1 1/2-inch-diameter solid ball, and the discharge piping of each ejector or pump shall have a backwater valve and be a minimum diameter of two inches. The discharge piping of grinder pumps shall have a minimum diameter of 1 1/4 inches. All pumps shall be protected from backflow by a backwater or check valve. Malfunction alarms shall be provided on sewage pumps or sewage ejectors rated at 20 gallons per minute or less.

(B) Change Section P-2301 - Fixtures, fittings and appurtenances to read as follows:

*P-2301.1. General. Plumbing fixtures, fittings, and appurtenances shall conform to the standards specified in Table No. P-2301 and shall be provided with an adequate supply of potable water to flush and keep the fixtures in a clean and sanitary condition without danger of backflow or cross-connection.*

*Exception: Pursuant to § 36-99.10 of the Code of Virginia, based upon the lack of present or future water supply, local government may elect to apply the provisions of Section P-2301.2 to all or a portion of their locality:*

*P-2301.2. Maximum flow and water consumption. The maximum water consumption flow rates and quantities for all plumbing fixtures and fixture fittings shall comply with the following criteria:*

- 1. Shower heads shall be of the water conserving type, which deliver a maximum flow rate of 2.5 gpm at 80 psi.*
- 2. Faucets on lavatories shall be of the water conserving type, which deliver a maximum flow rate of 2.2 gpm at 60 psi.*
- 3. Water closets shall be of the 1.6 gpf type and shall be provided with a flush tank or similar device designed and installed to supply water in sufficient quantity and flow to flush the contents of the fixture and refill the fixture trap.*
- 4. Sink faucets shall be of the water conserving type, which deliver a maximum flow rate of 2.2 gpm at 60 psi.*

## PART VI. ELECTRICAL.

(A) Revise Part VI as follows:

The electrical installations shall conform to the Electrical

Code for One and Two Family Dwellings (NFPA 70A-1990) published by the National Fire Protection Association.

## PART VII. ENERGY CONSERVATION.

(A) Revise Part VII as follows:

The energy conservation requirements shall conform to Article 31 of the BOCA National Building Code/1990.

\* \* \* \* \*

**Title of Regulation:** VR 394-01-22. Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code/1990.

**Statutory Authority:** §§ 36-98, 36-102 and 36-103 of the Code of Virginia.

**Public Hearing Date:** September 14, 1992 - 10 a.m.  
(See Calendar of Events section for additional information)

### Summary:

*The 1990 edition of Volume II of the Uniform Statewide Building Code is a mandatory, statewide regulation which must be complied with in all buildings and structures to protect the property and the occupants from health and safety hazards that might arise from improper maintenance and use. Technical requirements of Volume II are based on the BOCA National Property Maintenance Code, a companion document to the BOCA National Building Code which is incorporated by Volume I of the Uniform Statewide Building Code, and which, as such, is similarly incorporated, except where amended, by reference into Volume II of the USBC. The Building Maintenance Code supersedes all local regulations heretofore adopted by local government or other political subdivisions. Local enforcement of the code is optional.*

*The proposed amendments to this regulation incorporate statutory changes made during the 1992 session of the General Assembly and respond to a review of public comment submitted to the Board of Housing and Community Development since the effective date of the 1990 edition of the regulation. Section 101.4 is changed to clarify the application of the code to buildings built prior to the effective date of Volume I of the building code. Section 104.4 changes the violation penalty fee to reflect the change to state law; § 105.8 clarifies existing requirements for unsafe buildings and public nuisances; and § 109.5 requires that parking spaces reserved for persons with disabilities be properly identified by January 1, 1993, pursuant to state law. One change has been proposed to the BOCA National Property Maintenance Code in Addendum 1 of Volume II. Section PM-303.4 of BOC*

*has been amended to change the level of lead based paint requiring abatement or removal in existing dwellings, child and day care centers from .06% to .5% by weight as recommended by the HUD Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing.*

VR 394-01-22. Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code/1990.

## Article 1.

### Adoption, Administration and Enforcement.

#### SECTION 100.0. GENERAL.

100.1. Title: These regulations shall be known as Volume II - Building Maintenance Code of the 1990 edition of the Virginia Uniform Statewide Building Code (USBC). Except as otherwise indicated, Building Maintenance Code or code, shall mean Volume II - Building Maintenance Code of the 1990 edition of the USBC.

Note: See Volume I - New Construction Code of the USBC for regulations applicable to new construction.

100.2. Authority: The Building Maintenance Code is adopted according to regulatory authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia.

100.3. Adoption: The Building Maintenance Code was adopted by order of the Board of Housing and Community Development on November 19, 1990. This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.4. Effective date: The Building Maintenance Code shall become effective on March 1, 1991.

100.5. Effect on other codes: The Building Maintenance Code shall apply to all buildings and structures as defined in the Uniform Statewide Building Code Law, Chapter 6, Title 36 of the Code of Virginia. The Building Maintenance Code supersedes all building maintenance codes and regulations of the counties, municipalities political subdivisions and state agencies that have been or may be enacted or adopted, except as modified by Section 100.6, below.

Note: This will not prevent adoption in accordance with Chapter 1, Title 15.1 of the Code of Virginia or other special or general legislation, or requirements by local governments which do not affect the manner of construction or materials to be used in the erection, alteration, repair, maintenance or use of a building or structure.

100.6. Application to pre-USBC buildings: Buildings or portions thereof constructed, altered, converted or repaired before the effective date of the initial edition of the USBC shall be maintained in compliance with the Building Maintenance Code. No provisions of the Building Maintenance Code shall require alterations to buildings or equipment unless an unsafe or unhealthy condition exists.

100.6.1. Hotels and motels: Pre-USBC hotels and motels shall also comply with applicable provisions of Section 109.0.

100.6.2. Nursing homes and Homes for Adults: Pre-USBC nursing homes licensed by the Virginia Department of Health, and pre-USBC Homes for Adults licensed by the Virginia Department of Social Services shall also comply with applicable provisions of section 109.0.

100.7. Application to post-USBC buildings: Buildings or portions thereof that were subject to the USBC when constructed, altered, converted or repaired shall be maintained in compliance with the Building Maintenance Code and with the edition of the USBC that was in effect at that time.

100.7.1 Hotels and motels: Post-USBC hotels and motels shall also comply with applicable provisions of section 109.0.

100.7.2. Nursing homes and Homes for Adults: Post-USBC nursing homes licensed by the Virginia Department of Health, and post-USBC Homes for Adults licensed by the Virginia Department of Social Services shall also comply with applicable provisions of section 109.0.

100.8. Exemptions for certain equipment: The provisions of the Buildings Maintenance Code shall not apply to equipment installed by a provider of publicly regulated utility services, or to electrical equipment used for radio and television transmission. The exempt equipment shall be under the exclusive control of the public service agency and located on property by established rights.

Exception: Buildings or service equipment associated with the exempt equipment.

100.9. Exemptions for farm structures: Farm structures not used for residential purposes shall be exempt from the provisions of the Building Maintenance Code.

Exception: Farm structures lying within a flood plain or in a mudslide prone area shall be subject to floodproofing regulations or mudslide regulations, as applicable.

100.10. Purpose: The purpose of the Building Maintenance Code is to ensure public safety, health and welfare through proper building maintenance and use and continued compliance with minimum standards of building construction, energy conservation, water conservation, and physically handicapped and aged accessibility. Proper building maintenance shall be deemed to include the



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maintenance and inspection of building equipment defined by § 36-97(13) of the Code of Virginia.

## SECTION 101.0. REQUIREMENTS.

101.1. Adoption of model code: The following model code, as amended by §§ 101.2 and 101.3, is hereby adopted and incorporated in the Building Maintenance Code.

THE BOCA NATIONAL PROPERTY MAINTENANCE CODE/ 1990 EDITION

Published by:

Building Officials and Code Administrators International, Inc.  
4051 West Flossmoor Road  
County Club Hills, Illinois 60478-5795

101.2. Administrative and enforcement amendments to the referenced model code: All requirements of the referenced model code and of standards referenced therein that relate to administrative and enforcement matters are deleted and replaced by Article 1 of the Building Maintenance Code.

101.3. Other amendments to the referenced model code: The amendments noted in Addendum 1 shall be made to the specified articles and sections of the BOCA National Property Maintenance Code/ 1990 edition for use as part of this Code.

101.4. Limitation of application of model code: No provision of the model code may be used to require alterations to the design or equipment of any portion of a building that was subject to the USBC when constructed, altered or converted as to use group, and which is occupied in accordance with the certificate of occupancy issued under the applicable edition of the USBC. In the application of the model code to other buildings, no requirement of the current edition of *Volume I, New Construction Code* of the USBC shall be exceeded.

## SECTION 102.0. LOCAL ENFORCING AGENCY.

102.1. Enforcement by local governments: Any local government may, after official action, enforce the Building Maintenance Code, or any portion of the code. The local governing body may assign responsibility for enforcement of the Building Maintenance Code, or any portion thereof, to a local agency or agencies of its choice. The terms "enforcing agency" and "code official" are intended to apply to the agency or agencies to which responsibility for enforcement has been assigned. The terms "building official" or "building department" apply only to the local building official or building department.

102.2. Right of inspection: The local governing body may inspect existing buildings to enforce the Building Maintenance Code, as authorized by § 36-105 of the Code of Virginia.

102.3. Interagency coordination: When enforcement of any portion of the Building Maintenance Code is assigned to an agency other than the building department, that agency shall coordinate its reports of inspection with the building department. All required alterations, repairs, installations or constructions shall be subject to the building permit and certificate of use and occupancy provisions of Volume I of the USBC.

102.4. Code official: Each local enforcing agency shall have an executive official in charge, hereinafter referred to as the code official.

102.4.1. Appointment: The code official shall be appointed by the local government.

102.5. Qualifications of local enforcing agency personnel: The local government shall establish qualifications for the code official and technical assistants adequate to ensure proper administration and enforcement of the Building Maintenance Code.

(Note: It is recommended that the code official have at least five years of building maintenance related experience. Consideration should be given to the use of certification programs offered by the Department of Housing and Community Development.)

102.6. Relief from personal responsibility: The local enforcing agency personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees. The code official or the code official's subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the USBC as a result of any act required or permitted in the discharge of official duties while assigned to the enforcing agency as employees, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed by such officer or employee in the discharge of official duties and under the provisions of the Building Maintenance Code may be defended by the enforcing agency's legal representative.

102.7. Control of conflict of interest: The minimum standards of conduct for officials and employees of the enforcing agency shall be in accordance with the provisions of the Virginia Comprehensive Conflict of Interest Act.

102.8. Assistance by state: Upon notification of appointment of a code official, the Professional Services Office shall advise the official of all services offered and will keep the official continually informed of developments affecting the code and its interpretation and administration.

## SECTION 103.0. DUTIES AND POWERS OF THE CODE OFFICIAL.

103.1. General: The code official shall enforce the provisions of the Building Maintenance Code as provided herein and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

Note: Section 36-105 of the Code of Virginia provides that fees may be levied by the local governing body in order to defray the cost of enforcement and appeals.

103.2. Notices and orders: The code official shall issue all necessary notices or orders to ensure compliance with the requirements of this code for the health, safety and general welfare of the public.

103.3. Delegation of duties and powers: The code official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with the code.

103.4. Modifications: The code official may grant modifications to any of the provisions of this code upon application by the owner or the owner's agent provided the spirit and intent of the Building Maintenance Code are observed and public health, welfare, and safety are assured. A copy of the application for a modification and a copy of the final decision of the code official shall be kept in the permanent records of the enforcing agency.

103.5. Unsafe conditions not related to maintenance: When the code official finds a condition that constitutes a serious and dangerous hazard to life or health in a building which was constructed, altered, converted, or repaired before the effective date of the initial edition of the USBC, and when such condition was not caused by faulty maintenance, or by failure to comply with the applicable state and local regulations that were in effect at the time, the official may order the minimum changes needed to remedy the hazardous condition.

Note: The Building Maintenance Code does not generally provide for retrofitting existing buildings. However, conditions may exist in older buildings, because of faulty design or equipment, that constitute such serious and dangerous hazards that correction is necessary to protect life and health. It is not the intent of this section that such changes comply fully with the requirements of the current edition of the USBC. Only those changes that are needed to remedy the serious and dangerous hazards to life or health may be required by the code official. Reference is also made to section 103.2 of the administrative provisions of the Volume I of the USBC, which provides authority for modifications to be issued for alternate means to be used that provide the same level of safety.

103.6. Enforcing agency records: The code official shall

keep records of reports of inspections, notices and orders issued and such other matters as directed by the local government. Records may be disposed of in accordance with the provisions of the Virginia Public Records Act, (a) after one year in the case of buildings under 1,000 square feet in area and one and two family dwellings of any area, and (b) after three years in the case of all other buildings.

## SECTION 104.0. VIOLATIONS.

104.1. Code violations prohibited: Buildings and equipment in violation of the provisions of this code shall not be used except as approved by the code official.

104.2. Notice of violation: The code official shall serve a notice of violation on the person responsible for maintenance or use of a building in violation of the provisions of this code. Such order shall reference the code section that serves as a basis for the violation and specify a time limit for the discontinuance or abatement of the violation. Such notice of violation shall be in writing, and be served by either delivering a copy of the notice to such person by mail to the last known post office address, delivered in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place at the entrance door or accessway if such person cannot be found on the premises.

104.3. Prosecution of violation: If the notice of violation is not complied with, the code official shall request, in writing, the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation; or to require the removal or termination of the use of the building in violation of the provisions of this code.

104.4. Violation penalties: Violations of this code are a misdemeanor in accordance with § 36-106 of the Code of Virginia, and upon conviction, may be punished by a fine of not more than ~~\$1,000~~ \$2,500.

104.5. Abatement of violation: Conviction of a violation of this code shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of this code relating to maintenance and use of the building or premises.

## SECTION 105.0. UNSAFE BUILDINGS.

105.1. General: This section shall apply to buildings and their equipment that fail to comply with the Building Maintenance Code through damage, deterioration, infestation, improper maintenance, or for other reasons, and thereby become unsafe, unsanitary, or deficient in adequate exit facilities, and which constitute a hazard, or are otherwise dangerous to human life, health or safety, or the public welfare. All such buildings shall be declared by the code official to be a public nuisance and unfit for

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human habitation and shall be made safe through compliance with this code or shall be vacated, and either secured against public entry, or taken down and removed as directed by the code official. A vacant building, unsecured or open at door or window, may be deemed a fire hazard and unsafe within the meaning of this section.

105.2. Inspection of unsafe buildings: The code official shall examine any building reported as unsafe, and shall prepare a report to be filed in the records of the enforcing agency. In addition to a description of unsafe conditions found, the report shall include the use of the building, and nature and extent of damages, if any, caused by a collapse or failure.

105.3. Notice of unsafe buildings: If a building is found to be unsafe, the code official shall serve a notice to the owner, the owner's agent or person in control of the unsafe building. The notice shall specify the required repairs or improvements to be made to the building, or require the unsafe building, or portion of the building to be taken down and removed within a stipulated time. Such notice shall require the person notified to declare to the designated official without delay acceptance or rejection of the terms of the notice.

Note: Whenever possible, the notice of unsafe building should also be given to the tenants of the unsafe building.

105.4. Posting of unsafe building notice: If the person named in the notice of an unsafe building cannot be found, the notice shall be sent by registered or certified mail to the last known address of such person. A copy of the notice shall be posted in a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

105.5. Disregard of notice: If the person served with a notice of unsafe building refuses or neglects to comply with requirements of the notice to abate the unsafe condition, the code official may revoke the certificate of occupancy. In the case of a vacant building, including one vacated through revocation of the certificate of occupancy, the code official may cause the building to be closed through any available means.

105.6. Authority to vacate building: When in the opinion of the code official, there is actual and immediate danger of failure or collapse of a building or any part of a building which would endanger life; or when any building or part of a building has fallen and life is endangered by occupancy of the building; or when any other hazardous condition poses an immediate and serious threat to life; or when a building is declared a public nuisance, and unfit for human habitation, the code official may order the occupants to vacate the building. The code official shall post a notice at each entrance to such building that reads: "THIS STRUCTURE IS UNSAFE OR UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL." Upon the posting of the notice, no person shall enter such a building

except upon authorization of the code official for one of the following purposes: (i) to make the required repairs; (ii) to take the building down and remove it; or (iii) to make inspections.

105.7. Temporary safeguards and emergency repairs: When, in the opinion of the code official, there is immediate danger of collapse or failure of a building or any part of a building which would endanger life, or when a violation of this code results in a hazard that creates an immediate, serious and imminent threat to the life and safety of the occupants, the code official shall have the necessary work done to the extent permitted by the local government to make such building or part of the building temporarily safe, whether or not legal action to force compliance has begun.

*105.8. Abatement or removal: Whenever the owner of a building or structure that has been deemed to be a public nuisance pursuant to § 105.1 fails to comply with the requirements of the notice to abate, the code official may cause the building to be razed or removed in accordance with § 108.1. For purposes of coordination and compliance, and pursuant to § 15.1-29.21 of the Code of Virginia, the local governing body may abate, raze or remove such public nuisance and bring action against the owner or responsible party to recover the costs incurred for such razing and removal.*

## SECTION 106.0. APPEAL TO THE LOCAL BOARD OF BUILDING CODE APPEALS.

106.1. Grounds for appeal: The owner of a building or the owner's agent may appeal from a decision of the code official to the local Building Code Board of Appeals established under Volume I of the USBC within 21 calendar days after the notice is served when it is claimed that:

1. The code official has refused to grant a modification of the provisions of the code;
2. The true intent of this code has been incorrectly interpreted;
3. The provisions of this code do not fully apply;
4. The use of a form of compliance that is equal to or better than that specified in this code has been denied.

106.2. Form of application: Applications for appeals shall be submitted in writing to the Local Building Code Board of Appeals.

106.3. Notice of meeting: The board shall meet upon notice of the chairman or at stated periodic meetings if warranted by the volume of work. The board shall meet within 30 calendar days of the filing of an appeal.

106.4. Hearing open to public: All hearings shall be public

in accordance with the Virginia Freedom of Information Act. The appellant, the appellant's representative, the code official of the jurisdiction and any other person whose interest may be affected by the matter on appeal, shall be given an opportunity to be heard.

106.5. Postponement of hearing: A quorum shall be more than 50% of the board. When a quorum of the board, as represented by members or alternates, is not present to consider a specific appeal, either the appellant, the building official or their representatives may, prior to the start of the hearing, request a single postponement of the hearing of up to 14 calendar days. A vote equivalent to a majority of the quorum of the board is required to reverse or modify the decision of the building official.

106.6. Form of decision, notification: Every action of the board on an appeal shall be by resolution. Certified copies shall be furnished to the appellant, to the building official, and to the code official.

106.7. Enforcement of decision: The code official shall take immediate action in accordance with the decision of the board.

## SECTION 107.0. APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

107.1. Appeal to the State Building Code Technical Review Board: Any person aggrieved by a decision of the local Board of Building Code Appeals, who was a party to the appeal, may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 21 calendar days of receipt of the decision of the local appeals board by the aggrieved party.

107.2. Enforcement of decision: Upon receipt of the written decision of the State Building Code Technical Review Board, the code official shall take immediate action in accordance with the decision.

107.3. Court review: Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board shall be to the circuit court of original jurisdiction in accordance with the provisions of the Administrative Process Act, Article 4 of Chapter 1.1:1 of Title 9 of the Code of Virginia.

## SECTION 108.0. DEMOLITION OF BUILDINGS.

108.1. Procedures for demolition: Whenever a building is to be demolished pursuant to any provision of this code, the work shall be carried out in compliance with the requirements of Volume I of the USBC.

## SECTION 109.0. SPECIAL PROVISIONS.

109.1. General: The provisions of this section contain requirements for improving the safety of certain buildings

by requiring the installation of materials or equipment not originally required. Unless otherwise noted, these provisions shall apply equally to both pre- and post-USBC buildings.

109.2. Hotels and motels: Existing hotels and motels shall comply with the provisions of this section.

109.2.1. Fire sprinkler system: An automatic sprinkler system meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment (effective date March 1, 1990), for Use Group R-1, shall be installed throughout existing hotels and motels by either March 1, 1997, or within seven years of the date upon which an adequate water supply is made available to meet the needs of the suppression system, whichever is later.

Exceptions:

1. Hotels and motels that are equipped throughout with an automatic sprinkler system.
2. Hotels and motels which are three stories or less in height.

109.2.2. Single and multiple station smoke detectors: Single and multiple station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment, for Use Group R-1, shall be installed in existing hotels and motels by March 1, 1993.

Exception: Hotels and motels that are equipped throughout with single and multiple station smoke detectors.

109.3. Nursing homes and nursing facilities: Existing nursing homes and nursing facilities licensed by the Virginia Department of Health shall comply with the provisions of this section.

109.3.1. Automatic sprinkler system: An automatic sprinkler system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment (effective date October 1, 1990), for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by January 1, 1993, as follows:

1. NFIPA 13D Standard for one story buildings.
2. NFIPA 13R Standard for buildings two or three stories in height.
3. NFIPA 13 Standard for buildings four or more stories in height.

Exceptions:

1. Nursing homes and nursing facilities which are equipped throughout with an automatic sprinkler system.
2. Nursing facilities consisting of certified long-term

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care beds located on the ground floor of general hospitals.

109.3.1.1. Quick response sprinklers; Quick response sprinklers shall be installed in patient sleeping rooms of buildings subject to § section 109.3.1.

109.3.1.2. Exceptions provided for: Buildings equipped throughout with an automatic fire sprinkler system meeting the requirements of NFPA 13 shall be permitted to use the exceptions provided in the USBC, Volume I, 1987 Edition, Third Amendment including, but not limited to, the following:

1. Section 502.3 (Area Increase)
2. Section 503.1 (Height Increase)
3. Section 610 (Use Group I-2 Areas)
4. Section 807 (Types and Location of Means of Egress)
5. Section 808 (Capacity of Egress Components)
6. Section 809 (Number of Exits)
7. Section 810 (Exit Access Passageways and Corridors)
8. Section 921 (Firestopping and Draftstopping)

109.3.2. Fire protective signaling system: A fire protective signaling system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by August 1, 1994.

Exception: Nursing homes and nursing facilities that are equipped throughout with an automatic fire protective signaling system.

109.3.3. Fire detection system: An automatic fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by August 1, 1994.

109.3.3.1. Fire detection system in existing sprinklered facilities: Nursing homes and nursing facilities that are exempt from § 109.3.1 because of an existing automatic sprinkler system shall install a fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment, for Use Group I-2.

109.4. Homes for Adults: Existing Homes for Adults licensed by the Virginia Department of Social Services shall comply with this section.

109.4.1. Fire protective signaling system and fire detection system: A fire protective signaling system and an

automatic fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in Homes for Adults by August 1, 1994.

Exception: Homes for Adults that are equipped throughout with a fire protective signaling system and an automatic fire detection system.

109.4.2. Single and multiple station smoke detectors: Battery or AC-powered single and multiple station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in Homes for Adults by August 1, 1994.

Exception: Homes for Adults that are equipped throughout with single and multiple station smoke detectors.

*109.5. Identification of handicapped parking spaces: All spaces reserved for the use of handicapped persons shall be identified by an above grade sign with a bottom edge no lower than four feet nor higher than seven feet above the parking surface. Such signs shall be installed in accordance with applicable provisions of the current edition of Volume I of the USBC by January 1, 1993.*

## ADDENDUM 1.

### AMENDMENTS TO THE BOCA NATIONAL PROPERTY MAINTENANCE CODE/ 1990 EDITION.

As provided in Section 101.3 of Volume II - Building Maintenance Code of the 1990 edition of the USBC, the amendments noted in this Addendum shall be made to the BOCA National Property Maintenance Code/ 1990 edition for use as part of the Building Maintenance Code.

#### ARTICLE 1. ADMINISTRATION AND ENFORCEMENT.

(A) Article 1, Administration and Enforcement, is deleted in its entirety and replaced with Article 1 of the Building Maintenance Code.

#### ARTICLE 3. ENVIRONMENTAL REQUIREMENTS.

- (A) Delete Section PM-301.1.
- (B) Delete Section PM-301.4.
- (C) Delete Section PM-301.5.
- (D) Delete Section PM-301.8.

Note: The above sections of this code have been deleted because the agency's Attorney General representative advises that they cannot be interpreted as building regulations under the current language of § 36-97(7) of the Code of Virginia.

(E) Change Section PM-302.12 to read:

PM-302.12. Insect screens: During the period from April 1 to December 1 every door, window and other outside opening required for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device in good working condition.

Exception: Screen doors shall not be required for out-swinging doors or other types of openings which make screening impractical, provided other approved means, such as air curtains or insect repellent fans are employed.

Change Section PM-303.4 to read as follows:

*PM-303.4. Lead-based paint: Interior and exterior painted surfaces of dwellings, child and day care facilities, including fences and outbuildings, that contain in excess of 0.5% lead by weight shall be removed or covered in an approved manner. Any surface to be covered shall first be marked with warnings as to the lead content of such surface.*

## ARTICLE 4.

### LIGHT, VENTILATION AND SPACE REQUIREMENTS.

(A) Change Section PM-401.1 to read:

PM-401.1. Habitable spaces: Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total window area, measured between stops, for every habitable space shall be 4.0% of the floor area of such room, except in kitchens when artificial light may be provided in accordance with the provisions of the building code. Whenever walls or other portions of a structure face a window of any other room and such obstructions are located less than three feet (914 mm) from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.

(B) Delete Section PM-403.10.

## ARTICLE 6.

(A) Change Section PM-601.1 to read:

PM-601.1. Residential buildings: Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guest room

on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C) in all habitable rooms, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 60°F (16°C) during other hours. The temperature shall be measured at a point 3 feet (914 mm) above the floor and 3 feet (914 mm) from the exterior walls. When the outdoor temperature is below the outdoor design temperature required for the locality by the mechanical code listed in Appendix A, the owner or operator shall not be required to maintain the minimum room temperatures, provided the heating system is operating at full capacity, with supply valves and dampers in a full open position.

(B) Change Section PM-601.2 to read:

PM-601.2. Nonresidential structures: Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C) during all working hours. The temperature shall be measured at a point 3 feet (914 mm) above the floor and 3 feet (914 mm) from the exterior walls.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

(C) Add new Section PM-603-3 to read:

PM-603.3. Inspection: Routine and periodic inspections shall be performed in accordance with Part X of ASME A-17.1 listed in Appendix A.

## ARTICLE 7.

(A) Add new Section PM-704.5.2.

PM-704.5.2. Visual and audible alarms: Visual and audible alarms meeting the requirements of ANSI/UL Standard 1638 and ANSI/NFPA 72G shall be provided in occupancies housing the hard of hearing as required by § 36-99.5 of the Code of Virginia; however, all visual alarms shall provide a minimum intensity of 100 candela. Portable alarms meeting these requirements shall be accepted.

## ARTICLE 8.

(A) Delete Section PM-801.2.

(B) Delete Section PM-801.3.

## ARTICLE 9.

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(A) Delete Article 9.

## APPENDIX A - REFERENCED STANDARDS.

(A) Change Appendix A as follows:

1. Delete standard reference number BOCA NBC-90, BOCA National Building Code and substitute the Virginia Uniform Statewide Building Code, Volume I 1990 edition.

2. Delete standard reference number BOCA NFPC-90, BOCA National Fire Prevention Code and substitute the Virginia Statewide Fire

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

NOTICE: Section V(7) of Attachment 4.19-A to the State Plan for Medical Assistance was amended, effective December 1, 1991, by an emergency regulation which appeared in 8:6 VA.R. 1004-1005 December 16, 1991.

**Title of Regulation:** State Plan for Medical Assistance Relating to Disproportionate Share Adjustment Payments for State Teaching Hospitals.  
**VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates—Inpatient Hospital Care.**

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

**Public Hearing Date:** N/A - Written comments may be submitted until October 9, 1992.

(See Calendar of Events section for additional information)

#### Summary:

*The purpose of this action is to promulgate permanent regulations to supersede the existing emergency regulation on the same issue.*

*The section of the State Plan affected by this action is the Methods and Standards for Establishing Payment Rates—Inpatient Hospital Care (Attachment 4.19 A).*

*The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended § 1923(c) of the Social Security Act to give states greater flexibility in making required payment adjustments to hospitals which serve a disproportionate number of low income patients with special needs. This flexibility permits the payment to vary according to the type of hospital, and does not appropriately recognize the extraordinary costs, volume or proportion of services which the large state-owned teaching hospitals provide to low-income patients and patients eligible for medical assistance.*

*The emergency regulation provided for two types of hospitals (state-owned teaching hospitals and all other hospitals) and varied the payment adjustment for disproportionate share hospitals by type of hospital.*

*Hospitals other than state-owned teaching hospitals are continuing to receive an adjustment equal to (i) their Medicaid utilization in excess of 8% times (ii) the lower of the prospective operating cost rate or ceiling. State-owned teaching hospitals are receiving (i) 11 times their Medicaid utilization in excess of 8% times (ii) the lower of the prospective operating cost rate or ceiling.*

*To date, the agency's experience with the emergency regulation has been to significantly increase disproportionate share payments to state-owned teaching hospitals. No comments have been received from nonstate-owned hospitals concerning the current emergency regulations.*

VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates—Inpatient Hospital Care.

The state agency will pay the reasonable cost of inpatient hospital services provided under the Plan. In reimbursing hospitals for the cost of inpatient hospital services provided to recipients of medical assistance.

I. For each hospital also participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the state agency will apply the same standards, cost reporting period, cost reimbursement principles, and method of cost apportionment currently used in computing reimbursement to such a hospital under Title XVIII of the Act, except that the inpatient routine services costs for medical assistance recipients will be determined subsequent to the application of the Title XVIII method of apportionment, and the calculation will exclude the applicable Title XVIII inpatient routing service charges or patient days as well as Title XVIII inpatient routine service cost.

II. For each hospital not participating in the Program under Title XVIII of the Act, the state agency will apply the standards and principles described in 42 CFR 447.250 and either (a) one of the available alternative cost apportionment methods in 42 CFR 447.250, or (b) the "Gross RCCAC method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient under the Medical Assistance Program.

III. For either participating or nonparticipating facilities, the Medical Assistance Program will pay no more in the aggregate for inpatient hospital services than the amount it is estimated would be paid for the services under the Medicare principles of reimbursement, as set forth in 42 CFR 447.253(b)(2), and/or lesser of reasonable cost or customary charges in 42 CFR 447.250.

IV. The state agency will apply the standards and principles as described in the state's reimbursement plan approved by the Secretary, HHS on a demonstration or experimental basis for the payment of reasonable costs by methods other than those described in paragraphs I and II above.

V. The reimbursement system for hospitals includes the following components:

(1) Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural—0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban—0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

(2) Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement ceilings.

The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for all hospitals in calendar year 1981. Individual hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new

operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia (DRI-V), as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1992, for providers subject to the prospective payment system, the allowance for inflation, as described above, which became effective on July 1, 1989, shall be converted to an escalation factor by adding two percentage points (200 basis points) (DRI-V+2), to the then current allowance for inflation. The escalation factor shall be applied in accordance with the current inpatient hospital reimbursement methodology in effect on June 30, 1992. On July 1, 1992, the conversion to the new escalation factor shall be accomplished by a transition methodology which, for non-June 30 year end hospitals, applies the escalation factor to escalate their payment rates for the months between July 1, 1992, and their next fiscal year ending on or before May 31, 1993.

The new method shall still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

(3) Subsequent to June 30, 1992, the group ceilings shall not be recalculated on allowable costs, but shall



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be updated by the escalator.

(4) Prospective rates for each hospital shall be based upon the hospital's allowable costs plus the escalator, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment shall be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to PRM-15 (Sec. 400), shall be considered as pass throughs and not part of the calculation.

(5) An incentive plan shall be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive shall be calculated based on the annual cost report.

The table below presents three examples under the new plan:

Group Ceiling	Hospital's Allowable Cost Per Day	Difference		Sliding Scale Incentive	
		% of Ceiling	% of Ceiling	% of Difference	% of Difference
\$230	\$230	0	0	0	0
\$230	207	23.00	10%	2.30	10%
\$230	172	57.50	25%	14.38	25%
\$230	143	76.00	33%	19.00	25%

(6) There shall be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

(7) *Disproportionate share hospitals defined.* Hospitals which have a disproportionately higher level of Medicaid patients and which exceed the ceiling shall be allowed a higher ceiling based on the individual hospital's Medicaid utilization. This shall be measured by the percent of Medicaid patient days to total hospital patient days. Each hospital with a Medicaid utilization of over 8.0% shall receive an adjustment to its ceiling. The adjustment shall be set at a percent added to the ceiling for each percent of utilization up to 30%.

*Disproportionate share hospitals defined.*

Effective July 1, 1988, The following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

## A. Criteria.

1. A Medicaid inpatient utilization rate in excess of 8.0% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget

Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subsection A 2 does not apply to a hospital:

- At which the inpatients are predominantly individuals under 18 years of age; or
- Which does not offer nonemergency obstetric services as of December 21, 1987.

## B. Payment adjustment.

1. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the type of hospital on the individual hospital's Medicaid utilization. There shall be two types of hospitals: (i) Type One, consisting of state-owned teaching hospitals, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization shall be determined by dividing the total number of Medicaid inpatient days by the number of inpatient days. Each hospital with a Medicaid utilization of over 8.0% shall receive a disproportionate share payment adjustment.

2. For Type One hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times 11, times (ii) the lower of the prospective operating cost rate or ceiling. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times (ii) the lower of the prospective operating cost rate or ceiling.

2. A payment adjustment for hospitals meeting the eligibility criteria in subsection A above and calculated under subsection B 1 above shall be phased in over a 3-year period. As of July 1, 1988, the adjustment shall be at least one-third the amount of the full payment adjustment; as of July 1, 1990, the payment shall be at least two-thirds the full payment adjustment; and as of July 1, 1990, the payment shall be the full amount of the payment adjustment. However, for each year of the phase-in period, no hospital shall receive a disproportionate share payment adjustment which is less than it would have received if the payment had been calculated pursuant to § V (5) of Attachment 4.10A to the State Plan in effect before July 1, 1988.

## (8) Outlier adjustments.

a. DMAS shall pay to all enrolled hospitals an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under one year of age.

b. DMAS shall pay to disproportionate share hospitals (as defined in V (7) above) an outlier adjustment in payment amount for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under six years of age.

### c. The outlier adjustment calculation.

(1) Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals identified in (8) a or b above. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

(2) Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals identified in (8) a or b above. Any hospital which qualifies for the extensive neonatal care provision (as governed by V (6) above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals identified in (8) a or b above.

(3) Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in (8) c (2) above.

(4) DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

d. Pursuant to § 1 of Supplement 1 to Attachment 3.1 A & B, there is no limit on length of time for medically necessary stays for individuals under six years of age. This section provides that consistent with the EPSDT program referred to in 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.

VI. In accordance with Title 42 §§ 447.250 through 447.272 of the Code of Federal Regulations which implements § 1902(a)(13)(A) of the Social Security Act, the Department of Medical Assistance Services ("DMAS") establishes payment rates for services that are reasonable and adequate to meet the costs that shall be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. To establish these rates Virginia uses the Medicare principles of cost reimbursement in determining the allowable costs for Virginia's prospective payment system. Allowable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of changes in financial position, and footnotes to the financial statements;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Home office cost report, if applicable; and
6. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

Although utilizing the cost apportionment and cost finding methods of the Medicare Program, Virginia does not adopt the prospective payment system of the Medicare Program enacted October 1, 1983.

### VII. Revaluation of assets.

A. Effective October 1, 1984, the valuation of an asset of a hospital or long-term care facility which has undergone

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a change of ownership on or after July 18, 1984, shall be the lesser of the allowable acquisition cost to the owner of record as of July 18, 1984, or the acquisition cost to the new owner.

B. In the case of an asset not in existence as of July 18, 1984, the valuation of an asset of a hospital or long-term care facility shall be the lesser of the first owner of record, or the acquisition cost to the new owner.

C. In establishing an appropriate allowance for depreciation, interest on capital indebtedness, and return on equity (if applicable prior to July 1, 1986) the base to be used for such computations shall be limited to A or B above.

D. Costs (including legal fees, accounting and administrative costs, travel costs, and feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) shall be reimbursable only to the extent that they have not been previously reimbursed by Medicaid.

E. The recapture of depreciation up to the full value of the asset is required.

F. Rental charges in sale and leaseback agreements shall be restricted to the depreciation, mortgage interest and (if applicable prior to July 1, 1986) return on equity based on cost of ownership as determined in accordance with A and B above.

## VIII. Refund of overpayments.

### A. Lump sum payment.

When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

### B. Offset.

If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

### C. Payment schedule.

If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time

of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services ("the director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

### D. Extension request documentation.

In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

### E. Interest charge on extended repayment.

Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by

DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

IX. Effective October 1, 1986, hospitals that have obtained Medicare certification as inpatient rehabilitation hospitals or rehabilitation units in acute care hospitals, which are exempted from the Medicare Prospective Payment System (DRG), shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding sections I, II, III, IV, V, VI, VII, VIII and excluding V(6). Additionally, rehabilitation hospitals and rehabilitation units of acute care hospitals which are exempt from the Medicare Prospective Payment System will be required to maintain separate cost accounting records, and to file separate cost reports annually utilizing the applicable Medicare cost reporting forms (HCFA 2552 series) and the Medicaid forms (MAP-783 series).

A new facility shall have an interim rate determined using a pro forma cost report or detailed budget prepared by the provider and accepted by the DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider will be held to the lesser of its actual operating cost or its peer group ceiling. Subsequent rates will be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of IX.

X. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

XI. Pursuant to Item 389 E4 of the 1988 Appropriation Act (as amended), effective July 1, 1988, a separate group ceiling for allowable operating costs shall be established for state-owned university teaching hospitals.

## XII. Nonenrolled providers.

A. Hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the DMAS average reimbursable inpatient cost-to-charge ratio, updated annually, for enrolled hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Hospitals that are not enrolled shall submit claims using the required DMAS invoice formats. Such

claims must be submitted within 12 months from date of services. A hospital is determined to regularly treat Virginia Medicaid recipients and shall be required by DMAS to enroll if it provides more than 500 days of care to Virginia Medicaid recipients during the hospitals' financial fiscal year. A hospital which is required by DMAS to enroll shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding Sections I, II, III, IV, V, VI, VII, VIII, IX, and X. The hospital shall be placed in one of the DMAS peer groupings which most nearly reflects its licensed bed size and location (Section V.(1) above). These hospitals shall be required to maintain separate cost accounting records, and to file separate cost reports annually, utilizing the applicable Medicare cost reporting forms, (HCFA 2552 Series) and the Medicaid forms (MAP-783 Series).

B. A newly enrolled facility shall have an interim rate determined using the provider's most recent filed Medicare cost report or a pro forma cost report or detailed budget prepared by the provider and accepted by DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider shall be limited to the lesser of its actual operating costs or its peer group ceiling. Subsequent rates shall be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of XII.A.

C. Once a hospital has obtained the enrolled status, 500 days of care, the hospital must agree to become enrolled as required by DMAS to receive reimbursement. This status shall continue during the entire term of the provider's current Medicare certification and subsequent recertification or until mutually terminated with 30 days written notice by either party. The provider must maintain this enrolled status to receive reimbursement. If an enrolled provider elects to terminate the enrolled agreement, the nonenrolled reimbursement status will not be available to the hospital for future reimbursement, except for emergency care.

D. Prior approval must be received from the DMAS Health Services Review Division when a referral has been made for treatment to be received from a nonenrolled acute care facility (in-state or out-of-state), except in the case of an emergency or because medical resources or supplementary resources are more readily available in another state.

E. Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

## XIII. Payment Adjustment Fund.

A. A Payment Adjustment Fund shall be created in each

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of the Commonwealth's fiscal years during the period July 1, 1992, to June 30, 1996. The Payment Adjustment Fund shall consist of the Commonwealth's cumulative addition of \$5 million in general funds and its corresponding federal financial participation for reimbursement to nonstate-owned hospitals in each of the Commonwealth's fiscal years during this period. Each July 1, or as soon thereafter as is reasonably possible, the Commonwealth shall, through a single payment to each nonstate-owned hospital, equitably and fully disburse the Payment Adjustment Fund for that year.

B. In the absence of any amendment to the State Plan, Attachment 4.19A, for the Commonwealth's fiscal year after 1996, the Payment Adjustment Fund shall be continued at the level established in 1996 and shall be disbursed in accordance with the methodology described below.

C. The Payment Adjustment Funds shall be disbursed in accordance with the following methodology:

1. Identify each nonstate-owned hospital provider (acute, neonatal and rehabilitation) receiving payment based upon its peer group operating ceiling in May of each year.
2. For each such hospital identified in subdivision 1, identify its Medicaid paid days for the 12 months ending each May 31.
3. Multiply each such hospital's days under subdivision 2 by such hospital's May individual peer group ceiling (i.e, disregarding such hospital's actual fiscal year end ceiling) as adjusted by its then current disproportionate share factor.
4. Sum all hospital amounts determined in subdivision 3.
5. For each such hospital, divide its amount determined in subdivision 3 by the total of such amounts determined in subdivision 4. This then becomes the hospital adjustment factor ("HAF") for each such hospital.
6. Multiply each such hospital's HAF times the amount of the Payment Adjustment Fund ("PAF") to determine its potential PAF share.
7. Determine the unreimbursed Medicaid allowable operating cost per day for each such hospital in subdivision 1 for the most recent fiscal year on file at DMAS as of May 31, inflate such costs by DRI-V+2 from the midpoint of such cost report to May 31 and multiply such inflated costs per day by the days identified for that hospital in subdivision 2, creating the "unreimbursed amount."
8. Compare each such hospital's potential PAF share to its unreimbursed amount.

9. Allocate to all hospitals, where the potential PAF share exceeds the unreimbursed amount, such hospital's unreimbursed amount as its actual PAF share.

10. If the PAF is not exhausted, for those hospitals with an unreimbursed amount balance, recalculate a new HAF for each such hospital by dividing the hospital's HAF by the total of the HAFs for all hospitals with an unreimbursed amount balance.

11. Recompute each hospital's new potential share of the undisbursed PAF by multiplying such funds by each hospital's new HAF.

12. Compare each hospital's new potential PAF share to its unreimbursed amount. If the unreimbursed amounts exceed the PAF shares at all hospitals, each hospital's new PAF share becomes its actual PAF share. If some hospitals' unreimbursed amounts are less than the new potential PAF shares, allocate to such hospitals their unreimbursed amount as their actual PAF share. Then, for those hospitals with an unreimbursed amount balance, repeat steps 10, 11 and 12 until each hospital's actual PAF share is determined and the PAF is exhausted.

13. The annual payment to be made to each nonstate-owned hospital from the PAF shall be equal to their actual PAF share as determined and allocated above. Each hospital's actual PAF share payment shall be made on July 1, or as soon thereafter as is reasonably feasible.

# FINAL REGULATIONS

For information concerning Final Regulations, see information page.

## Symbol Key

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

## DEPARTMENT OF AVIATION (BOARD OF)

**Title of Regulation:** VR 165-01-02. Rules and Regulations of the Virginia Aviation Board Governing the Licensing of Aircraft and Airports, and the Operation of Aircraft and Airports in the State of Virginia. **REPEALED.**

**Title of Regulation:** VR 165-01-02:1. Regulations Governing the Licensing and Operation of Airports, Aircraft and Obstructions to Airspace in the Commonwealth of Virginia.

**Statutory Authority:** § 5.1-2 of the Code of Virginia.

**Effective Date:** September 9, 1992.

### Summary:

Since having last been amended in 1980, the rules and regulations have become outdated in terms of content, organization, and currency with Aviation Law of the Commonwealth. The repeal of those rules and regulations, along with a concurrent promulgation of the new regulations, will create a better organized and current set of procedures by which to carry out the intent of the Virginia Aviation Law as specified in Title 5.1 of the Code of Virginia.

These new regulations streamline the department's regulatory function, omitting areas of responsibility no longer valid, and expanding others deemed important for aviation safety.

The regulations address topical aviation areas in Virginia for the protection and enhancement of safe and efficient air transportation in the Commonwealth. The regulations relate to (i) aircraft; (ii) airports and landing areas; (iii) obstructions to airspace; and (iv) miscellaneous items including accident reports, aircraft surveys, and enforcement of the regulations.

Essentially this action repeals the Rules and Regulations Governing the Licensing of Airmen, Aircraft and Airports, and the Operation of Aircraft and Airports in the State of Virginia, and promulgates their replacement, to be known as the Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstruction to Airspace in the Commonwealth of Virginia. Outlined below are the resulting changes.

1. Numerous modifications, deletions, and additions to definitions.

2. Deleted entire section regarding licensing of airmen.
3. Combined from several previous sections items dealing with aircraft into new Part II.
4. Combined and streamlined two previous sections regarding licensing of airports and landing areas into new Part III.
5. Created new Part IV dealing with obstructions and the protection of navigable airspace.
6. Deleted four previous sections regarding parachuting and drop zones.
7. Streamlined section regarding aerial application aircraft.
8. Added miscellaneous items to the General Section.

VR 165-01-02:1. Regulations Governing the Licensing and Operation of Airports, Aircraft and Obstructions to Airspace in the Commonwealth of Virginia.

## PART I. DEFINITIONS.

### § 1.1. Definitions.

Whenever used in these regulations, unless the context or subject matter requires otherwise, the following words or terms have the meaning herein ascribed to them, respectively:

"Aerial application" means the dispensing or discharge of any liquid spray, dust aerosol, fog or organic or inorganic matter used or useful as a fertilizer or a pesticide (this would include herbicides and fungicides) from an aerial application aircraft.

"Aerial application aircraft" means any aircraft (including helicopters of any type) which is equipped with any apparatus or mechanism designed or used to dispense or discharge liquid spray, dust, seed, aerosol, fog or organic or inorganic matter used or useful as a fertilizer or a pesticide from the air.

"Aircraft" means any contrivance now known or hereafter invented, which is controlled, used, and usually occupied by [ ~~man~~ a person ] for the purpose of navigation and transportation through the air, excepting "hang glider" as defined in § 5.1-1 of the Code of Virginia.

"Airline" means an air carrier operation under Federal

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Aviation Regulation Part 121 or Part 135 if operating with an exemption from Title IV of the Federal Aviation Act to provide scheduled passenger service.

"Airman" means any individual, including the person in command, and any pilot, mechanic, or member of the crew, who engages in the navigation of aircraft while under way within Virginia airspace [ ; and ; ] any individual who [ ~~inspects, maintains, overhauls or repairs aircraft, aircraft engines, propellers or accessories;~~ is directly in charge of the inspection, maintenance, overhauling or repair of aircraft, aircraft engines, propellers or accessories; and any individual who serves in the capacity of aircraft dispatcher. ]

"Airport" means any area of land or water which is used or intended for use for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities including rights-of-way, easements and all airport buildings and facilities located thereon.

"Airspace" means all that space above the land and waters within the boundary of this state.

"Antique aircraft" means any aircraft used solely for exhibit or demonstration flying, constructed by the original manufacturer, or his licensee, on or before [ ~~30 years prior to the current date. December 31, 1945,~~ and any Beech G-17, any post-World War II Fairchild 24, or any Monocoupe. ]

"Approach surface" means a surface longitudinally centered on the extended runway centerline and extending outward and upward. For non-Federal Aid Airports, the [ slope surface ] extends at a slope of 15:1 from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

1. 1,200 feet at a distance of 5,000 feet for that end of a runway with only visual approaches.
2. 2,000 feet at a distance of 5,000 feet for that end of a runway having or proposing to have a nonprecision instrument approach procedure.

See also Appendix B of these regulations for design standards as they apply to Federal Aid Airports.

"Aviation" means transportation by air; the operation, construction, repair or maintenance of aircraft, aircraft power plants and accessories, [ ~~including the repair, packing and maintenance of parachutes~~ ] ; the design, establishment, construction, extension, operation, improvement, repair or maintenance of airports or landing areas, [ including but not limited to navigable airspace, ] or other air navigation facilities, and air instruction.

"Board" means the Virginia Aviation Board.

"Certificate" means an aerial application aircraft certificate issued by the department.

"Civil aircraft" means any aircraft other than a public aircraft.

"Commercial operator" means a person [ , except an airline, ] who operates any aircraft for the purpose of rental or charter or for any other purpose from which revenue is derived.

[ "~~Contract carrier permit~~" means a permit issued by the department to contract for transport of passengers or aircraft by air. Owners of aircraft who contract to provide flight instruction in their aircraft are required to have a ~~contract carrier permit.~~ ]

"Conical surface" for a non-Federal Aid airport means a surface extending outward and upward from the periphery of the horizontal surface at a slope of 15:1 for a horizontal distance of 4,000 feet. See also Appendix B of these regulations for standards as they apply to Federal Aid Airports.

[ "~~Contract carrier permit~~" means a permit issued by the department to contract carriers for transport of passengers or aircraft by air. Owners of aircraft who contract to provide flight instruction in their aircraft for profit are required to have a contract carrier permit. ]

"Department" means the Department of Aviation.

"Effective runway length" means the distance from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centerline of the runway at the far end thereof.

"Hazards" for airports means any [ fixed or mobile ] structure, object or natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft.

"Helipad" means a rectangular or square specially prepared surface that may be turf or paved, which is designated specifically for the purpose of landing and takeoff of helicopter aircraft.

"Heliport" means any identifiable area on land, water, or structure, including any building or facilities thereon, used or intended to be used for the landing and takeoff of helicopters, or other rotorcraft, appurtenant areas which are used, or intended for use, for heliport buildings or other heliport facilities including rights-of-way, easements and all heliport buildings and facilities located thereon.

"Heliport approach surface" means a surface beginning at each end of the heliport primary surface with the same width as the primary surface, and extending outward an

upward. Reference Appendix B of these regulations for design standards.

"Helicopter primary surface" means the area of the primary surface coinciding in size and shape with the designated takeoff and landing area of a heliport. This surface is a horizontal plane at the elevation of the established heliport elevation.

"Helicopter transitional surface" means a surface extending outward and upward from the lateral boundaries of the heliport primary surface and from the approach surfaces. Reference Appendix B of these regulations for design standards.

"Horizontal surface" means a horizontal plane 150 feet above the established airport elevation. Reference Appendix B of these regulations for design standards.

"Imaginary surfaces" are those surfaces as defined herein for non-Federal Aid Airports and in Part 77.25, Subchapter E (Airspace), of Title 14 of the Code of Federal Regulations. Reference Appendix B of the regulations for the definitions and design standards [ for heliports, military, and Federal Aid airports ] .

"Intrastate air transportation" means air transportation between two or more airports within Virginia [ , or air transportation to and from the same airport in Virginia without an intermediate stop outside Virginia ] .

"Landing area" means any local specific site, whether over land or water, including airports and intermediate landing fields, which is used or intended to be used for the landing and takeoff of aircraft, whether or not facilities are provided for the sheltering, servicing or repair of aircraft, or for receiving or discharging passengers or cargo.

"Noncommercial dealer" means a person who owns and offers for sale a minimum of three aircraft during any consecutive 12-month period, which aircraft are not used for personal use, rental, charter or for any purpose from which revenue is derived.

"Obstacle" means any fixed or mobile object that is located on an area intended for the surface movement of aircraft, or that extends above a defined imaginary surface intended to protect aircraft in flight, that interferes with the siting or operation of navigational aids, or that may control the establishment of instrument procedures.

"Obstruction" means any object, [ obstacle, or structure, ] man-made or otherwise, which penetrates any of the imaginary surfaces at an aircraft landing [ facility area ] .

"Obstruction clearance plane" means a plane sloping upward from the runway at a slope of 15:1 to the horizontal and tangent to or clearing all obstructions within a specified area surrounding the runway as shown in a profile view of that area. For Federal Aid Airports the

slope of the plane is 20:1.

"Person" means any individual, corporation, government, political subdivision of the [ state Commonwealth ] , or governmental subdivision or agency, business trust, estate, trust, partnership, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

"Primary surface" means a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 100 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The minimum width of a primary surface is 200 feet. See also Appendix B of these regulations for standards as they apply to Federal Aid Airports.

"Public aircraft" means an aircraft used exclusively for the service of any state or political subdivision thereof, or the federal government.

"Relocated threshold" means a landing threshold that has been relocated from the physical end of the runway.

"Runway" means a rectangular specially prepared surface that may be turf or paved which is designated specifically for the purpose of landing and taking off of aircraft.

"Runway safety area" means a rectangular area, symmetrical about the runway centerline, which includes the runway, runway shoulders, and stopways, if present. The portion abutting the edge of the runway shoulders, runway ends and stopways is cleared, drained, graded, and usually turfed. Under normal conditions, the runway safety area is capable of supporting snow removal, firefighting, and rescue equipment and of accommodating occasional passage of aircraft without causing major damage to the aircraft.

"Stopway" or "overrun" means any area beyond the takeoff runway, no less wide than the runway and centered upon the extended centerline of the runway, able to support the airplane during an aborted takeoff without causing structural damage to the airplane, and designated by the airport authorities for use in decelerating the airplane during an aborted takeoff.

[ "Structure" means any object, including a mobile object, constructed or erected by man, including but not limited to buildings, towers, cranes, smokestacks, earth formations, overhead transmission lines, flag poles, and ship masts. ]

"Threshold" means the beginning of that portion of the runway identified for the landing of aircraft.



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"Transitional surface" for non-Federal Aid airports means a surface extending outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 5 to 1 from the sides of the primary surface and from the sides of the approach surfaces until they intersect the horizontal surface. See also Appendix B of these regulations for standards as they apply to Federal Aid Airports.

"Ultralight" means any aircraft that (i) is used or intended to be used for manned operation in the air by a single occupant, (ii) is used or intended to be used for recreation and sport purposes only, and (iii) does not have any U.S. or foreign air worthiness certificate, and (iv) weighs less than 254 pounds empty weight, excluding floats and safety devices which are intended for deployment in a potentially catastrophic situation; and (v) that has a fuel capacity not exceeding 5 U.S. gallons; and (vi) is not capable of more than 55 knots calibrated airspeed at full power in level flight and has a power-off stall speed which does not exceed 24 knots calibrated airspeed.

## PART II. AIRCRAFT.

### § 2.1. Aircraft to be licensed.

Every resident of this state owning a civil aircraft, every nonresident owning a civil aircraft based in this state over 60 days during a 12-month period, all aerial application aircraft operating within this state and every owner of a civil aircraft operated in this state as a for-hire intrastate air carrier shall, before the same is operated in this state, apply to the department for, and obtain from the department, an aircraft license for such civil aircraft.

[ No aircraft as defined in § 5.1-1, except a public aircraft or a balloon, shall be licensed by the department unless and until the applicant thereof furnishes proof of financial responsibility in the amounts required for each aircraft for which a license is applied for.

Except as provided below, the tax on the sale or use of an aircraft required to be licensed by this Commonwealth shall be paid by the purchaser or user of such aircraft and collected by the Virginia Tax Commissioner prior to the time the owner applies to the Department of Aviation for, and obtains, a license thereof.

The tax on the gross receipts from each aircraft licensed for commercial use shall be paid by the dealer to the commissioner on or before the 20th day of each month. ]

### § 2.2. Application for aircraft license.

[ An owner Owner(s) ] who holds a currently effective registration certificate for an aircraft issued by the Federal Aviation Administration shall make application for an aircraft license upon appropriate forms to be

prescribed and furnished by the department. Such [ owner owner(s) ] shall provide all information as requested thereon, provided, however, the failure of the Federal Aviation Administration to require registration of an aircraft, including, for example an ultralight, shall not of itself operate to excuse the owner thereof from the licensing requirements contained in § 2.1 above. The owner shall certify every application for an aircraft license.

### § 2.3. Expiration and renewal of licenses.

Every aircraft license issued by the department shall expire 12 months from date of issuance, except for antique aircraft as hereinafter provided, unless sooner suspended or revoked by the department. Every such license shall be renewed annually upon application of the owner on appropriate forms prescribed and furnished by the department and upon payment of the fees required by these regulations, such renewal [ to shall ] take effect on the date of issuance.

Every antique aircraft license issued by the department shall expire on the date of sale of such aircraft, unless sooner suspended or revoked by the department.

No license issued by the department for an aircraft shall be transferable.

### § 2.4. License decals to be carried or displayed.

The aircraft license decal issued by the department for an aircraft required to be licensed by these regulations shall be displayed at all times centered below the right-hand horizontal stabilizer on the fuselage or immediately aft of the cabin entry door of such aircraft; it shall be readily visible from the outside of such aircraft and shall be subject to inspection by any person charged with the duty of enforcing the aviation laws of this state.

Aircraft license decals issued to antique aircraft and balloons may, in lieu of being displayed, be carried with the aircraft papers in such aircraft and shall be subject to inspection by any person charged with the duty of enforcing the aviation laws of this state.

### § 2.5. Transfer of registration or interest in aircraft—surrender of license.

The owner of an aircraft licensed by the department under the provisions of these regulations who transfers or assigns his registration or interest in such aircraft shall immediately notify the department in writing of such transfer or assignment and shall furnish the department with the name and address of the person to whom such transfer or assignment was made and shall remove or obliterate the decal license so as to indicate its cancellation prior to delivery of the aircraft to the transferee or assignee and shall request the department to cancel such decal license.

## § 2.6. Commercial, noncommercial and dealer's licensing.

Persons engaged in commercial operations may obtain commercial single aircraft licenses or a commercial fleet license covering all aircraft owned by any such dealer or commercial carrier.

Noncommercial dealer aircraft licenses shall be issued to dealers for demonstration flights only. This license shall not be valid while the aircraft is being used for personal use, rental, charter or for any purpose from which revenue is derived.

Commercial single, commercial fleet or noncommercial dealer aircraft licenses will be issued in lieu of regular licensing for each aircraft and may be obtained from the department upon application therefore upon a form prescribed by the department and the payment of the fees required by these regulations. Such license shall expire one year from the date of the issuance of such license. Upon the issuance of such license, the department shall issue to such licensee decals of distinguishing color which shall be displayed by such licensee as required by § 2.4 of these regulations.

All corporate applicants applying for commercial licenses shall be Virginia corporations or duly authorized to transact business in Virginia.

Such dealer decals may be used on aircraft owned by such dealer when operated in this state by such dealer or his authorized representatives for demonstration for sale.

Commercial air carriers licensed under a commercial fleet aircraft license and providing regular scheduled air service shall be exempt from displaying licensing decals.

Any aircraft sold to or used by the United States or any of the governmental agencies thereof, the Commonwealth of Virginia or any political subdivision thereof, [ or any airline operated solely intrastate, interstate or in foreign commerce and as a common carrier providing scheduled air service on a continuing basis to one or more Virginia airports shall be exempt from such commercial license and permit requirements; provided, however, that nothing contained herein shall be deemed to exempt from the licensing and permit requirements contained in § 5.1-9.2 of the Code of Virginia any aircraft or operations of a person engaged in whole or in part in the business of a contract carrier by aircraft intrastate in the airspace of this state shall be exempt from such commercial license requirements ].

[ Any aircraft operated by any air carrier operating under Federal Aviation Regulation Part 121 or Part 135, if operating with an exemption from Title IV of the Federal Aviation Act to provide scheduled passenger service, shall be exempt from such commercial license requirements. ]

## § 2.7. Commercial operators.

All commercial fleet operators shall submit to the department a monthly report, on forms provided by the department, listing all aircraft owned or leased by such operator.

## § 2.8. Lease or rental of unlicensed aircraft.

It shall be unlawful for any person to lease or rent an unlicensed aircraft to any person.

## § 2.9. Operation of aircraft.

All aircraft operations shall be conducted in conformity with Federal Aviation Regulations as amended from time to time and violation of such federal regulations shall also constitute a violation of these regulations.

## § 2.10. Fees.

The annual fee for a license or renewal thereof: noncommercial aircraft shall be \$5.00; commercial single aircraft shall be \$10.00; noncommercial dealer aircraft shall be \$50.00 and commercial fleet aircraft shall be \$75.00 payable at the time of application.

The fee for replacement of a lost license shall be \$2.00 for either noncommercial or commercial aircraft licenses [ upon satisfactory proof that such replacement is necessary or in the public interest ].

## PART III. AIRPORTS AND LANDING AREAS.

## § 3.1. Licenses.

Airports and landing areas [ , except private landing areas as defined in § 5.1-7.2 of the Code of Virginia, ] shall be licensed by the department pursuant to [ the provisions of §§ 5.1-7 and 5.1-8 of the Code of Virginia, on and after the effective date of these regulations, following review and recommendation by the board. An application for a license to operate or conduct an airport or a landing area shall be executed by the applicant or his or its duly authorized agent, under oath on forms prescribed by the department, and shall be filed with the department. § 5.1-7 of the Code of Virginia. Airports and landing areas having enterprises engaged in commercial aviation or persons operating any airport or landing field proposing to extend the runways of such airport or landing field shall, in addition to such license, obtain a permit therefor from the department pursuant to § 5.1-8 of the Code of Virginia, see § 3.3. Such license or permit will be issued following review and recommendation of the board. Private landing areas as defined in § 5.1-7.2 shall only be registered. An application for a license or permit shall be executed by the applicant or a duly authorized agent, under oath, on forms prescribed by the department, and shall be filed with the department. ]

## § 3.2. Permits.

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Airports and landing areas which are issued permits pursuant to § 5.1-8 of the Code of Virginia shall be open to the general public on a nondiscriminatory basis. An application for such permit shall be submitted to the department by the applicant or his duly authorized agent under oath on forms prescribed by the department. Such permit shall remain in effect until suspended, modified or revoked by the department.

## [ § 3.3. Minimum requirements for licensing.

The minimum standards which are required for initial and continued licensing or permitting under §§ 5.1-7 and 5.1-8 of the Code of Virginia will provide for:

1. An effective runway length of 2200 feet with 100 feet of overrun, and obstructed approach surfaces of 15:1 horizontal to vertical slope at each end of the runway.
2. An unobstructed primary surface(s) which is 200 feet in width.
3. An unobstructed transition surface(s) of 5:1 slope on either side of the primary and approach surfaces.
4. A minimum runway width of 60 feet, and minimum runway safety area width of 130 feet.
5. A displaced threshold, if an approach surface to either physical end of the runway is obstructed and the obstacle cannot be removed, shall be located down the runway at the point where the obstruction clearance plane intersects the runway centerline.
6. An airport runway licensed or permitted specifically and solely for the purpose of accommodating short-takeoff-and-landing aircraft may, at the discretion of the department, be less than 2000 feet in length; however, all other dimensional standards will apply.
7. A heliport used for commercial public use purposes will provide for minimum dimensions of 75 feet square. The heliport will have unobstructed primary, approach, and transition surfaces in accordance with their definitions in these regulations.
8. In addition to the investigation required for safety provisions as outlined in § 5.1-8 of the Code of Virginia, a detailed consideration of the economic, social, and environmental effects of the airport location shall be conducted. These considerations may include public hearings as required to assure consistency with the goals and objectives of such planning as has been carried out by the community. ]

## [ § 3.2. § 3.4 ] Transfer of licenses.

No license [ or permit ] issued by the department for the operation of an airport or landing area may be transferred by the licensee [ or permittee ] without first

obtaining the approval of the department and review and recommendation of the board for such transfer.

Application for approval of a transfer of a license shall be made on forms prescribed by the department and may be granted only after satisfactory evidence has been submitted which shows that the proposed transferee (i) is capable of operating the airport or landing area in accordance with the laws of this [ state Commonwealth ] and these regulations; and (ii) is financially responsible and has paid or guaranteed payment of all financial commitments due the Commonwealth under Title 5.1 of the Code of Virginia or these regulations.

Before such transfer shall be made the transferee by written agreement shall assume the unfulfilled obligation to the Commonwealth to operate the airport or landing area under any and all agreements executed by any prior licensee or licensees of such airport or landing area to procure state funds for such airport or landing area.

Upon death [ or , ] dissolution [ , or bankruptcy ] of a licensee, the airport license may be transferred. Transfer shall be effected within 180 days after death or dissolution of the licensee or the airport license shall become null and void.

## [ § 3.4. Minimum requirements for licensing.

The minimum standards which are required for initial and continued licensing or permitting under §§ 5.1-7 and 5.1-8 of the Code of Virginia will provide for an effective runway length of 2,000 feet with 100 feet of overrun and unobstructed approach surfaces of 15:1 slope at each end of the runway. The airport will have an unobstructed primary surface(s) which is 2,200 feet in length and 200 feet in width. There will be unobstructed transition surfaces of 5:1 slope on either side of the primary and approach surfaces. The minimum runway width shall be 60 feet and the minimum runway safety area width shall be 130 feet.

In any case, where an approach surface to either physical end of the runway is obstructed, and the obstacle cannot be removed, the threshold must be displaced. A displaced threshold shall be located down the runway at the point where the obstruction clearance plane intersects the runway centerline.

An airport runway licensed or permitted specifically and solely for the purpose of accommodating short-takeoff-and-landing aircraft may, at the discretion of the department, be less than 2,000 feet in length; however, all other dimensional standards will apply.

The minimum dimensional standards which are required for licensing or permitting a commercial, public-use landing area for use as a heliport will provide for minimum dimensions of 75 feet square. The heliport will have unobstructed primary, approach and transition surfaces in accordance with § 1.1 of these regulations.

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In addition to the investigation required for safety provisions as outlined in § 5-1-8 of the Code of Virginia, a detailed consideration of the economic, social and environmental effects of the airport location shall be conducted. These considerations may include hearings as required to ensure consistency with the goals and objectives of such planning as has been carried out by the community. ]

## § 3.5. Public waters landing rights.

[ The public waters of Virginia shall be available for amphibious or float planes use in accordance with applicable state and federal statutes and regulations. Users or prospective users of such waters for such purposes should, unless prevented by sudden emergencies of other conditions beyond the reasonable control of such user, obtain all available information regarding known obstructions or hazards. Counties, cities, and towns shall have the power to establish, maintain, and operate airports and landing areas and other navigation facilities in, over, and upon any public waters of this Commonwealth, or any submerged land under such public waters, within the limits or jurisdiction of or bordering on such counties, cities or towns. Any such areas established shall follow all the applicable permitting and licensing requirements of Part III of these regulations ] .

## § 3.6. Private or personal nonlicensed airports.

Any person owning property utilized for landing aircraft that is solely for private or personal use, [ and which is not open to the general public, ] shall be required only to register the landing area if it is not within five nautical miles of a commercial airport. Registration shall be accomplished on forms provided by the department.

Aircraft landing at these landing areas and nonpublic-use airports shall have prior approval of the landowners or controlling agency when reasonably practical. Aircraft landing at other than licensed airports without such prior approval shall not be removed therefrom without the consent of the owner or lessee of such property.

## § 3.7. Fees.

The fee for licensing a commercial, public use airport or landing area in accordance with § 3.1 shall be \$100.

The fee for [ issuing ] a permit [ issued ] pursuant to § 3.2 shall be \$50. [ No fee is charged for registering a private use airport. ]

## PART IV. OBSTRUCTIONS TO AIRSPACE.

### § 4.1. Determination of hazard.

The Department of Aviation shall conduct an aeronautical study and determine the effect of any structure that penetrates any imaginary surface upon the

safe and efficient operation of any licensed [ , military, or government ] air navigation facility or airport. This determination shall be made based on standards as defined by these regulations and Federal Aviation Regulations, Part 77. If a structure constitutes an "Obstruction" in accordance with these standards, it shall be presumed to be a "Hazard" until determined otherwise the by Virginia Aviation Board.

### § 4.2. Obstruction criteria.

In conducting any study required by these regulations the department may consider, but not be limited to, at least the following factors: Federal Aviation Regulations Parts 77.25, 77.28, 77.29; Airport Traffic Patterns; IFR Airways and Routes; VFR routes and designated practice areas; and terminal airspace and instrument approach procedures.

### § 4.3. Obstruction permit procedure.

[ A. Any person seeking a permit from the board, as required by § 5-1-25.1 of the Code of Virginia, pertaining to structures hazardous to air navigation shall abide by the requests listed below. This process shall not be applicable in those localities that have satisfied the local ordinance provisions of § 15-1-491.02 of the Code of Virginia.

1. The person shall submit to the Department of Aviation a permit request, made on such form as prescribed by the department, including any ancillary data required by the department.

2. The department shall conduct an analysis of the request using the criteria established in §§ 4.1 and 4.2 of these regulations. It shall then forward to the board its analysis in the form of a staff report with the concurrent recommendations regarding the permit request.

3. The board shall issue its decision on the permit request at the meeting described in subdivision 4 below. The decision may be reached using, but not limited to, (i) the department staff report, (ii) any verbal and written testimony of the applicant, (iii) any analysis of the Federal Aviation Administration, and (iv) any comments from the local jurisdiction where the structure is to be located. All decisions issued by the board shall be issued in writing stating the reasons for same. Any affirmative decision may be accompanied by conditions deemed applicable by the board including, but not limited to, obstruction marking, lighting and similar safety features.

4. The board shall consider each permit request at the next regularly scheduled meeting following the completion of the department staff report. Upon receiving the request, the department shall notify the applicant of the receipt, and supply available information pertaining to the obstruction analysis, with the date and location of the applicable board meeting.

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The analysis and decision process shall not normally exceed 90 days from the date of receipt.

5. The applicant, if given an affirmative decision by the board, shall not be relieved by that decision of any local legal requirements as to building, variance, or other permits as may be required.

This process shall not be applicable in those counties, cities, and towns which have satisfied the local ordinance provisions of § 15.1-491.02 of the Code of Virginia. See § 4.4, Model Airport Safety Zoning Ordinance.

Any person seeking an obstruction permit from the board, as required by § 5.1-25.1 of the Code of Virginia, pertaining to structures hazardous to air navigation shall submit to the department a permit request on such forms as prescribed by the department, including any ancillary data required by the department.

Upon receipt of such request, the department shall (i) notify the applicant of said receipt and supply available information pertaining to the obstruction analysis, with the date and location of the applicable board meeting; (ii) conduct an analysis of the request using the criteria in §§ 4.1 and 4.2 within 90 days from the date of receipt, unless it advises the applicant that such analysis will take longer; (iii) shall forward to the board its analysis in the form of a staff report with the concurrent recommendations regarding the permit request.

The board shall consider each permit request at the next regularly scheduled meeting, following the completion of the department staff report. Its consideration may include, but is not limited to, the department's staff report, any verbal and written testimony of the applicant, any analysis of the Federal Aviation Administration, and any comments from the local jurisdiction(s) where the structure is to be located. All decisions issued by the board shall be issued in writing stating the reasons for same. Any affirmative decision may be accompanied by conditions deemed appropriate by the board including, but not limited to, obstruction marking, lighting, and similar safety features.

The applicant, if given an affirmative decision by the board, shall not be relieved by that decision of any local requirements as to zoning, building, variance, or other permits as may be required. ]

## § 4.4. Model airport safety zoning ordinance.

[ B. ] Any county, city, or town in the Commonwealth seeking to comply with the mandate of § 15.1-491.02 of the Code of Virginia to enact local obstruction ordinances shall abide by the following:

1. The Model Airport Safety Zoning Ordinance developed by the Department of Aviation shall be used as a guide by localities. A copy of such ordinance is found in Appendix A of these regulations.

2. The provisions of any locally adopted ordinance shall be in substantial conformity with the Model Airport Safety Zoning Ordinance. Substantial conformity shall include, but not be limited to, protection of airspace from intrusions as described in Article 3 [ and , ] 4 [ , and 7 ] of the Model.

3. The department may, at the request of a local governing body, review any ordinance submitted prior to adoption by such locality. In conducting its review the department shall make an evaluation regarding the integrity of such ordinance with respect to the requisites of the Model Airport Safety Zoning Ordinance. The review of the department may include, but not be limited to, the evaluation with respect to the Model Ordinance, any comments of the locality, and its opinion concerning the expected effectiveness of the ordinance as it relates to the general intent of § 15.1-491.02 of the Code of Virginia.

## PART V. AERIAL APPLICATION AIRCRAFT.

### § 5.1. Certificate required.

Aerial application aircraft operating within this state must be licensed and certificated by the department. Application therefore must be made by the federally registered owner of the aircraft on forms prescribed by the department.

### § 5.2. Requirements for certificate.

Before any aerial application aircraft will be certificated by the department, such aircraft must be certificated by the Federal Aviation Administration, licensed by the department, equipped with approved shoulder harness, and the owner must furnish proof of financial responsibility as required by § 5.1-88.1 of the Code of Virginia.

### § 5.3. Duration of certificates.

Certificates, unless sooner suspended, cancelled or revoked by the department, shall remain in effect for the period to coincide with the Virginia aircraft license or for the period covered by the insurance policy bond or other security on file with the department, whichever expires first.

### § 5.4. Renewal of certificates.

Certificates may be renewed by the department upon application on forms prescribed by the department, provided satisfactory evidence is furnished by the applicant that the requirements herein established for issuance of an original certificate have been met.

### § 5.5. Use of approved pesticides.

Each holder of an aerial applicator certificate shall ensure that pesticides used are approved and registered

with the Virginia Department of Agriculture and Consumer Services, 1100 Bank Street, P.O. Box 1163, Richmond, Virginia 23219, Phone (804) 786-3798, pursuant to § 5.1-5, and Chapter 14 of Title 3.1 of the Code of Virginia.

## PART VI. SUSPENSION, MODIFICATION OR REVOCATION OF LICENSES.

### § 6.1. Sanctions, notice and appeals.

The department may immediately temporarily suspend or modify any license, permit or certificate issued pursuant to Chapter 1 of Title 5.1 of the Code of Virginia and these regulations for violation of any of the provisions of the aviation laws of Virginia or of these regulations, at the instance of any person, upon duly sworn affidavit of such person, or upon its own motion. Such sanction shall be effective upon receipt of written notice of the sanction by the licensee at his last known address as disclosed by the records of the department. Such temporary sanction shall be effective for a period not to exceed 90 days.

The department may permanently suspend, modify or revoke any license, permit or certificate issued pursuant to Chapter 1 of Title 5.1 of the Code of Virginia and these regulations for violation of any of the provisions of the aviation laws of Virginia or of these regulations, at the instance of any person, by duly sworn affidavit of such person, or on its own motion. Such action shall be effective 10 days after receipt of written notice of the action by the licensee at his last known address as disclosed by the records of the department, unless the licensee shall, before that time, show cause why such sanction should not be imposed.

Temporary or permanent suspensions, modifications or revocations by the department may be appealed by filing a written notice of appeal with the director of the department within 10 days of receipt of the notice of sanction, requesting an opportunity to be heard and to present evidence. Such an opportunity will be afforded by the director not later than 21 days after receipt by him of the written notice of appeal. The director will give written notice to the licensee of his decision to affirm, modify or rescind the sanction within 10 days after this hearing.

The sanctions enumerated in this regulation shall be cumulative with other enforcement powers conferred upon the department by these regulations or by statute, and no action taken hereunder shall limit the jurisdiction of the department to impose other penalties authorized by these regulations or by statute.

## PART VII. GENERAL.

### § 7.1. Report of accidents.

The pilot, or any member of the crew able to do so, or the owner or lessee of an aircraft involved in an accident

or incident in this state resulting in injury to or death of any person or damage to the property of others in an amount in excess of \$500 or damage to the aircraft in an amount in excess of \$500 shall immediately report such accident or incident to the Virginia State Police, the Federal Aviation Administration, and to the National Transportation Safety Board if required. Such report shall show the license number of the aircraft, the name of the pilot, the time and place of the accident or incident, the name or names of the persons killed or injured or whose property was damaged, and whether the persons injured or killed were passengers in the aircraft or members of the crew of the aircraft and the nature and extent of the injuries to persons or damage to property. Within five days after such accident or incident, the owner or lessee of such aircraft shall make a full and complete report thereof in writing to the Virginia State Police and the Federal Aviation Administration.

State police and local police authorities of any city, incorporated town or county, shall preserve aircraft wreckage until the arrival of the National Transportation Safety Board or the Federal Aviation Administration. Until the board or its authorized representative takes custody of aircraft wreckage, mail, or cargo, such wreckage, mail and cargo may be disturbed or moved only to the extent necessary:

1. To remove persons injured or trapped;
2. To protect the wreckage from further damage; or
3. To protect the public from injury

### § 7.2. Airport hazards.

Commercial, public-use airport and landing area owners, operators and managers shall maintain vigilance as to airport conditions and shall notify the nearest Federal Aviation Administration Flight Service Station and the Department of Aviation whenever any known hazards to aircraft exist at such airport or landing area. Known hazards are any conditions which create an unsafe situation and include uncut grass on any runway in excess of eight inches in height.

### § 7.3. Emergency services.

The department, in the interest of the public, will exercise direction and surveillance of the programs of the Department of Emergency Services which relate to aviation within the state.

### § 7.4. Use of department's aircraft by other state agencies.

Upon request, the department may authorize the use of its aircraft by other state agencies. The department shall be reimbursed by any such agency for such use on the basis of the direct and indirect cost per flying hour of its aircraft as determined by the department. All sums collected for such use shall be credited to the Aviation

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## Special Fund.

### § 7.5. Aviation facilities constructed in whole or in part with state funds.

Before any funds appropriated by the General Assembly of Virginia for the promotion of aviation, the construction or improvement of aviation facilities at any county, municipal or privately-owned, commercial, public-use airport or heliport, the owner thereof shall enter into a written agreement with the department, acting through the director, which shall provide for operation of such airport or heliport as a public-use facility for a minimum period of 20 years. The owner of any such aviation facility and his or its transferees, successors and assignees who fails to fulfill the period of operation specified in any such agreement shall be liable for the return of any such funds on a pro rata basis.

Privately owned or publicly owned hospitals may establish and maintain airports and may restrict the public use of such airports to takeoff and landing of any aircraft for medical emergencies only; such airports may be funded in accordance with this regulation.

### § 7.6. Enforcement.

It shall be the duty of the department to assist all law-enforcement officers of this state in the enforcement of the provisions of Title 5.1 of the Code of Virginia and these regulations promulgated pursuant thereto.

### § 7.7. Annual aircraft survey.

To provide an annual physical count of based aircraft, all Virginia licensed or registered airports shall submit annually a survey of all based aircraft with information as required on a form provided by the department.

### § 7.8. Contract carrier permit holders: landing restrictions.

Holders of Virginia Contract Carrier permits operating for-hire aircraft shall operate to and from licensed commercial, public-use airports only, with the following exceptions: Permit holders may operate to and from other landing areas on an infrequent basis upon consent of the person contracting for such services and with financial responsibility assured as required under § 5.1-9.5 of the Code of Virginia.

Operation must also be in compliance with § 8.2 of these regulations.

### § 7.9. Posting of traffic patterns and chart of local student practice area.

Each fixed base operator at a commercial, public-use licensed airport or landing area shall post and keep posted a copy of the airport traffic pattern and an aeronautical chart with the local student practice area clearly outlined thereon in a conspicuous place available to airmen at such

airport or landing area.

### § 7.10. Posting of regulations.

Each fixed base operator at a commercial, public-use licensed airport or landing area shall post and keep posted a copy of these regulations.

### § 7.11. Effective date.

These regulations shall become effective [ 30 days after publication of the final regulation in the Virginia Register of Regulations and shall remain effective until modified, suspended, or revoked in conformance with all the requisites of the Virginia Administrative Process Act as provided for in the Administrative Process Act ] .

# Appendix A

## AIRPORT SAFETY ZONING ORDINANCE

### PREAMBLE

AN ORDINANCE regulating and restricting the height of structures and objects or natural growth, and otherwise incidentally regulating the use of property in the vicinity of the airports in (-insert name of locality-) by creating the appropriate zones and establishing the boundaries thereof; providing for changes in the restrictions and boundaries of such zones; defining certain terms used herein; providing for enforcement; and imposing penalties.

The ordinance is adopted pursuant to the authority conferred by Chapter 11 of Title 15.1, and specifically to satisfy the requirements of Section 15.1-491.02 of the Code of Virginia 1950, as amended. It is hereby found that an obstruction has the potential for endangering the lives and property of users of the airports and residents in (-insert name of locality-); and that an obstruction may reduce the size of areas available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airports and the public investment therein. Accordingly, it is declared:

1. That is necessary in the interest of the public health, safety, and general welfare that the creation or establishment of obstructions that are hazards to air navigation be prevented;
2. That the creation or establishment of an obstruction has the potential for being a public nuisance and may injure the area served by the airports;
3. That the (-insert name of locality-) derives economic development and enhanced interstate commerce from (-insert name of airports(s)-), when such airport(s) and it's (their) surrounding vicinity is held strictly to the highest possible safety standards; and
4. That the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

Be it ordained by (-insert name of local governing body-):

### ARTICLE 1 SHORT TITLE.

Section 1.1 This ordinance shall be known and may be cited as the (-insert name of locality-) Airport Safety Zoning Ordinance.

## ARTICLE 2. DEFINITIONS

Section 2.1 As used in this ordinance, the following terms shall have the meanings respectively ascribed to them, unless the context clearly requires otherwise:

2.2 "Administrator": The official charged with the enforcement of this ordinance. He or she shall be the (-insert title of designated local official-).

2.3 "Airport": (-insert name of affected airport or airports-).

2.4 "Airport elevation": The highest point on any usable landing surface expressed in feet above mean sea level.

2.5 "Approach surface": A surface, whose design standards are referenced in Article 3 of this ordinance, longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface, and at the same slope as the approach zone height limitation slope set forth in Article 4 of this ordinance. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.

2.6 "Approach, transitional, horizontal, and conical zones": The airspace zones as set forth in Article 3 of this ordinance.

2.7 "Conical surface": A surface, whose design standards are referenced in Article 3 of this ordinance, extending and sloping horizontally and vertically from the periphery of the horizontal surface.

2.8 "Hazard to air navigation": An obstruction determined by the Virginia Department of Aviation or the Federal Aviation Administration to have a substantial adverse effect on the safe and efficient utilization of navigable airspace in the Commonwealth.

2.9 "Height": For the purpose of determining the height limits in all zones set forth in Article 4 of this ordinance and shown on the zoning map, the datum shall be mean sea level (M.S.L.) elevation unless otherwise specified.

2.10 "Horizontal surface": A horizontal plane, whose design standards are referenced in Article 3 of this ordinance, above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

2.11 "Nonconforming use": Any preexisting structure or object of natural growth which is inconsistent with the provisions of this ordinance or any amendment to this ordinance.



**2.12 "Obstruction":** Any structure, growth, or other object, including a mobile object, which exceeds a limiting height, or penetrates any surface or zone floor, set forth in Article 4 of this ordinance.

**2.13 "Permit":** A document issued by (-insert name of locality-) allowing a person to begin an activity which may result in any structures or vegetation exceeding the height limitations provided for in this ordinance.

**2.14 "Person":** Any individual, firm, partnership, corporation, company, association, joint stock association, or governmental entity. The term includes a trustee, a receiver, an assignee, or a similar representative of any of them.

**2.15 "Primary surface":** A surface, whose design standards are referenced in Article 3 of this ordinance, longitudinally centered on a runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

**2.16 "Runway":** A specified area on an airport prepared for landing and takeoff of aircraft.

**2.17 "Structure":** Any object, including a mobile object, constructed or installed by any person, including but not limited to buildings, towers, cranes, smokestacks, earth formations, towers, poles, and electric lines of overhead transmission routes, flag poles, and ship masts.

**2.18 "Transitional surfaces":** Surfaces, whose design standards are referenced in Article 3 of this ordinance, which extend outward perpendicular to the runway centerline sloping from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces.

**2.19 "Vegetation":** Any object of natural growth.

**2.20 "Zone":** All areas provided for in Article 3 of this ordinance, generally described in three dimensions by reference to ground elevation, vertical distances from the ground elevation, horizontal distances from the runway centerline and the primary and horizontal surfaces, with the zone floor set at specific vertical limits by the surfaces found in Article 4 of this ordinance.

#### ARTICLE 3 AIRPORT SAFETY ZONES

**Section 3.1** In order to carry out the provisions of this ordinance, there are hereby established certain zones which

include all of the area and airspace of (-insert name of locality-) lying equal to and above the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to (-insert name of airport or airports-). These zones are established as overlay zones, superimposed over the existing base zones, being more specifically zones of airspace that do not affect the uses and activities of the base zones except as provided for in Articles 4 and 5 of this ordinance. An area located in more than one of the following zones is considered to be only in the zone with the most restrictive height limitation. These zones are as follows:

**3.2 "Airport zone":** A zone that is centered about the runway and primary surface, with the floor set by the horizontal surface.

**3.3 "Approach zone":** A zone that extends away from the runway ends along the extended runway centerline, with the floor set by the approach surfaces.

**3.4 "Transitional zone":** A zone that fans away perpendicular to the runway centerline and approach surfaces, with the floor set by the transitional surfaces.

**3.5 "Conical zone":** A zone that circles around the periphery of and outward from the horizontal surface, with the floor set by the conical surface.

**3.6** The source and the specific geometric design standards for these zones are to be found in Part 77.25, 77.28, and 77.29, Subchapter E (Airspace), of Title 14 of the Code of Federal Regulations, or in successor federal regulations. A copy of these design standards is found in the Appendix of this ordinance.

#### ARTICLE 4 AIRPORT SAFETY ZONE HEIGHT LIMITATIONS

**Section 4.1** Except as otherwise provided in this ordinance, in any zone created by this ordinance no structure shall be erected, altered, or maintained, and no vegetation shall be allowed to grow to a height so as to penetrate any referenced surface, also known as the floor, of any zone provided for in Article 3 of this ordinance at any point.

**Section 4.2** The height restrictions, or floors, for the individual zones shall be those planes delineated as surfaces in Part 77.25, 77.28, and 77.29, Subchapter E (Airspace), of Title 14 of the Code of Federal Regulations, or in successor federal regulations. A copy of these design standards is found in the Appendix of this ordinance.

ARTICLE 5  
USE RESTRICTIONS

Section 5.1 Notwithstanding any other provision of this ordinance, and within the area below the horizontal limits of any zone established by this ordinance, no use may be made of land or water in such a manner as to:

5.2 Create electrical interference with navigational signals or radio communication between the airport and aircraft;

5.3 Diminish the ability of pilots to distinguish between airport lights and other lights;

5.4 Result in glare in the eyes of pilots using the airport;

5.5 Impair visibility in the vicinity of the airport;

5.6 Create the potential for bird strike hazards; or

5.7 Otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft in the vicinity of and intending to use the airport.

ARTICLE 6  
NONCONFORMING USES

Section 6.1 Except as provided in Section 6.2 and 7.2 of this ordinance, the regulations prescribed by this ordinance shall not require the removal, lowering, or other change or alteration of any structure or vegetation not conforming to the regulations as of the effective date of this ordinance, or otherwise interfere with the continuance of a nonconforming use. Nothing contained in this ordinance shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this ordinance, and is diligently prosecuted.

Section 6.2 Notwithstanding the provision Section 6.1, the owner of any existing nonconforming structure or vegetation is hereby required to permit the installation, operation, and maintenance thereon of whatever markers and lights deemed necessary by the Federal Aviation Administration, the Virginia Department of Aviation, or the administrator to indicate to operators of aircraft the presence of that airport obstruction. These markers and lights shall be installed, operated, and maintained at the expense of the airport owners, and not the owner of the nonconforming structure in question.

ARTICLE 7  
PERMITS AND VARIANCES

Section 7.1 Except as provided in Sections 7.1, 7.2, and 7.3 of this Article, no structure shall be erected or otherwise established in any zone created by this ordinance unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which desired with and sufficient geometric specificity to determine whether the resulting structure would conform to the regulations prescribed in this ordinance. No permit for a structure inconsistent with this ordinance shall be granted unless a variance has been approved as provided in Section 7.4.

Section 7.2 No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use or structure to become a greater hazard to air navigation than it was on the effective date of this ordinance or any amendments thereto other than with relief as provided for in Section 7.4.

Section 7.3 Whenever the administrator determines that a nonconforming structure has been abandoned or more than fifty percent destroyed, physically deteriorated, or decayed, no permit shall be granted that would enable such structure to be rebuilt, reconstructed, or otherwise refurbished so as to exceed the applicable height limit or otherwise deviate from the zoning regulations contained in this ordinance, except with the relief as provided for in Section 7.4.

Section 7.4 Any person desiring to erect or increase the height or size of any structure not in accordance with the regulations prescribed in this ordinance may apply for a variance from such regulations to the (-insert board of zoning appeals or other entity-). Such application shall be properly advertised and be reviewed and considered in a public hearing. Prior to being considered by the (-insert board of zoning appeals or other entity-) the application for variance shall be accompanied by a determination from the Virginia Department of Aviation as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall only be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this ordinance.

Section 7.5 Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this ordinance and be reasonable in the circumstances, be so conditioned as to require the owner of the structure in question

to install, operate, and maintain, at the owner's expense, such markings and lights as may be deemed necessary by the Federal Aviation Administration, the Virginia Department of Aviation, or the administrator. If deemed proper through the failure of the owner of the structure or with other reasonable cause by the (-insert board of zoning appeals or other entity-), this condition may be modified to require the owner of the structure in question to permit the airport owner, at his own expense, to install, operate, and maintain the necessary markings and lights.

Section 7.6 Applications for permits and variances shall be made on Forms available from the administrator, with such forms allowing for enough specific detail such that proper analysis can be given the request.

**ARTICLE 8  
ENFORCEMENT**

Section 8.1 The administrator shall administer and enforce the regulations prescribed in this ordinance. He or she shall be vested with the police power incumbent to carry out and effectuate this ordinance, including the action of injunction, prosecution and other available means through the (-insert name of circuit court having jurisdiction in the locality-).

**ARTICLE 9  
APPEALS**

Section 9.1 Any person aggrieved, or any officer, department, board, or bureau of (-insert name of locality-) affected by a decision of the administrator may appeal such decision to the (-insert board of zoning appeals or other entity-).

**ARTICLE 10  
JUDICIAL REVIEW**

Section 10.1 Any person aggrieved or any taxpayer adversely affected by any decision of the (-insert board of zoning appeals or other entity-) may appeal to the (-insert name of circuit court having jurisdiction in the locality-).

**ARTICLE 11  
PENALTIES**

Section 11.1 Each violation of this ordinance or of any regulation, order, or ruling promulgated under this ordinance shall constitute a misdemeanor and be punishable by a fine of no more than five hundred dollars. Each day on which a violation occurs shall constitute a separate offense.

**ARTICLE 12  
CONFLICTING REGULATIONS**

Section 12.1 Where there exists a conflict between any of the regulations or limitations prescribed in this ordinance and any other regulations applicable to the same subject, where the conflict is with respect to the height of structures or vegetation and the use of land, or any other matter, the more stringent limitation or requirement shall govern.

**ARTICLE 13  
SEVERABILITY**

Section 13.1 Should any portion or provision of this ordinance be held by any court to be unconstitutional or invalid, that decision shall not affect the validity of the ordinance as a whole, or any part of the ordinance other than the part held to be unconstitutional or invalid.

**ARTICLE 14  
ADOPTION**

Section 14.1 Be it resolved that this ordinance has been properly drawn, legally advertised, and presented through a public hearing before the governing body of (-insert name of locality-) on (-insert month, day, year-). Be it further resolved that the effective date of this ordinance is (-insert month, day, year-) and that the ordinance from that date forward carries the full weight of law within (-insert name of locality-) until and unless altered otherwise by the Governing Body.

## Appendix B

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OBJECTS AFFECTING NAVIGABLE AIRSPACE

PART 77

## Federal Air Regulations

Part 77.25,  
77.28, & 77.29**§ 77.25 Civil airport imaginary surfaces.**

The following civil airport imaginary surfaces are established with relation to the airport and to each runway. The size of each such imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach existing or planned for that runway end.

(a) **Horizontal surface**—a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

- (1) 5,000 feet for all runways designated as utility or visual;
- (2) 10,000 feet for all other runways.

The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(b) **Conical surface**—a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

(c) **Primary surface**—a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface,

the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of a primary surface is:

- (1) 250 feet for utility runways having only visual approaches.
- (2) 500 feet for utility runways having nonprecision instrument approaches.
- (3) For other than utility runways the width is:

(i) 500 feet for visual runways having only visual approaches.

(ii) 500 feet for nonprecision instrument runways having visibility minimums greater than three-fourths statute mile.

(iii) 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths of a statute mile, and for precision instrument runways.

The width of the primary surface of a runway will be that width prescribed in this section for the most precise approach existing or planned for either end of that runway.

(d) **Approach surface**—a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

(1) The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

(i) 1,250 feet for that end of a utility runway with only visual approaches;

(ii) 1,500 feet for that end of a runway other than a utility runway with only visual approaches;

(iii) 2,000 feet for that end of a utility runway with a nonprecision instrument approach;

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OBJECTS AFFECTING NAVIGABLE AIRSPACE

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(iv) 3,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths of a statute mile;

(v) 4,000 feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths statute mile; and

(vi) 16,000 feet for precision instrument runways.

(2) The approach surface extends for a horizontal distance of:

(i) 5,000 feet at a slope of 20 to 1 for all utility and visual runways;

(ii) 10,000 feet at a slope of 34 to 1 for all nonprecision instrument runways other than utility; and,

(iii) 10,000 feet at a slope of 50 to 1 with an additional 40,000 feet at a slope of 40 to 1 for all precision instrument runways.

(3) The outer width of an approach surface to an end of a runway will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

(e) **Transitional surface**—these surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 7 to 1 from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

**§ 77.27 [Revoked]****§ 77.28 Military airport imaginary surfaces.**

(a) **Related to airport reference points.** These surfaces apply to all military airports. For the purposes of this section a military airport is any airport operated by an armed force of the United States.

(1) **Inner horizontal surface**—a plane is oval in shape at a height of 150 feet above the established airfield elevation. The plane

is constructed by scribing an arc with a radius of 7,500 feet about the centerline at the end of each runway and interconnecting these arcs with tangents.

(2) **Conical surface**—a surface extending from the periphery of the inner horizontal surface outward and upward at a slope of 20 to 1 for a horizontal distance of 7,000 feet to a height of 500 feet above the established airfield elevation.

(3) **Outer horizontal surface**—a plane, located 500 feet above the established airfield elevation, extending outward from the outer periphery of the conical surface for a horizontal distance of 30,000 feet.

(b) **Related to runways.** These surfaces apply to all military airports.

(1) **Primary surface**—a surface located on the ground or water longitudinally centered on each runway with the same length as the runway. The width of the primary surface for runways is 2,000 feet. However, at established bases where substantial construction has taken place in accordance with a previous lateral clearance criteria, the 2,000-foot width may be reduced to the former criteria.

(2) **Clear zone surface**—a surface located on the ground or water at each end of the primary surface, with a length of 1,000 feet and the same width as the primary surface.

(3) **Approach clearance surface**—an inclined plane, symmetrical about the runway centerline extended, beginning 200 feet beyond each end of the primary surface at the centerline elevation of the runway end and extending for 50,000 feet. The slope of the approach clearance surface is 50 to 1 along the runway centerline extended until it reaches an elevation of 500 feet above the established airport elevation. It then continues horizontally at this elevation to a point 50,000 feet from the point of beginning. The width of this surface at the runway end is the same as the primary surface, it flares uniformly, and the width at 50,000 is 16,000 feet.

(4) **Transitional surfaces**—these surfaces connect the primary surfaces, the first 200 feet of the clear zone surfaces, and the ap-

proach clearance surfaces to the inner horizontal surface, conical surface, outer horizontal surface or other transitional surfaces. The slope of the transitional surface is 7 to 1 outward and upward at right angles to the runway centerline.

§ 77.29 Airport imaginary surfaces for heliports.

(a) *Heliport primary surface.* The area of the primary surface coincides in size and shape with the designated takeoff and landing area of a heliport. This surface is a horizontal plane at the elevation of the established heliport elevation.

(b) *Heliport approach surface.* The approach surface begins at each end of the heliport primary surface with the same width as the primary surface, and extends outward and upward for a horizontal distance of 4,000 feet where its width is 500 feet. The slope of the approach surface is 8 to 1 for civil heliports and 10 to 1 for military heliports.

(c) *Heliport transitional surfaces.* These surfaces extend outward and upward from the lateral boundaries of the heliport primary surface and from the approach surfaces at a slope of 2 to 1 for a distance of 250 feet measured horizontally from the centerline of the primary and approach surfaces.

## DEPARTMENT OF HEALTH (STATE BOARD OF)

**REGISTRAR'S NOTICE:** This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 1 of the Code of Virginia, which excludes agency orders or regulations fixing rates or prices. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** VR 355-39-200. Charges for Medical Care Services.

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

**Effective Date:** September 15, 1992.

**Summary:**

*These amendments modify the Virginia Department of Health's schedule of charges for home health services. Visit charges have been simplified and will be increased for skilled nursing, physical therapy, speech therapy, and medical reimbursement for Medicaid payment levels that became effective on July 1, 1992. These increased charges and subsequent higher revenues will allow the department to recover some of its increased costs that have occurred due to higher nurses' salaries and supply costs.*

*One change is being made because a billing code that had been used to charge for the administration of nonroutine medications and immunizations has been deleted. The guidelines for billing have been changed and the department is changing its billing procedures to be the same as the new ones.*

*In addition, some changes are being made to correct errors that have been made on past charge schedules. There is no economic or service impacts associated with these changes.*

STATE HEALTH DEPARTMENT  
 CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS  
 EFFECTIVE AUGUST ~~15~~ SEPTEMBER 15, 1992  
 EXCEPT FOR NORTHERN VIRGINIA - CHART I

By the provisions of the "Regulations Governing Eligibility Standards and Charges for Medical Care Services," promulgated by the authority of the Board of Health in accordance with § 32.1-12 of the Code of Virginia, listed below are the charges for medical care services, stating the minimum required payments to be made by patients toward their charges, according to income levels.

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT OR PER SERVICE(1)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)	
29900	MATERNITY/GYNECOLOGY(3)	\$ 33.00	\$ .00	\$ 3.25	\$ 8.25	\$16.50	\$24.75	\$ 33.00	
59420	Maternity Care Billed on Global Basis	\$300.00	\$ .00	\$30.00	\$75.00	\$150.00	\$225.00	\$300.00	
59430	Postpartum Visit	\$ 33.00	\$ .00	\$ 3.30	\$ 8.25	\$16.50	\$24.75	\$ 33.00	
29000, 29001, 29002, 29003, 29004	Maternity Care Coordination(4) Risk Screening	\$ 10.00	\$ .00	\$ 1.00	\$ 2.50	\$ 5.00	\$ 7.50	\$ 10.00	
29104	Maternity Assessment	\$ 25.00	\$ .00	\$ 2.50	\$ 6.25	\$12.50	\$18.75	\$ 25.00	
29105, 29107, 29109	Maternity Follow-up	\$ 40.00 per month x 11 months	\$ .00	\$ 4.00	\$10.00	\$20.00	\$30.00	\$ 40.00	
29310	Nutritional Services Original Assessment	\$ 20.00	\$ .00	\$ .00	\$ .00	\$ .00	\$15.00	\$ 20.00	
29311	Follow-up	\$ 10.00 per encounter	\$ .00	\$ .00	\$ .00	\$ .00	\$ 7.50	\$ 10.00	
29300, 29301, or 29302	Group Education	\$ 6.00 per class or session \$ 36.00 maximum	\$ .00	\$ .60	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	
29312	Homemaker Services	\$ 33.00 per visit or \$ 8.00 per hour, not to exceed 4 hours	\$ .00	\$ 3.30	\$ 8.25	\$16.50	\$24.75	\$ 33.00	
			\$ .00	\$ .80	\$ 2.00	\$ 4.00	\$ 6.00	\$ 8.00	
	CLINICAL VISITS (INCLUDES BOTH PEDIATRIC AND ADULT SERVICES)								
	New Patients: To qualify as a new patient, patient must not have been seen by any provider in that health department for at least three years.								
99201	Visit included all three components: *Problem focused history *Problem focused examination *Straightforward medical decision making		\$ .00	\$ 2.50	\$ 6.00	\$12.00	\$18.00	\$ 24.00	
99202	Visit included all three components: *Expanded problem focused history		\$ .00	\$ 3.00	\$ 7.00	\$14.00	\$21.00	\$ 28.00	

CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS  
 EFFECTIVE AUGUST ~~SEPTEMBER~~ 15, 1992  
 EXCEPT FOR NORTHERN VIRGINIA - CHART I

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT OR PER SERVICE(1)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
	*Expanded problem focused examination							
	*Straightforward medical decision making							
99203	Visit included all three components: *Detailed history *Detailed examination *Medical decision making of low complexity		\$ .00	\$ 3.25	\$ 8.25	\$16.50	\$24.75	\$ 33.00
99204	Visit included all three components: *Comprehensive history *Comprehensive examination *Medical decision making of moderate complexity		\$ .00	\$ 4.75	\$11.75	\$23.50	\$35.00	\$ 46.75
99205	Visit included all three components: *Comprehensive history *Comprehensive examination *Medical decision making of high complexity		\$ .00	\$ 5.00	\$12.50	\$25.00	\$37.50	\$ 50.00
	Established patient visits: Any patient that has been seen by a provider in that health department within the last 3 years.							
99211	Visit may or may not require physician Presenting problems are minimal		\$ .00	\$ 1.00	\$ 2.50	\$ 5.00	\$ 7.50	\$ 10.00
99212	Visit included two of three components: *Problem focused history *Problem focused examination *straightforward medical decision making		\$ .00	\$ 2.00	\$ 4.75	\$ 9.50	\$14.25	\$ 19.00
99213	Visit included two of three components: *Expanded problem focused history *Expanded problem focused examination *Medical decision of low complexity		\$ .00	\$ 2.75	\$ 6.50	\$13.25	\$19.75	\$ 26.50
99214	Visit included two of three components: *Detailed history *Detailed examination *Medical decision making of moderate complexity		\$ .00	\$ 3.50	\$ 8.75	\$26.25	\$24.75	\$ 35.00



CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS  
EFFECTIVE AUGUST ~~SEPTEMBER~~ 15, 1992  
EXCEPT FOR NORTHERN VIRGINIA - CHART I

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT OR PER SERVICE(1)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
99215	Visit included two of three components: *Comprehensive history *Comprehensive examination *Medical decision making of high complexity		\$ .00	\$ 4.50	\$11.25	\$22.50	\$33.75	\$ 45.00
	PREVENTIVE MEDICINE SERVICES (These codes are to be used primarily for well baby visits. They are the codes to be used for EPSDT billing.)							
	New Patient							
99381	Age under 1 year		\$ .00	\$ 3.50	\$ 8.75	\$17.50	\$26.25	\$ 35.00
99382	Age 1 through 4 years		\$ .00	\$ 4.00	\$ 9.75	\$19.50	\$29.25	\$ 39.00
99383	Age 5 through 11 years		\$ .00	\$ 4.00	\$ 9.75	\$19.50	\$29.25	\$ 39.00
99384	Age 12 through 17 years		\$ .00	\$ 3.50	\$ 8.75	\$17.50	\$26.25	\$ 35.00
99385	Age 18 through 21 years		\$ .00	\$ 3.75	\$ 9.50	\$19.00	\$28.50	\$ 38.00
	Established Patient							
99391	Age under 1 year		\$ .00	\$ 3.50	\$ 8.75	\$17.50	\$26.25	\$ 35.00
99392	Age 1 through 4 years		\$ .00	\$ 3.50	\$ 9.00	\$18.00	\$27.00	\$ 36.00
99393	Age 5 through 11 years		\$ .00	\$ 3.50	\$ 9.00	\$18.00	\$27.00	\$ 36.00
99394	Age 12 through 17 years		\$ .00	\$ 3.00	\$ 7.75	\$15.50	\$23.25	\$ 31.00
99395	Age 18 through 21 years		\$ .00	\$ 3.75	\$ 9.50	\$19.00	\$28.50	\$ 38.00
	Infant Care Coordination(4)							
<del>Z9000, Z9001, Z9002, Z9004</del> Z9010, Z9012, Z9014, Z9104	Risk Screening	\$ 10.00	\$ .00	\$ 1.00	\$ 2.50	\$ 5.00	\$ 7.50	\$ 10.00
Z9106, Z9108, Z9110	Infant Assessment	\$ 25.00	\$ .00	\$ 2.50	\$ 6.25	\$12.50	\$18.75	\$ 25.00
	Follow-up	\$ 40.00 per month x 24 months	\$ .00	\$ 4.00	\$10.00	\$20.00	\$30.00	\$ 40.00
	FAMILY PLANNING(5)							
Z9007	Initial/Annual Visit	\$ 50.00	\$ .00	\$ 5.00	\$12.50	\$25.00	\$37.50	\$ 50.00
Z9009	Follow-up/Problem Visit	\$ 20.00	\$ .00	\$ 2.00	\$ 5.00	\$10.00	\$15.00	\$ 20.00
	COLPOSCOPY SERVICES							
57454	Colposcopy with Biopsy	\$ 90.00	\$ .00	\$ 9.00	\$22.50	\$45.00	\$67.50	\$ 90.00
57511	Colposcopy with Biopsy and Cryosurgery	\$130.00	\$ .00	\$13.00	\$32.50	\$65.00	\$97.50	\$130.00
	DENTAL SERVICES(6)							

-----BASED ON MEDIAN PRIVATE PRACTICE PROFESSIONAL FEES-----

CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS  
EFFECTIVE AUGUST SEPTEMBER 15, 1992  
EXCEPT FOR NORTHERN VIRGINIA - CHART I

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT OR PER SERVICE(1)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
	SPECIAL SERVICES WITHOUT ELIGIBILITY(7)							
36415	Venipuncture	\$ 7.00						
98838	Administration of Prescribed Medication and/or Nonroutine Immunizations	\$ <del>3.50</del> 10.00						
	PLUS: Cost of Vaccine(7) when furnished by Health Department							
	Blood Pressure Check	No Charge						
86580	PPD/Tuberculin Testing	\$ 3.15						
71010	Radiological Examination (Chest)	\$ 20.00						
	Activities of Daily Living(8)	\$ 9.00 per hour						
	Cholesterol Screening	\$ 5.00						
	and Counseling							
	Medical Record Copying	\$ .50 per page						
	ELIGIBILITY IS REQUIRED ON THE FOLLOWING:							
	Pharmacy Professional Fee	\$ 4.40	\$ .00	\$ .50	\$ 1.00	\$ 2.25	\$ 3.25	\$ 4.40
	PLUS: Cost of Drugs or Vaccine		0%	10%	25%	50%	75%	100%
	Other X-ray Services(9)		BASED ON REASONABLE COSTS AS DETERMINED BY THE DEPT. OF MEDICAL ASSIST. SVCS					
			MAXIMUM PAYMENT LEVELS					
	Other Laboratory Services(10)		BASED ON REASONABLE COSTS AS DETERMINED BY THE DEPT. OF MEDICAL ASSIST. SVCS					
			MAXIMUM PAYMENT LEVELS					
	OTHER SERVICES							
	Children's Specialty Services (Annual)	\$120.00	\$ .00	\$12.00	\$30.00	\$60.00	\$90.00	\$120.00
	HOME HEALTH SERVICES							
	Skilled Nursing	\$ 99.00	\$ .00	\$ 9.90	\$24.75	\$49.50	\$74.25	\$ 99.00
	Assessment	\$ <del>94.00</del>	\$ <del>0.00</del>	\$ <del>9.40</del>	\$ <del>23.50</del>	\$ <del>47.00</del>	\$ <del>70.50</del>	\$ <del>94.00</del>
	Follow-up	\$ <del>85.00</del>	\$ <del>0.00</del>	\$ <del>8.50</del>	\$ <del>21.25</del>	\$ <del>42.50</del>	\$ <del>63.75</del>	\$ <del>85.00</del>
		\$ <del>155.00</del>	\$ <del>0.00</del>	\$ <del>15.50</del>	\$ <del>38.75</del>	\$ <del>77.50</del>	\$ <del>116.25</del>	\$ <del>155.00</del>
	Comprehensive	\$167.00	\$ .00	\$16.70	\$41.75	\$83.50	\$125.25	\$167.00
	Physical Therapy	\$ 94.00	\$ .00	\$ 9.40	\$23.50	\$47.00	\$70.50	\$ 94.00
	Assessment	\$ <del>91.00</del>	\$ <del>0.00</del>	\$ <del>9.10</del>	\$ <del>22.75</del>	\$ <del>45.50</del>	\$ <del>68.25</del>	\$ <del>91.00</del>
	Follow-up	\$ <del>75.00</del>	\$ <del>0.00</del>	\$ <del>7.50</del>	\$ <del>18.75</del>	\$ <del>37.50</del>	\$ <del>56.25</del>	\$ <del>75.00</del>
	Occupational Therapy	\$ 93.00	\$ .00	\$ 9.30	\$23.25	\$46.50	\$69.75	\$ 93.00
	Assessment	\$ <del>93.00</del>	\$ <del>0.00</del>	\$ <del>9.30</del>	\$ <del>23.25</del>	\$ <del>46.50</del>	\$ <del>69.75</del>	\$ <del>93.00</del>
	Follow-up	\$ <del>77.00</del>	\$ <del>0.00</del>	\$ <del>7.70</del>	\$ <del>19.25</del>	\$ <del>38.50</del>	\$ <del>57.75</del>	\$ <del>77.00</del>
	Speech Therapy	\$ 98.00	\$ .00	\$ 9.80	\$24.50	\$49.00	\$73.50	\$ 98.00
	Assessment	\$ <del>97.00</del>	\$ <del>0.00</del>	\$ <del>9.70</del>	\$ <del>24.25</del>	\$ <del>48.50</del>	\$ <del>72.75</del>	\$ <del>97.00</del>
	Follow-up	\$ <del>81.00</del>	\$ <del>0.00</del>	\$ <del>8.10</del>	\$ <del>20.25</del>	\$ <del>40.50</del>	\$ <del>60.75</del>	\$ <del>81.00</del>
	Home Health Aide	\$ 46.00	\$ .00	\$ 4.60	\$11.50	\$23.00	\$34.50	\$ 46.00
		\$ <del>109.00</del>	\$ <del>0.00</del>	\$ <del>10.90</del>	\$ <del>27.25</del>	\$ <del>54.50</del>	\$ <del>81.75</del>	\$ <del>109.00</del>
	Medical Social Worker	\$125.00	\$ .00	\$12.50	\$31.25	\$62.50	\$93.75	\$125.00

CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS  
EFFECTIVE AUGUST ~~15~~ SEPTEMBER 15, 1992  
EXCEPT FOR NORTHERN VIRGINIA - CHART I

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT OR PER SERVICE(1)	INCOME	INCOME	INCOME	INCOME	INCOME	INCOME
			LEVEL A (0%)	LEVEL B (10%)	LEVEL C (25%)	LEVEL D (50%)	LEVEL E (75%)	LEVEL F (100%)
<b>CHILD DEVELOPMENT SERVICES PROGRAM</b>								
Medical Services								
	Problem focused consultation	\$ 47.00	\$ .00	\$ 4.70	\$11.75	\$23.50	\$35.25	\$ 47.00
	Expanded consultation	\$ 60.00	\$ .00	\$ 6.00	\$15.00	\$30.00	\$45.00	\$ 60.00
	Detailed consultation	\$ 75.00	\$ .00	\$ 7.50	<del>\$16.75</del> \$18.75	<del>\$33.50</del> \$37.50	<del>\$50.25</del> \$56.25	\$ 75.00
	Comprehensive consultation	\$100.00	\$ .00	\$10.00	\$25.00	\$50.00	\$75.00	\$100.00
	Pharmacological Management	\$ 8.50	\$ .00	\$ .85	\$ 2.10	\$ 4.25	\$ 6.35	\$ 8.50
	Health Education	\$ 10.50	\$ .00	\$ 1.05	\$ 2.65	\$ 5.25	\$ 7.90	\$ 10.50
Mental Health Services								
	Psychological Evaluation per hr.	\$105.00	\$ .00	\$10.50	\$26.25	\$52.50	\$78.75	\$105.00
	Psycho-social Assessment	\$ 30.00	\$ .00	\$ 3.00	\$ 7.50	\$15.00	\$22.50	\$ 30.00
	Individual Psychotherapy per 1/2 hour	\$ 15.75	\$ .00	\$ 1.60	\$ 3.95	\$ 7.90	\$11.85	\$ 15.75
	Family Psychotherapy	\$ 10.50	\$ .00	\$ 1.05	\$ 2.65	\$ 5.25	\$ 7.90	\$ 10.50
	Group Psychotherapy	\$ 10.50	\$ .00	\$ 1.05	\$ 2.65	\$ 5.25	\$ 7.90	\$ 10.50
	Multifamily Psychotherapy	\$ 10.50	\$ .00	\$ 1.05	\$ 2.65	\$ 5.25	\$ 7.90	\$ 10.50
Educational Services								
	Educational Diagnostic Evaluation	-NC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
	School Visit/Consultation	-NC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
	Classroom Observation	-NC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
Case Management Services								
	Interdisciplinary Medical Conference	\$ 40.45	\$ .00	\$ 4.05	\$10.12	\$20.23	\$30.35	\$ 40.45
	Other Case Management Activity	-NC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
	Progress Review	-NC-	-----SERVICE-----					

STATE HEALTH DEPARTMENT  
 CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS  
 EFFECTIVE AUGUST ~~15~~ SEPTEMBER 15, 1992  
 NORTHERN VIRGINIA - CHART II

By the provisions of the "Regulations Governing Eligibility Standards and Charges for Medical Care Services," promulgated by the authority of the Board of Health in accordance with § 32.1-12 of the Code of Virginia, listed below are the charges for medical care services, stating the minimum required payments to be made by patients toward their charges, according to income levels.

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT OR PER SERVICE(1)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
Z9900	MATERNITY/GYNECOLOGY(3)	\$ 37.00	\$ .00	\$ 3.75	\$ 9.25	\$18.50	\$27.75	\$ 37.00
59420	Maternity Care Billed on Global Basis	\$330.00	\$ .00	\$33.00	\$82.50	\$165.00	\$247.50	\$330.00
59430	Postpartum Visit	\$ 36.00	\$ .00	\$ 3.60	\$ 9.00	\$18.00	\$27.00	\$ 36.00
Z9900, Z9901, Z9902, Z9903, Z9904	Maternity Care Coordination(4) Risk Screening	\$ 11.50	\$ .00	\$ 1.25	\$ 3.00	\$ 5.75	\$ 8.75	\$ 11.50
Z9104	Maternity Assessment	\$ 28.50	\$ .00	\$ 2.85	\$ 7.25	\$14.25	\$21.50	\$ 28.50
Z9105, Z9107, Z9109	Maternity Follow-up	\$ 45.50 per month x 11 months	\$ .00	\$ 4.55	\$11.50	\$22.75	\$34.25	\$ 45.50
Z9310	Nutritional Services Original Assessment	\$ 22.75	\$ .00	\$ 2.50	\$ 5.75	\$11.50	\$17.00	\$ 22.75
Z9311	Follow-up	\$ 11.50 per encounter	\$ .00	\$ 1.25	\$ 3.00	\$ 5.75	\$ 8.75	\$ 11.50
Z9300, Z9301, or Z9302	Group Education	\$ 7.00 per class or session \$ 41.00 maximum	\$ .00	\$ .75	\$ 1.75	\$ 3.50	\$ 5.25	\$ 7.00
Z9312	Homemaker Services	\$ 37.50 per visit or \$ 9.25 per hour, not to exceed 4 hours	\$ .00	\$ 3.75	\$ 9.50	\$18.75	\$28.25	\$ 37.50
			\$ .00	\$ .95	\$ 1.85	\$ 4.75	\$ 6.95	\$ 9.25
	CLINICAL VISITS (INCLUDES BOTH PEDIATRIC AND ADULT SERVICES)							
	New Patients: To qualify as a new patient, patient must not have been seen by any provider in that health department for at least three years.							
99201	Visit included all three components: *Problem focused history *Problem focused examination *Straightforward medical decision making		\$ .00	\$ 2.75	\$ 6.75	\$13.50	\$20.25	\$ 27.00
99202	Visit included all three components: *Expanded problem focused history		\$ .00	\$ 3.00	\$ 7.75	\$15.50	\$23.25	\$ 31.00

CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS  
EFFECTIVE AUGUST ~~SEPTEMBER~~ 15, 1992  
NORTHERN VIRGINIA - CHART II

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT OR PER SERVICE(1)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
99203	*Expanded problem focused examination *Straightforward medical decision making Visit included all three components: *Detailed history *Detailed examination *Medical decision making of low complexity	\$ .00	\$ 3.75	\$ 9.25	\$18.50	\$27.75	\$ 37.00	
99204	Visit included all three components: *Comprehensive history *Comprehensive examination *Medical decision making of moderate complexity	\$ .00	\$ 5.00	\$12.75	\$25.50	\$38.25	\$ 51.00	
99205	Visit included all three components: *Comprehensive history *Comprehensive examination *Medical decision making of high complexity	\$ .00	\$ 5.50	\$13.75	\$27.50	\$41.25	\$ 55.00	
99211	Established patient visits: Any patient that has been seen by a provider in that health department within the last 3 years. Visit may or may not require physician Presenting problems are minimal	\$ .00	\$ 1.00	\$ 2.75	\$ 5.50	\$ 8.25	\$ 11.00	
99212	Visit included two of three components: *Problem focused history *Problem focused examination *straightforward medical decision making	\$ .00	\$ 2.00	\$ 5.25	\$10.50	\$15.75	\$ 21.00	
99213	Visit included two of three components: *Expanded problem focused history *Expanded problem focused examination *Medical decision of low complexity	\$ .00	\$ 3.00	\$ 7.50	\$15.00	\$22.50	\$ 30.00	
99214	Visit included two of three components: *Detailed history *Detailed examination *Medical decision making of moderate complexity	\$ .00	\$ 4.00	\$ 9.75	\$19.50	\$29.25	\$ 39.00	

CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS  
EFFECTIVE AUGUST ~~15~~ SEPTEMBER 15, 1992  
NORTHERN VIRGINIA - CHART II

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT OR PER SERVICE(1)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
99215	Visit included two of three components: *Comprehensive history *Comprehensive examination *Medical decision making of high complexity		\$ .00	\$ 5.00	\$12.50	\$25.00	\$37.50	\$ 50.00
	PREVENTIVE MEDICINE SERVICES (These codes are to be used primarily for well baby visits. They are the codes to be used for EPSDT billing.)							
	New Patient							
99381	Age under 1 year		\$ .00	\$ 4.00	\$ 9.75	\$19.50	\$29.25	\$ 39.00
99382	Age 1 through 4 years		\$ .00	\$ 4.25	\$10.75	\$21.50	\$32.25	\$ 43.00
99383	Age 5 through 11 years		\$ .00	\$ 4.25	\$10.75	\$21.50	\$32.25	\$ 43.00
99384	Age 12 through 17 years		\$ .00	\$ 4.00	\$ 9.75	\$19.50	\$29.25	\$ 39.00
99385	Age 18 through 21 years		\$ .00	\$ 4.25	\$10.50	\$21.00	\$31.50	\$ 42.00
	Established Patient							
99391	Age under 1 year		\$ .00	\$ 4.00	\$ 9.75	\$19.50	\$29.25	\$ 39.00
99392	Age 1 through 4 years		\$ .00	\$ 4.00	\$10.00	\$20.00	\$30.00	\$ 40.00
99393	Age 5 through 11 years		\$ .00	\$ 4.00	\$10.00	\$20.00	\$30.00	\$ 40.00
99394	Age 12 through 17 years		\$ .00	\$ 3.50	\$ 8.75	\$17.50	\$26.25	\$ 35.00
99395	Age 18 through 21 years		\$ .00	\$ 4.25	\$10.50	\$21.00	\$31.50	\$ 42.00
	Infant Care Coordination(4)							
<del>29000-29001</del>								
<del>29002-29004</del>								
<del>29010, 29012</del>	Risk Screening	\$ 11.50	\$ .00	\$ 1.85	\$ 3.00	\$ 5.75	\$ 8.75	\$ 11.50
<del>29014</del>								
29104	Infant Assessment	\$ 28.50	\$ .00	\$ 2.85	\$ 7.25	\$14.25	\$21.50	\$ 28.50
29106, 29108, 29110	Follow-up	\$ 45.00 per month x 24 months	\$ .00	\$ 4.60	\$11.25	\$22.55	\$33.75	\$ 45.00
	FAMILY PLANNING(5)							
09007	Initial/Annual Visit	\$ 56.00	\$ .00	\$ 5.60	\$14.00	\$28.00	\$42.00	\$ 56.00
09008	Follow-up/Problem Visit	\$ 22.75	\$ .00	\$ 2.25	\$ 5.75	\$11.25	\$17.00	\$ 22.75
	COLPOSCOPY SERVICES							
57454	Colposcopy with Biopsy	\$100.00	\$ .00	\$10.00	\$25.00	\$50.00	\$75.00	\$100.00
57511	Colposcopy with Biopsy and Cryosurgery	\$145.00	\$ .00	\$14.50	\$36.25	\$72.50	\$98.75	\$145.00
	DENTAL SERVICES(6) -----BASED ON MEDIAN PRIVATE PRACTICE PROFESSIONAL FEES-----							

CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS  
EFFECTIVE AUGUST SEPTEMBER 15, 1992  
NORTHERN VIRGINIA - CHART II

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT OR PER SERVICE(1)	INCOME	INCOME	INCOME	INCOME	INCOME	INCOME
			LEVEL A (0%)	LEVEL B (10%)	LEVEL C (25%)	LEVEL D (50%)	LEVEL E (75%)	LEVEL F (100%)
<b>SPECIAL SERVICES WITHOUT ELIGIBILITY(7)</b>								
36415	Venipuncture	\$ 8.00	-----FLAT RATE CHARGE-----					
90030	Medication and/or Nonroutine Immunizations PLUS: Cost of Vaccine(7) when furnished by Health Department	\$ <del>4.00</del> 10.00	-----FLAT RATE CHARGE-----					
86580	Blood Pressure Check	No Charge	-----FLAT RATE CHARGE-----					
71010	PPD/Tuberculin Testing	\$ 3.55	-----SERVICE PROVIDED FREE STATEWIDE-----					
	Radiological Examination (Chest)	\$ 22.00	-----SERVICE PROVIDED FREE STATEWIDE-----					
	Activities of Daily Living(8)	\$ 11.00 per hour	-----SERVICE PROVIDED FREE STATEWIDE-----					
	Cholesterol Screening and Counseling	\$ 6.00	-----SERVICE PROVIDED FREE STATEWIDE-----					
	Medical Record Copying	\$ .50 per page	-----SERVICE PROVIDED FREE STATEWIDE-----					
<b>ELIGIBILITY IS REQUIRED ON THE FOLLOWING:</b>								
	Pharmacy Professional Fee	\$ 4.40	\$ .00	\$ .50	\$ 1.00	\$ 2.25	\$ 3.25	\$ 4.40
	PLUS: Cost of Drugs or Vaccine		BASED ON REASONABLE COSTS AS DETERMINED BY THE DEPT. OF MEDICAL ASSIST. SVCS					
	Other X-ray Services(9)		MAXIMUM PAYMENT LEVELS					
	Other Laboratory Services(10)		BASED ON REASONABLE COSTS AS DETERMINED BY THE DEPT. OF MEDICAL ASSIST. SVCS					
			MAXIMUM PAYMENT LEVELS					
<b>OTHER SERVICES</b>								
	Children's Specialty Services (Annual)	\$136.00	\$ .00	\$13.50	\$34.00	\$68.00	\$102.00	\$136.00
<b>HOME HEALTH SERVICES</b>								
	Skilled Nursing	\$ 99.00	\$ .00	\$ 9.90	\$24.75	\$49.50	\$74.25	\$ 99.00
	Assessment	<del>\$ 94.00</del>	<del>\$ --.00</del>	<del>\$ 9.40</del>	<del>\$23.50</del>	<del>\$47.00</del>	<del>\$70.50</del>	<del>\$ 94.00</del>
	Follow-up	<del>\$ 85.00</del>	<del>\$ --.00</del>	<del>\$ 8.50</del>	<del>\$21.25</del>	<del>\$42.50</del>	<del>\$63.75</del>	<del>\$ 85.00</del>
	Comprehensive	<del>\$155.00</del>	<del>\$ --.00</del>	<del>\$15.50</del>	<del>\$38.75</del>	<del>\$77.50</del>	<del>\$116.25</del>	<del>\$155.00</del>
	Physical Therapy	\$167.00	\$ .00	\$16.70	\$41.75	\$83.50	\$125.25	\$167.00
	Assessment	<del>\$ 94.00</del>	<del>\$ .00</del>	<del>\$ 9.40</del>	<del>\$23.50</del>	<del>\$47.00</del>	<del>\$70.50</del>	<del>\$ 94.00</del>
	Follow-up	<del>\$ 97.00</del>	<del>\$ --.00</del>	<del>\$ 9.70</del>	<del>\$22.75</del>	<del>\$45.50</del>	<del>\$68.25</del>	<del>\$ 97.00</del>
	Occupational Therapy	\$ 93.00	\$ .00	\$ 9.30	\$23.25	\$46.50	\$69.75	\$ 93.00
	Assessment	<del>\$ 93.00</del>	<del>\$ --.00</del>	<del>\$ 9.30</del>	<del>\$23.25</del>	<del>\$46.50</del>	<del>\$69.75</del>	<del>\$ 93.00</del>
	Follow-up	<del>\$ 77.00</del>	<del>\$ --.00</del>	<del>\$ 7.70</del>	<del>\$19.25</del>	<del>\$38.50</del>	<del>\$57.75</del>	<del>\$ 77.00</del>
	Speech Therapy	\$ 98.00	\$ .00	\$ 9.80	\$24.50	\$49.00	\$73.50	\$ 98.00
	Assessment	<del>\$ 97.00</del>	<del>\$ --.00</del>	<del>\$ 9.70</del>	<del>\$24.25</del>	<del>\$48.50</del>	<del>\$72.75</del>	<del>\$ 97.00</del>
	Follow-up	<del>\$ 81.00</del>	<del>\$ --.00</del>	<del>\$ 8.10</del>	<del>\$20.25</del>	<del>\$40.50</del>	<del>\$60.75</del>	<del>\$ 81.00</del>
	Home Health Aide	\$ 46.00	\$ .00	\$ 4.60	\$11.50	\$23.00	\$34.50	\$ 46.00
	Medical Social Worker	<del>\$109.00</del>	<del>\$ --.00</del>	<del>\$10.90</del>	<del>\$27.25</del>	<del>\$54.50</del>	<del>\$81.75</del>	<del>\$109.00</del>
		\$125.00	\$ .00	\$12.50	\$31.25	\$62.50	\$93.75	\$125.00

CHARGES AND PAYMENT REQUIREMENTS BY INCOME LEVELS  
EFFECTIVE AUGUST ~~SEPTEMBER~~ 15, 1992  
NORTHERN VIRGINIA - CHART II

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT OR PER SERVICE(1)	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
CHILD DEVELOPMENT SERVICES PROGRAM								
Medical Services								
	Problem focused consultation	\$ 53.00	\$ .00	\$ 5.30	\$13.25	\$26.50	\$39.75	\$ 53.00
	Expanded consultation	\$ 68.00	\$ .00	\$ 6.80	\$17.00	\$34.00	\$51.00	\$ 68.00
	Detailed consultation	\$ 85.00	\$ .00	\$ 8.50	\$21.25	\$42.50	\$63.75	\$ 85.00
	Comprehensive consultation	\$113.00	\$ .00	\$11.30	\$28.20	\$56.50	\$84.75	\$113.00
	Pharmacological Management	\$ 9.50	\$ .00	\$ .95	\$ 2.40	\$ 4.75	\$ 7.15	\$ 9.50
	Health Education	\$ 12.00	\$ .00	\$ 1.20	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00
Mental Health Services								
	Psychological Evaluation per hr.	\$120.00	\$ .00	\$12.00	\$30.00	\$60.00	\$90.00	\$120.00
	Psycho-social Assessment	\$ 34.00	\$ .00	\$ 3.40	\$ 8.50	\$17.00	\$25.50	\$ 34.00
	Individual Psychotherapy per 1/2 hour	\$ 18.00	\$ .00	\$ 1.80	\$ 4.50	\$ 9.00	\$13.50	\$ 18.00
	Family Psychotherapy	\$ 12.00	\$ .00	\$ 1.20	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00
	Group Psychotherapy	\$ 12.00	\$ .00	\$ 1.20	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00
	Multifamily Psychotherapy	\$ 12.00	\$ .00	\$ 1.20	\$ 3.00	\$ 6.00	\$ 9.00	\$ 12.00
Educational Services								
	Educational Diagnostic Evaluation	-NC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
	School Visit/Consultation	-NC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
	Classroom Observation	-NC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
Case Management Services								
	Interdisciplinary Medical Conference	\$ 45.70	\$ .00	\$ 4.75	\$11.43	\$22.85	\$34.28	\$ 45.70
	Other Case Management Activity	-NC-	-----SERVICE PROVIDED FREE STATEWIDE-----					
	Progress Review	-NC-	-----SERVICE PROVIDED FREE STATEWIDE-----					

ALL FOOTNOTES FOR STATEWIDE CHARGES STILL APPLY TO NORTHERN VIRGINIA CHARGES



CHARGES AND PAYMENTS BY INCOME LEVELS  
 AUGUST ~~SEPTEMBER~~ 15, 1992

## FOOTNOTES

1. For any service not listed, please contact the Office of Community Health Services so that a charge may be established.
2. Maximum Charges per Visit:
  - a. If the service is obtained through contracts with providers of the department, charges will be those charged the department as stated in the contract or the set charges, whichever is more.
  - b. The listed charges include all procedures such as routine lab work or x-ray as required in each program protocol for all patients.
  - c. Health Department maximum charges shall be: Income A - Free; Income B - 10% of charges; Income C - 25% charges; Income D - 50% of charges; Income E - 75% of charges; Income F - 100% of charges. See Income Levels Schedules in the Eligibility Section of the CHS manual for more details.
3. Maternity:
  - a. Maternity patients covered by Medicaid may be charged either on a per visit basis or for global care.  
 Maternity patients covered by private insurance will be billed on a global basis. At the end of the pregnancy, the insurance company is to be billed \$300 for antenatal care. The billing code is 59420.
  - b. All women making a postpartum visit are to be charged for the visit. To bill as a postpartum visit, use CPT code 59430. If family planning services are provided, this visit may be billed as a family planning visit (CPT code 09007 for Medicaid; appropriate office visit code for private insurances).
4. Maternal and Infant Care Coordination:
 

Services must meet Medicaid's guidelines before charging the patient for the services.

Charges may be deferred if the determination is made that the patient needs the services, but cannot pay for them at the time of service. Documentation of the waiver for deferment must be on file in the patient's medical folder. Refer to "Waiver of Payments" section of Regulations Governing Eligibility Standards and Charges for Medical Care Services.

For non-Medicaid patients, the contraceptive method selected is included in the cost of the initial and yearly visits.

If the patient has Medicaid and is given contraceptives at the clinic visit, bill for two procedures: one for the clinic visit and one for the contraceptives. Districts with pharmacies are to bill the prescription filling fee.

Billing codes for Medicaid are 09007 for the initial/yearly exam and 09009 for the follow-up/problem visits. If private insurance is to be billed, use the appropriate visit and code as described in item 3 b above.
6. Dental:
 

The charges for dental services are based on average professional charges in the private sector. Charge schedules may be obtained from the Division of Dental Health.

For any service requiring the services of a dental lab, the patient will be required to pay the full lab charge. The professional fee is \$30.00 per hour. Contact Dental Health for specific charges.

7. Special Services:

Service charges are to be applied statewide except when indicated as free. Flat rate services must be paid at the time the services are provided.

When a medication or nonroutine immunization is provided and no other clinical service is provided, an administration charge should be billed using the 99211 evaluation/management code. This is to be treated as a flat rate charge subject to the sliding fee scale only if the patient states they cannot otherwise pay the charge. If other clinical services are charged and billed, then there should be no administration charge.

8. ADL Services:

ADL services are provided to patients who do not qualify for Medicaid benefits. All ADL service collections are to be charged to the General Medical subprogram activity.

9. Other X-Ray Services:

These services are to be charged whenever they are ordered by the provider and are not part of the routine examination protocol for all clinic patients.

10. Other Lab Services:

These services are to be charged whenever they are ordered by the provider and are not part of the routine examination protocol for all clinic patients.

Contract Lab Work: When lab work is sent to contract labs and the patient is covered by Medicaid, a handling fee of \$3.00 (CPT code 99000) should be charged. (Medicare will not pay a handling fee, but will pay the venipuncture as below.) For all other patients, the charges for the lab work should be the Medicaid rate for the test(s) ordered.

If a venipuncture was needed to draw the sample, you may bill for the venipuncture.

# Final Regulations

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## DEPARTMENT OF MINORITY BUSINESS ENTERPRISE

**Title of Regulation:** VR 486-01-02. Regulation to Govern the Certification of Minority Business Enterprises.

**Statutory Authority:** § 2.1-64.35:8 of the Code of Virginia.

**Effective Date:** September 9, 1992.

### Summary:

This regulation governs the certification of a business as a bonafide minority business enterprise. These rules apply to minority businesses seeking assistance from the Department of Minority Business Enterprise and may serve as a vehicle for state agencies and institutions, localities, and private sector organizations requiring such certification.

This regulation does not apply to disadvantaged business enterprises involved in highway activities. Such firms will continue to be certified by the Virginia Department of Transportation in accordance with federal highway administration regulations.

This regulation sets forth the process of certification, establishes a formal application procedure, creates a review process to determine the extent of ownership and control of a business owned by a minority individual or individuals, provides a basis for approval or denial of certification and outlines an appeal procedure to ensure due process from businesses that have been denied certification.

Changes made to the regulation since publication of the proposed regulation include: (i) adding a waiver provision to the requirements of "investment" in § 1.1 for businesses that are at least two years old, and (ii) extending the time allowed for businesses to notify the department of changes in its status after certification approval from 15 days to 30 days in § 3.6.

VR 486-01-02. Regulation to Govern the Certification of Minority Business Enterprises.

### PART I GENERAL INFORMATION.

#### § 1.1. Definitions.

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

"Administratively closed" means an application for certification or recertification that has been placed in an inactive status by the department due to:

1. Insufficient information submitted and the failure of the applicant to respond to at least two written requests for such information; or

2. The applicant has voluntarily withdrawn his application; or

3. The firm is no longer in business.

"Applicant" means any licensed for profit business entity that applies to the Department of Minority Business Enterprise for certification as a bona fide minority business enterprise.

"Business enterprise" means a legal entity which is organized in any form, other than as a joint venture, such as a sole proprietorship, partnership or corporation, to engage in lawful commercial transactions for profit.

"Certification" means a process through which a business enterprise is verified to be in fact owned and controlled by an individual or individuals of an identified minority group, and so eligible to participate in minority business programs designed to stimulate minority business development.

"Certification staff" means the certification staff of the Department of Minority Business Enterprise which consists of [ two the ] certification specialists and the deputy director for market development. The certification staff shall review all matters relating to applications for certification, recertification and decertification at the direction [ of ] the director of the Department.

"Certified" means any applicant that has satisfied the requirements of these regulations as a minority owned business and is placed on the department's certified list for a period of two years.

"Control" means the primary power to direct the management and operations of a business enterprise and:

1. "Operational control" means the applicant should demonstrate that basic decisions pertaining to the operations of the business are independently made. This does not necessarily preclude the applicant from seeking paid assistance. An applicant must possess the knowledge to weigh all advice given and to make decisions regarding their particular industry or field. Such control includes but is not limited to the following:

a. The dominant control over the purchase of goods, equipment, business inventory, and services needed in the day-to-day operation of the business;

b. The dominant control of corporate accounts such as savings, checking, and other financial affairs; and

c. A thorough knowledge of the financial structure of the business and a control of the overall financial affairs and policy of the firm.

2. "Managerial control" means the applicant should demonstrate the ability to make independent and

unilateral business decisions needed to guide the future and destiny of the business. Such control includes but is not limited to the following:

- a. Dominant control over management policy;
- b. Dominant control over the hiring and firing of employees; and
- c. Dominant control over the solicitation and negotiation of contracts, the offering and acceptance or rejection of bids, and the administration of major aspects of the business.

3. "Operational and managerial noncontrol" exists when any one of the following conditions create a presumption that the minority owners do not have dominant control of the company:

- a. The minority owners are current employees of a nonminority corporation, sole proprietorship, trust, or partnership which has ownership interest in the business firm applying for certification; or
- b. The principals of the applicant company are substantially the same as in a nonminority firm that has an overt or undisclosed ownership or investment in the company; or
- c. The applicant is a wholly-owned subsidiary or affiliate of a nonminority firm.

"Conversion rights" means any agreement, option, scheme or documents that will create any rights which, if exercised, would result in less than 51% minority ownership of the business enterprise and less than dominant control by minority owners.

"Day" means any day except Saturday, Sunday and legal state holidays.

"Decertification" means the process by which a company loses its minority business certification.

"Department" or "DMBE" means the Department of Minority Business Enterprise.

"Director" means the director of the Department of Minority Business Enterprise.

"Investment" means as follows in the following contexts: A substantial personal investment equal to at least 51% of combined financial and nonfinancial investments in the business by the minority owners. Proof of such substantial investment shall be established by producing evidence of financial investment in the business or investments in the form of capital, equipment, contribution of property, space, patents or copy rights. Contributions of personal or professional services alone shall not be considered a substantial investment; however, a contribution of such services shall receive consideration when given in

conjunction with other tangible forms of investment.

[ The requirement of investment as defined above may be waived provided the department has determined that the business has operated in a financially successful manner under the actual managerial and operational control of not less than two years. The department must also find that the personal or professional services of the minority owner(s) during such period are equivalent in value to the substantial personal investment otherwise required above and the minority owner(s) have shared in the profits, salaries or income of the business in a ratio at least equal to the share(s) or percentage of their alleged majority ownership. Nothing in this paragraph shall be deemed a waiver of any other requirement imposed by law or these regulations as a prerequisite to certification. ]

"Minority" means a person who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "Asian Americans" means all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Korea, Samoa, Laos, Cambodia, Taiwan, Northern Marianas, the Philippines, U.S. Territory of the Pacific, India, Pakistan, Bangladesh and Srilanka and who are regarded as such by the community of which these persons claim to be a part.

2. "Blacks" means all persons having origins in any of the black racial groups in Africa and who are regarded as such by the community of which these persons claim to be a part.

3. "Hispanic Americans" means all persons having origins in any of the Spanish speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who are regarded as such by the community of which these persons claim to be a part.

4. "American Indians" means all persons having origins in any of the original peoples of North America and who are regarded as such in the community of which these persons claim to be a part of or who are recognized by a tribal organization.

5. "Eskimos and Aleuts" means all persons having origins in any of the peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia and who are regarded as such in the community of which these persons claim to be a part.

6. "Members of other groups" means all other individuals found to be socially disadvantaged by the United States Small Business Administration under Section 8(a) of the Small Business Act (15 USC 637 (a)).

# Final Regulations

"Owned" means as follows as it relates to the following legal entities of a business enterprise:

1. In a "corporation" minority principals must own at least 51% or more, of all voting stock of the corporation. Any voting agreements, voting trusts or shareholders agreement among the stockholders must not dilute the beneficial ownership, the rights or the influence of minority owners of the stock or classes of stock, of the corporation.
2. In a "partnership" form of business the minority principals must act as general partners, own 51% or more, of the partnership interest, exert 51% control among other general partners and must have made at least 51% of the total investment.
3. In a "sole proprietorship" the individual shall be a minority and own 100% of the business interest including assets, both tangible and intangible.

"Recertification" means the review of firms currently certified by the department to determine whether or not certification will be renewed for another two years.

"Recertify" means to renew certification for another two years.

"Revoked or decertified" means a business is no longer recognized by the department as a bona fide minority business enterprise and has been deleted from the department's certified list.

"Site visit" means a visit by a certification [ specialist, supervisor or other department employee staff member ] to the site of an applicant or certified company for the purpose of clarifying or obtaining additional information.

## § 1.2. Certification eligibility criteria.

In order to be certified by the department a business shall meet the following criteria:

1. Be legally owned and licensed.
2. Be minority "controlled" as defined by § 1.1 of these regulations.
3. Be "owned" by a minority as defined by § 1.1 of these regulations.
4. Have an "investment" by a minority as defined by § 1.1 of these regulations.
5. Be freed from any "conversion rights" as defined by § 1.1 of these regulations.

## PART II. GENERAL REQUIREMENTS.

### § 2.1. Who may file a certification application.

Any for profit business enterprise that believes it meets the criteria for a minority business enterprise may file an official application with the department to be certified and included on the minority business certification list. The exceptions are any businesses whose investment securities are offered for sale in interstate commerce. For example, a business whose securities are listed with the National Association of Security Dealers, American, or New York Stock Exchange for the purpose of selling shares of stock or other investment securities to the general public shall be ineligible to be certified under these regulations.

### § 2.2. Application submission and initial review.

Any firm desiring to be registered as a minority business enterprise with this department shall make and file a written application on such forms as may be prescribed by the department. Applications for certification shall be submitted to the Virginia Department of Minority Business Enterprise at its office in Richmond, Virginia. The application shall be reviewed initially for completeness. The specialist may conduct a site visit to obtain or clarify any information. The specialist shall prepare a written report stating the factual and legal grounds for approval or denial of certification within 30 days from the date a completed application is filed.

### § 2.3. Request for additional information.

In the event that information obtained in an application or site visit is unclear or inconsistent, the department shall request the applicant to provide additional information or documentation to clarify the application. Any applicant who is asked to provide additional information shall be notified by the department in writing [ with good cause and advised of the reason for the request ].

### § 2.4. Administratively closed application.

Any application pending for 60 days because requested additional information or documentation has not been provided, shall be administratively closed. In this instance a firm shall be notified in writing by certified mail of such action. Any application that has been administratively closed for 60 or more days from the date of such action shall be required to file a new application.

### § 2.5. Notification of change in application information prior to a determination by the certification staff.

The applicant shall be responsible for notifying the department immediately of any change in the application information or supporting documentation submitted prior to the decision of the certification staff. Failure to do so may be grounds for denial of certification.

### § 2.6. False or misleading information.

Any applicant that knowingly provides false or misleading information on his application or in supporting documentation shall be automatically denied certification.

and shall be prohibited from reapplying for certification for a period of two years.

## PART III. APPROVAL AND DENIAL OF CERTIFICATION.

### § 3.1. Certification staff.

The certification staff shall make the initial determination to deny or approve an application by a simple majority decision of the certification staff.

### § 3.2. Quorum.

A quorum for a meeting of the certification staff shall consist of two staff members. A majority vote of the members in attendance shall be necessary for the approval or denial of an application for certification. A unanimous vote shall be necessary [ ~~to make a final determination if only two certification staff members are present~~ ]. In the event of a tie vote the [ ~~application may be held over for the next meeting of the certification staff. In this case the~~ ] director or his designee shall review the application and cast the third and deciding vote.

### § 3.3. Approval of certification.

If certification is approved the department shall notify the applicant in writing no later than 10 days from the date of the decision.

### § 3.4. Duration of certification.

A business certified by the department shall remain certified for a period of two years, unless the business is decertified or is no longer in business.

### § 3.5. Certification list.

The department shall maintain a list of businesses certified as a minority business enterprise. This list shall be used as a source to assist governmental agencies, individuals, corporations, and prime contractors in identifying and utilizing minority businesses. This list may be updated and published monthly.

### § 3.6. Notification of changes in status.

After a business has been certified by the department, within [ ~~15~~ 30 ] days of any change in the [ legal structure, ] ownership, control, management, or status as an on-going minority business concern the applicant shall notify the department in writing of such change and the department shall, within [ ~~15~~ 30 ] days, notify the firm of its determination that such a change [ ~~is either a material change which~~ ] warrants a review by the certification staff or that the change has no effect on the certification status of the business. Failure to notify the department within [ ~~15~~ 30 ] days of such change is grounds for automatic revocation or decertification.

### § 3.7. Denial of certification.

If certification is denied, the department shall notify the applicant by certified mail no later than 10 days from the date of the decision by the certification staff stating the factual and legal grounds for such action and offering the applicant the opportunity to appeal the decision.

### § 3.8. Reapplication.

If and when the applicant has finalized his right to appeal [ in accordance with the time frames and provisions outlined in Part IV of these regulations ], he may reapply for certification 12 months after the date of the ultimate disposition of his case.

## PART IV. APPEALS.

### § 4.1. Appeals from a denial of certification or decertification.

An applicant shall have the right to appeal a denial of certification or decertification. Appeals for denial of certification or decertification shall be in accordance with these regulations and §§ 9-6.14:11 and 9-6.14:12 of the Code of Virginia. The appeal process for denial of certification and decertification shall be the same.

### § 4.2. Notification of intent to appeal.

The applicant shall file a written notice of intent to appeal stating the grounds for such appeal to the director of the department within 10 days of receipt of the certification staff's determination to deny certification or decertify. Upon receipt of such notice by the director, the department shall notify the applicant in writing of the date, time, and location of the hearing. The applicant shall be advised of his right to be represented by counsel and to present evidence and witnesses.

### § 4.3. Informal hearing committee.

Appeals are reviewed by an informal hearing committee comprised of the original certification [ ~~staff specialists~~ ] presided by the director or his designee. The decision of the informal hearing committee shall be by a simple majority decision of the full committee and shall be issued in writing within 15 days of the hearing date except when additional information is requested at the hearing which is pertinent to the committee's decision on the hearing, in which case it will issue a written notice within 15 days of receiving such information.

### § 4.4. Submission of new information by the applicant.

New information which was not submitted in the original application and which reflects a change in information upon which the decision to deny certification was based submitted at the informal hearing may be reviewed by the informal hearing committee. The informal hearing

# Final Regulations

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committee has the sole discretion to accept or reject any new information.

## § 4.5. Formal hearing.

If the informal hearing committee upholds the denial of certification, the applicant may appeal the decision of the hearing committee through a formal hearing procedure presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Virginia Supreme Court. The applicant shall file a notice of intent directly to the director of the department within 10 days of receipt of the informal hearing committee's determination upholding the denial of certification or decertification. The department will then acknowledge receipt of such notice in writing to the applicant within five days and so advise the Executive Secretary of the Virginia Supreme Court. The rules and procedures for the formal hearing process shall be established by the hearing officer in compliance with the requirements of the Administrative Process Act and the Executive Secretary of the Supreme Court.

## § 4.6. Judicial review.

In the case when the hearing officer has upheld the denial of certification and the appeal process has been exhausted and the applicant desires further review, the applicant shall be informed of his right to pursue a judicial review.

## PART V. DECERTIFICATION.

### § 5.1. Standard.

Any certified business that fails to continue to satisfy the conditions stated in these regulations shall be subject to full decertification procedures.

### § 5.2. Complaint.

Whenever the department receives a complaint that a certified company no longer meets the requirements of these regulations the director shall assign a certification specialist to investigate the complaint and make a report of the findings.

### [ § 5.3. Investigation procedures. ]

The certification specialist shall use the following procedures to investigate the complaint:

1. Promptly notify in writing the firm which is the subject of the complaint that a complaint has been filed and that the matter is under review.
2. Conduct an investigation including, but not limited to, questioning all parties who have information

regarding the complaint.

3. Prepare a written report to present to the certification staff recommending a disposition of the matter based on the factual and legal grounds of the case.

4. Should the firm be decertified, the same rules for notification, reapplication and appeals will apply as for denial of certification under Part IV of these regulations.

## PART VI. RECERTIFICATION.

### § 6.1. Notification of expiration of certification.

At least 30 days prior to the anniversary date of the last certification date, a business shall be notified in writing of the expiration of certification and advised of the need to renew certification.

### § 6.2. Application for recertification.

Any firm desiring to be recertified shall make and file a written application on such forms as may be prescribed by the department. The department shall request such information as may be reasonably necessary to determine an applicant's eligibility to renew certification. Consideration shall be given to previous information submitted so as to avoid any unnecessary duplication and to reduce the paperwork burden on the applicant.

### § 6.3. Extensions.

A reasonable extension for filing an application for certification may be granted by the director of the department for good cause shown, for a period of no longer than 30 days from the expiration date of the previous certification.

### § 6.4. Expiration of certification and notification.

Any business failing to renew certification prior to the expiration date of the previous certification shall be so notified in writing by the department of the expiration of certification and deleted from the certification list.

## PART VII. MISCELLANEOUS.

### § 7.1. Confidentiality.

The department shall take all necessary steps to ensure the confidentiality of any documents submitted in support of an application for certification which are not considered public records within the definition of the Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia).

§ 7.2. Certification by another state, locality or federal agency.

Current certification of a business by another state, locality, or federal agency shall be considered as evidence of an applicant's status, but shall not be conclusive evidence that the applicant has satisfied the eligibility requirements set in § 1.2 of these regulations. The director of the department at his discretion may waive certification application requirements of businesses certified by another state, locality, or federal agency.

extended by the director of the department.

### § 7.3. Applicant representation.

Any applicant or party, other than a staff member of the department, shall be entitled to representation or may appoint someone else, including an attorney, to represent him at any proceedings involving the department, provided that written notice of this decision shall be sent to the director of the department stating the name, title, and relationship of such person to the applicant or party.

Such person shall have full authority to act for and on behalf of the represented, and the acts of the representative shall be binding on such party.

### § 7.4. Standard industry practice.

A business may be exempted from the requirements of § 1.2 if it can demonstrate that it is minority owned and controlled and operating within prescribed standard industry practice. Examples of businesses who may meet this exemption are those which are locally minority owned but, in accordance with industry practice, remain under the control of a larger parent organization or those established by the parent company for the express purpose of promoting minority business development. The application of the exemption shall be determined by the department on a case by case basis.

### § 7.5. Identity of any person furnishing information relating to an investigation.

Any person who volunteers information regarding a possible violation of these regulations shall be kept confidential to the extent possible, consistent with a fair determination of the issues. Where disclosures of the person's identity are essential to assure a fair determination of the issues under these regulations, the director of the department or the certification staff may disclose such identity.

### § 7.6. Waiver of one-year period.

Any business denied certification as a minority business enterprise prior to the effective date of these regulations may reapply for certification under these regulations without regard to the one-year waiting period.

### § 7.7. Extension of time period.

In any circumstance where the convenience of the applicant or the interests of justice so require, the time period for performance under these regulations may be



REGISTERED  
92 JUL 20 AM

Revised 9/1/99

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINORITY BUSINESS ENTERPRISE



MINORITY BUSINESS ENTERPRISE CERTIFICATION APPLICATION

The following definitions shall be used in determining whether a firm is owned and controlled by one or more minorities for the purpose of certification:

**MINORITY BUSINESS ENTERPRISE (MBE)** - a business that is owned and controlled by one or more socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Minority persons are Black Americans, Hispanic Americans, Asian Americans, American Indians, Eskimos, and Aleuts.

**MINORITY** - A person who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

**BLACK AMERICANS** - all persons having documented origins in any of the black racial groups of Africa.

**HISPANIC AMERICANS** - all persons having documented origins in any of the Spanish-speaking peoples of Mexico, South or Central America or the Caribbean Islands or other Spanish or Portuguese cultures and who are regarded as such by the community of which these persons claim to be a part.

**ASIAN AMERICANS** - all persons having documented origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Korea, Samoa, Laos, Cambodia, Taiwan, Northern Marianas, the Philippines, U.S. Territory of the Pacific, India, Pakistan, Bangladesh and Sri Lanka and who are regarded as such by the community of which these persons claim to be a part.

**AMERICAN INDIANS** - all persons having documented origins in any of the original peoples of North America and who are regarded as such in the community of which these persons claim to be a part or who are recognized by a tribal organization.

**ESKIMOS AND/OR ALEUT** - all persons having documented origins in any of the peoples of Northern Canada, Greenland, Alaska and Eastern Siberia and who are regarded as such in the community of which these persons claim to be a part.

**MINORITY CODES (MC)** - B-Black H-Hispanic Amer. A-Asian Amer. AI-Amer. Indian E-Eskimos AL-Aleut

THIS REQUEST IS FOR CERTIFICATION \_\_\_\_\_ RECERTIFICATION \_\_\_\_\_

I. BUSINESS PROFILE

- a. Legal name of firm \_\_\_\_\_
- b. Business address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- c. Mailing address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- d. Phone number ( ) \_\_\_\_\_ Contact person: \_\_\_\_\_
- e. Federal Employer Identification number \_\_\_\_\_
- f. Date established \_\_\_\_\_ g. Date incorporated \_\_\_\_\_

II. TYPE OF BUSINESS

- a. Describe products or services rendered \_\_\_\_\_
- b. List (if known) one primary Standard Industrial Classification Code (SIC) \_\_\_\_\_ and three secondary SIC codes \_\_\_\_\_
- c. Please circle marketing areas: Central VA Private Sector Northern VA Tidewater All Exporting

III. LEGAL STRUCTURE

- Check one:  sole proprietorship  partnership  corporation
- |   |   |
|---|---|
| Name _____                              | Name _____                              |
| Title _____                             | Title _____                             |
| MC _____ SS# _____                      | MC _____ SS# _____                      |
| Sex _____ Percentage of Ownership _____ | Sex _____ Percentage of Ownership _____ |
| # Shares _____ Purchase Price _____     | # Shares _____ Purchase Price _____     |

Please list all owners, shareholders, and/or directors owning stock in the company. Attach additional sheets if necessary.

IV. CERTIFICATION

- a. Are you an MBE certified with the Virginia Department of Transportation? Yes \_\_\_\_\_ No \_\_\_\_\_

IF YES, PLEASE SUBMIT THE FOLLOWING INFORMATION, SIGN AFFIDAVIT, AND RETURN THE APPLICATION. IF NO, PLEASE COMPLETE THE REMAINDER OF THE APPLICATION.

- Copy of VDOT firms certification letter
  - Copy of most recent Federal Tax Return
  - Firm's gross receipts, total assets and net worth for each of the last two years. Please attach additional sheets.
- b. Are you an MBE certified as an 8(a) firm with the U.S. Small Business Administration? Yes \_\_\_\_\_ No \_\_\_\_\_

IF YES, PLEASE SUBMIT THE FOLLOWING INFORMATION, SIGN AFFIDAVIT, AND RETURN THE APPLICATION. IF NO, PLEASE COMPLETE THE REMAINDER OF THE APPLICATION.

- Copy of SBA 8(a) certification letter with statement of fixed participation period.
  - Copy of most recent federal tax return
  - Firm's gross receipts, total assets and net worth for each of the last two years. Please attach additional sheet.
- c. If certified as a MBE by any other public or private organization, attach a copy of the current certification.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

REGISTRAR OF REGULATIONS  
92 JUL 20 AM 9:5

V. MANAGEMENT AND CONTROL OF FIRM

Please provide information regarding those individuals (owners and non-owners) who are responsible for the day-to-day operation and policy decision-making, including, but not limited to, those with responsibility to do the following. See minority codes (MC) listed on page one.

a. Decide which jobs the business will undertake:

Name \_\_\_\_\_ MC \_\_\_\_\_ Name \_\_\_\_\_ MC \_\_\_\_\_  
Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_ Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_

b. Estimate the cost of jobs:

Name \_\_\_\_\_ MC \_\_\_\_\_ Name \_\_\_\_\_ MC \_\_\_\_\_  
Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_ Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_

c. Sign the performance bonds which the business obtains:

Name \_\_\_\_\_ MC \_\_\_\_\_ Name \_\_\_\_\_ MC \_\_\_\_\_  
Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_ Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_

d. Negotiate and sign for the insurance for the business:

Name \_\_\_\_\_ MC \_\_\_\_\_ Name \_\_\_\_\_ MC \_\_\_\_\_  
Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_ Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_

e. Supervise the jobs the business undertakes:

Name \_\_\_\_\_ MC \_\_\_\_\_ Name \_\_\_\_\_ MC \_\_\_\_\_  
Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_ Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_

f. Hire and fire employees of the business:

Name \_\_\_\_\_ MC \_\_\_\_\_ Name \_\_\_\_\_ MC \_\_\_\_\_  
Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_ Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_

g. Purchase major items or supplies:

Name \_\_\_\_\_ MC \_\_\_\_\_ Name \_\_\_\_\_ MC \_\_\_\_\_  
Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_ Title \_\_\_\_\_ Hrs w/ky \_\_\_\_\_

VI. FINANCIAL INFORMATION

a. Indicate the source(s) of investment capital (by code) for individuals who have an ownership interest of 5% or more in the business. See minority codes (MC) listed on page one.

Financial Codes: PS - Personal Savings JS - Joint Savings RE - Real Estate BL - Bank Loan PC - Personal Checking O - Other, please explain.

Name \_\_\_\_\_ Fin. Code \_\_\_\_\_ MC \_\_\_\_\_  
Name \_\_\_\_\_ Fin. Code \_\_\_\_\_ MC \_\_\_\_\_  
Name \_\_\_\_\_ Fin. Code \_\_\_\_\_ MC \_\_\_\_\_  
Name \_\_\_\_\_

b. Please supply the following information regarding your primary banking institution. Attach additional sheets, if needed.

Name of Bank \_\_\_\_\_ Contact Person \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Telephone number ( ) \_\_\_\_\_  
Type of Account and Account number:  
Checking Account # \_\_\_\_\_ Savings # \_\_\_\_\_ Line of Credit # \_\_\_\_\_  
Loan # \_\_\_\_\_ Loan # \_\_\_\_\_ Loan # \_\_\_\_\_  
c. Bonding capacity \$ \_\_\_\_\_  
d. Gross receipts for the last two years 19\_\_ \$ \_\_\_\_\_ 19\_\_ \$ \_\_\_\_\_

AFFIDAVIT

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing documents are true and correct and include all information necessary to identify and explain the operation of

Name of Firm \_\_\_\_\_

as well as the ownership thereof. The undersigned, in addition, swears that the above named firm is a bona fide minority business enterprise of which at least 51% is owned and controlled by a minority, who exercises independent day-to-day management.

I agree to notify the Department of Minority Business Enterprise within thirty days of any change in the ownership, control, management or status as an on-going minority business concern.

I understand that any material misrepresentation will be grounds for denial or revocation of certification and initiation of action under Federal or State laws concerning false sworn statements.

Owner(s) Signature \_\_\_\_\_

Print Name(s) \_\_\_\_\_

Date \_\_\_\_\_ Please imprint corporate seal (where appropriate)

Date \_\_\_\_\_ City County of \_\_\_\_\_ State \_\_\_\_\_

NOTARY

Commonwealth/State of \_\_\_\_\_

City/Country of \_\_\_\_\_

Subscribed and Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

Notary Public \_\_\_\_\_

My Commission expires \_\_\_\_\_, 19\_\_

NOTE: THE PENALTY FOR OBTAINING CERTIFICATION AS A MINORITY BUSINESS ENTERPRISE BY DECEPTION IS A CLASS 1 MISDEMEANOR IN THE COMMONWEALTH OF VIRGINIA, PUNISHABLE BY CONFINEMENT IN JAIL FOR NOT MORE THAN TWELVE MONTHS AND A FINE OF NOT MORE THAN \$1,000, EITHER OR BOTH. (Section 18.2-11, CODE OF VIRGINIA)

Acknowledged: \_\_\_\_\_

ATTACHMENTS

REGISTRAR OF REGULATIONS  
92 JUL 20 AM 8:00

The following items must be attached and submitted with this application. Any omissions will delay the certification process. Please number corresponding copies.

1. Copy of most recent federal income tax return (include all schedules) and previous year financial statements (Balance Sheet and Profit and Loss Statement).
  2. At least five (5) canceled checks written on business account.
  3. Copy of bank resolutions or signature card on all company checking and other accounts.
  4. Copies of resumes of principals and key employees
  5. Copies of drivers license(s), U.S. Passport, or other document(s) that provide evidence of minority status for each minority owner. If not an American citizen, proof of permanent resident status (i.e. naturalization papers, alien registration number)
  6. Copy of tribal identification card or certificate if claiming to be an American Indian. In lieu of the latter, written evidence of recognition of such in community will be acceptable.
  7. Copies of license (i.e. business, contractors, etc.)
  8. Partnership (if applicable)
    - Partnership Agreement
    - Buy-out Agreement
    - Profit Sharing Agreement
  9. Corporation (if applicable)
    - Articles of Incorporation, including date approved by State
    - Minutes of first corporate organizational meeting and of any meeting which by laws were amended.
    - Corporate By Laws
    - Copy (front and back) of stock certificate(s) issued (not a specimen copy)
    - Stock transfer ledger
    - Proof of stock purchase
- Furnish copies of agreements relating to:
- stock options
  - ownership agreements
  - stockholder agreements
  - restrictions on the disposal of loan agreement
10. Documents of initial investment by applicant, showing source of start-up or buy-out capital. Please submit cancelled checks or other document.
  11. Sample of letterhead stationary business card, flyers or any other evidence of business operation.

REQUEST FOR EXEMPTION OF CERTIFICATION INFORMATION  
FROM DISCLOSURE UNDER THE  
VIRGINIA FREEDOM OF INFORMATION ACT

In submission of certain proprietary information for consideration of certification,

\_\_\_\_\_  
(Name of Firm)

hereby invokes the protection of 11-52 (D) of the Code of Virginia (Virginia Public Procurement Act) and requests exemption from public disclosure of certain proprietary information.

The material to be protected and the reasons why such protection is necessary, are listed below.

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Signature of owner: \_\_\_\_\_

Date: \_\_\_\_\_

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: VR 615-08-01. Virginia Energy Assistance Program.

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

Effective Date: October 1, 1992.

### Summary:

*The amendments incorporate changes to the fuel and crisis assistance components. Application periods and program dates will be determined by the Board of Social Services for both components.*

*Additional guidance on the types of crisis assistance available is provided. A new § 3.2 has been added to the regulation to establish the application period guidelines for the crisis assistance component.*

VR 615-08-01. Virginia Energy Assistance Program.

### PART I. DEFINITIONS.

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

*"Department"* means the Department of Social Services.

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

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

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

*"Fiscal year"* means October 1 through September 30.

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

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

*"Primary heating system"* means the system that is

currently used to heat the majority of the house.

*"Program year"* means the specified timeframe established for each of the program components by the department.

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

### PART II. FUEL ASSISTANCE.

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

#### A. Eligibility criteria.

1. Income limits. Maximum income limits shall be at or below 130% of the Poverty Guidelines. In order to be eligible for Fuel Assistance, a household's income must be at or below the maximum income limits.

2. Resource limits. The resource limit for a household containing an elderly or disabled person shall be \$3,000. The resource limit for all other households shall be \$2,000. In order to be eligible for Fuel Assistance, a household's resources must be at or below the amount specified.

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

#### B. Resource transfer.

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

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

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

1. The transfer was not done in an effort to become eligible for Fuel Assistance;

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

# Final Regulations

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

## § 2.2. Benefits.

Benefit levels shall be established based on income in relation to household size, fuel type, and geographic area, with the highest energy need.

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

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

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

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

Gross monthly income

Living arrangements

Primary heat type

Climate zone

Vulnerability

Person 60 years of age or older

Disabled person in HH

Child under 16

Point values will be determined by department staff.

B. The total points of all households will be determined.

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

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

§ 2.3. The application period for fuel assistance shall [ ~~be the month of November~~ begin not earlier than September 1 and shall end not later than March 31 each year. The Board of Social services shall set specific dates within that period for acceptance of fuel assistance applications. ]

## PART III.

## CRISIS ASSISTANCE.

§ 3.1. The purpose of the Crisis Assistance component is to assist households with energy-related, weather-related or supply shortage emergencies. This component is intended to meet energy emergencies that cannot be met by the Fuel Assistance component or other local resources.

### A. Eligibility criteria.

In order to be eligible for Crisis Assistance, a household shall meet the following criteria:

1. All of the Fuel Assistance criteria as set forth in Part II, § 2.1;
2. Have an energy-related, weather-related or supply shortage emergency as defined in Part I;
3. Other resources cannot meet the emergency (including Fuel Assistance);
4. Did not receive Crisis Assistance during the current fiscal year;
5. For assistance with primary heat source, did not receive Fuel Assistance in current program year.

### B. Benefits.

An eligible household can receive no more than \$200 for Crisis Assistance during any federal fiscal year, unless the assistance is for the rebuilding or replacement of heating equipment or purchase of heating equipment where none exists, in which case the maximum amount of assistance shall be \$700.

The following forms of assistance shall be provided:

1. Repairs, replacement or rebuilding of inoperable or unsafe heating equipment [ ~~is Routine~~ , including necessary ] maintenance cost of heating equipment and [ the ] purchase of supplemental equipment.
2. Payment of electricity when it is needed to operate the primary heating equipment. Payment will be limited to \$200 maximum. Assistance may be provided once every five years.
3. A one-time-only payment per fuel type of a heat-related utility security deposit.
4. Providing space heaters.
5. Providing emergency shelter.
6. Purchase [ ~~of a 30-day~~ ] supply of home heating fuel [ ~~sufficient to respond to the immediate crisis situation~~ ] when the household is out of fuel or [ ~~payment~~ ] to prevent the disconnection of a primary utility heat source. Assistance will be provided durin

a specified timeframe. [ *The Board of Social Services will establish maximum payment amounts.* ]

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

#### PART IV. COOLING ASSISTANCE.

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

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

##### A. Eligibility criteria.

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

##### B. Benefits.

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

#### PART V. ADMINISTRATIVE COSTS.

§ 5.1. Local administrative expenditures for the implementation of the Energy Assistance Program shall not be reimbursed in excess of 7.0% of program grant allocation.

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF SOCIAL SERVICES

FUEL ASSISTANCE APPLICATION

Date Appl. Rec'd \_\_\_\_\_  
Worker # \_\_\_\_\_

Present Locality \_\_\_\_\_ Case #: \_\_\_\_\_

PLEASE ANSWER ALL QUESTIONS. READ INSTRUCTIONS FOR COMPLETION BEFORE COMPLETING FORM. IF ANY OF THE INFORMATION PRINTED ON THIS FORM IS NOT CORRECT, PLEASE LINE THROUGH AND WRITE THE CORRECT ANSWER ON THE FORM.

LAST NAME: \_\_\_\_\_ FIRST: \_\_\_\_\_ MIDDLE: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: VA ZIP CODE: \_\_\_\_\_ PHONE: ( ) \_\_\_\_\_

SSN: \_\_\_\_\_ SEX \_\_\_\_\_ RACE: \_\_\_\_\_ SPOUSE SSN: \_\_\_\_\_

The amount of resources (bank accounts, cash, etc.) available to everyone living in your home is \$ \_\_\_\_\_ If this amount is not correct, please write the correct answer here: \$ \_\_\_\_\_

Give the value of each resource: Checking \$ \_\_\_\_\_ Savings \$ \_\_\_\_\_  
Cash \$ \_\_\_\_\_ Stocks, Bonds \$ \_\_\_\_\_ Prepaid Funeral Expense \$ \_\_\_\_\_

The amount of money received by everyone living in your home each month is \$ \_\_\_\_\_  
If this amount is not correct, please write the correct answer here \$ \_\_\_\_\_

How many people live in your home? \_\_\_\_\_ If this number is not correct, please write the correct number here \_\_\_\_\_

Was every one living in your home born in the U.S.? \_\_\_\_\_ YES \_\_\_\_\_ NO  
If no, who was not born in the U.S.?

Is there anyone living in your home 60 years of age or older? \_\_\_\_\_ YES \_\_\_\_\_ NO  
If yes, who?

Is anyone living in your home disabled? \_\_\_\_\_ YES \_\_\_\_\_ NO Does this person receive SSI, VA 100% Disability, Social Security Disability, Railroad Retirement Disability, or Medicaid Disability?  
\_\_\_\_\_ YES \_\_\_\_\_ NO If yes, which kind?

Is there a child 16 years of age or younger living in your home? \_\_\_\_\_ YES \_\_\_\_\_ NO  
If yes, who?

Has your home been winterized by the Virginia Weatherization Program? \_\_\_\_\_ YES \_\_\_\_\_ NO

If you or anyone in your household have given away or transferred any resources (bank accounts, cash, etc.) in the past twelve months, complete the following:  
What resources, to whom, why and when \_\_\_\_\_

032-12-057 (8.91)

LIVING ARRANGEMENTS

Circle the letter that best describes your present living situation. Read each one before you choose.

- A Homeowner responsible for paying heating bills
- B Homeowner not responsible for paying heating bills
- C Renter responsible for paying heating bills
- D Renter not responsible for paying heating bills
- E Renter with heat included in rent
- F Renter responsible for paying excess usage charges
- G Government assisted renter responsible for paying some heating bills
- H Government assisted renter and not responsible for paying heating bills
- I Roomer, roomer/boarder with heat included in rent
- J Roomer, roomer/boarder responsible for paying heating bills
- K Roomer, roomer/boarder not responsible for paying heating bills
- L Resides in an emergency shelter, institution, group home, or home for adults

INCOME

GIVE THE FOLLOWING INFORMATION ABOUT HOUSEHOLD MEMBERS WHO WORK:

Name of Person	Employers Name	How Often Paid	Earnings Before Deductions

If any person living in your home receives any of the following types of unearned income or benefits, check the type received and write the amount received.

Type of Benefit	Amount
Food Stamps	XXXXXXXXXX
ADC	\$ _____
SSI	\$ _____
Veterans Benefits	\$ _____
Retirement Benefits	\$ _____
Child Support	\$ _____
Unemployment	\$ _____
Workers Compensation	\$ _____
Other (write in name)	\$ _____

HEAT TYPE USED

What fuel do you heat your home with? Check only one.  
 Wood  Coal  Natural Gas  Electric

Vendor Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Account Number \_\_\_\_\_  
 Account Name \_\_\_\_\_  
 Oil  Kerosene  LP Gas

Vendor Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Tank size \_\_\_\_\_ Unpaid Bill Amount? \_\_\_\_\_  
 Should Fuel Pay The Old Bill?  Yes  No

APPLICANT CERTIFICATION

I request assistance and certify that the above statements and attachments are true and correct to the best of my knowledge and belief.  
 I agree to let the Department of Social Services know immediately of the next working day of any changes that occur in my situation.  
 I understand that neither I nor a member of my household can sell any fuel purchased on my behalf through the program unless I have contacted the local Department of Social Services and received their permission to sell.  
 I understand that I have the right to file a complaint if I feel I have been discriminated against because of race, color, national origin, religion, sex, age, handicap or religious belief.  
 I understand that if I give false information, withheld information, or fail to report changes promptly, or on purpose, I may be breaking the law and could be prosecuted for perjury, larceny and/or welfare fraud.  
 I understand that if I completed, or assisted in completing this form for the applicant and/or aided or abetted the applicant to obtain assistance for which he/she is not eligible that I may be breaking the law and could be prosecuted.  
 My signature below authorizes the Department of Social Services or other agencies involved in the program to obtain any verifications necessary to establish my eligibility for assistance and to obtain cost and consumption data from my vendor for statistical purposes.  
 I understand that my signature on this form gives the local Social Service Agency permission to give information in my case record to other organizations from which I have or may request assistance.

Applicants Signature \_\_\_\_\_ Date \_\_\_\_\_

This application was completed on behalf of the applicant by

Signature \_\_\_\_\_ Date \_\_\_\_\_

## ENERGY ASSISTANCE PROGRAM

### WHAT IS THE ENERGY ASSISTANCE PROGRAM?

The ENERGY ASSISTANCE PROGRAM is made up of three components:  
 Fuel Assistance which helps eligible households with the cost of heating their homes.  
 Crisis Assistance which helps households in emergency situations with assistance such as heating equipment repairs and security deposits.  
 Cooling Assistance which helps households in medical need of cooling to purchase fans/air conditioners or pay electric bills.

### WHO IS ELIGIBLE FOR THE ENERGY ASSISTANCE PROGRAM?

In order to be eligible for any of the components, a household must meet income and resource requirements.  
 Income Requirements- Households can not be more than 130% of the Poverty Income Level for the household size.  
 Resource Requirements- A household may have up to \$2,000 in resources including but not limited to cash and money in bank accounts. A household with a member who is age 60 or over or a member who is disabled (one who receives SSI, Social Security Disability, Railroad Retirement Disability, or Medicaid Disability) may have up to \$3,000 in resources.  
 Other Requirements  
 Fuel Assistance- You must be responsible for paying all or part of the cost of heating your home.  
 Crisis Assistance- You must have a heating emergency.  
 Cooling Assistance- A physician must certify that you are in medical need of cooling.

### DOES EVERY CITY OR COUNTY OFFER THE SAME KIND OF ASSISTANCE?

Fuel Assistance and Crisis Assistance are offered by all counties and cities. Cooling Assistance is an optional component in which each county or city must decide whether or not to participate.

### WHEN IS ENERGY ASSISTANCE PROVIDED?

The Fuel Assistance Program accepts applications during the month of November. Persons who received Fuel Assistance in the previous year receive an application form in the mail. Persons who did not receive Fuel Assistance in the previous year must visit, call or write the local social services agency. A face to face interview is not required.  
 Crisis Assistance begins November 1 and ends March 15.  
 Cooling Assistance usually begins June 15 and ends August 31.

### HOW LONG DOES THE SOCIAL SERVICE AGENCY HAVE TO PROCESS MY CASE?

Fuel Assistance is processed as soon as possible but no later than 30 days from receiving your application.  
 Crisis Assistance/Cooling Assistance- one week or sooner if life-threatening.

### WHAT IS THE WEATHERIZATION PROGRAM?

The Virginia Weatherization Program, funded in part by the U.S. Department of Energy, pays for improvements to the homes of low-income people to help reduce their home energy costs.  
 Weatherization will save an average of 20 percent on home energy costs each year. It will also result in a much more comfortable place to live during the cold winter months.  
 Weatherization is provided at no cost to both homeowners and renters who qualify. Eligibility is determined by income, with priority given to the elderly and handicapped.  
 For complete information about the weatherization program in your area, contact the Virginia Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219-1747.

### HOW TO SAVE MONEY AND KEEP WARM IN THE WINTER

- Don't let your energy bills run sky-high. Here's what you can do to keep them down.
- Set your temperature back at night to 60 degrees. (Elderly persons should be careful when doing this- they are more likely to get sick when the temperature is too low.)
  - Open shades and drapes during the day to let the sun in. Close them at night when it gets dark.
  - Close doors and windows to rooms in the house that aren't used often.
  - Plug holes and cracks in walls and windows.
  - Caulk and weather-strip doors and windows.
  - Insulate your attic and basement.
  - Wrap water pipes to help keep hot water hot.
  - If you have a fireplace, shut the outside vents. Use the flue damper.
  - Have your heating unit checked to see if it's running properly.
  - Apply for Weatherization Assistance and other community conservation programs.
  - If you are having trouble paying your heating bills, contact your fuel supplier. You may be able to arrange special payment plans.

## YOU MAY BE ELIGIBLE FOR FUEL ASSISTANCE

You may be eligible to receive help with your heating fuel bills from the Fuel Assistance component of the Energy Assistance Program. You may apply for help to pay your heating bills if you have to pay for some or all of the heating bills or heat is included in your rent.

Answer all questions on the application. Return the form within 5 days with your most recent heating bill (or a copy of it) to the address on the envelope or your local social services office. Applications will be processed on a first come first serve basis. No application will be accepted after November 30th.

You should receive a notice of approval or denial within 30 days after the application is returned to the local office. If you do not receive this notice, please call the local office.

### IMPORTANT:

1. Send only one application per household.
2. Check all pertinent information on the form to make certain it is correct and current. If any of this information is not correct or has changed, mark it out and write the correct information on the application form.
3. Answer each question. Be sure to sign and date the form.
4. The bill for your primary source of heating fuel will be paid. Be sure to list the name of the company that you buy your fuel from (unless your heat is included in your rent).

### If you use natural gas or electricity:

You must attach a recent copy of your heating bill. Write the correct account name and account number on the form. If you move after mailing your application, you must report your new account number to your worker even if the same company provides your heating fuel.

### If you use LP Gas, oil or kerosene:

Write the company name and their complete mailing address on the form. This must be done in order for you to receive fuel and your dealer to get paid.

5. **NO PAYMENTS WILL BE MADE UNTIL JANUARY.** Telephone calls to the local social services office should only be made to report a change. You must report a change of address, income, blue type, vendor or number of people in your home. Other calls will only delay processing your application. You will be paid by mail in January of the maximum amount of heating assistance you are eligible to receive.

6. If all persons in your home do not receive Food Stamps, AOC and/or SSI, you must send copies of last month's paystubs or a statement from the employer giving the monthly income. You must send in proof of all kinds of income received by all people living in your home. Failure to send in proof of income will delay the processing of your application.



APPEALS AND FAIR HEARINGS

A fair hearing provides you the opportunity to review the way a local social services agency has handled your situation concerning your stated need for fuel assistance. The fair hearing is a private, informal meeting at the local social services agency with you and anyone you wish to bring as a witness or to help you tell your story, such as a lawyer. A representative of the local agency will be present as well as a hearings officer. The hearings officer is the official representative of the State Department of Social Services.

In addition to filing an appeal, you have the right to request a conference with your local social services agency, at which time the agency must give you an explanation of its proposed action. You must also be given the opportunity to present any information of which your disagreement with the agency's proposed action is based. At such a conference, you have the right to have your story presented by an authorized representative, such as a friend, relative, or lawyer.

The person who conducts the hearing is someone from the State Department of Social Services, not someone from your local social service agency. The hearings officer makes a decision on your appeal.

You will be notified of the date and time for your hearing at the local social services agency or at a location agreeable to you and the agency. If you cannot be there on that day, call your service or eligibility worker immediately. If you need transportation, the local agency will provide it. You may bring a representative and/or witnesses to the hearing to help you tell your story. Your service or eligibility worker, a local agency supervisor, and possibly other agency staff who know about your case may also be at the hearing to tell how the agency's decision was reached.

At the hearing, you and/or your representative will have the opportunity to:

- (1) examine all documents and records which are used at the hearing;
- (2) present your case or have it presented by a lawyer or by another authorized representative;
- (3) bring witnesses;
- (4) establish pertinent facts and advance arguments; and
- (5) question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

The decision or recommendation of the hearings officer shall be based exclusively on evidence and other material introduced at the hearing, except when medical information is requested or other essential information is needed. In such an event, you and the local social services agency would be given the opportunity to question or refute this additional information.

You will be notified in writing of the hearings officer's decision on your appeal within 60 days of the date your appeal request is received by the State Department of Social Services.

It is YOUR RIGHT TO APPEAL decisions of the local social services agency; consequently, if you want more information or help with an appeal, you may contact the local social services agency. It will not cost you anything to request a fair hearing, and you will not be penalized for asking for a fair hearing. If you desire free legal advice you may contact your local legal aid office.

TO:

YOU ARE AUTHORIZED TO PROVIDE HEATING FUEL TO THE INDIVIDUAL NAMED BELOW NOT TO EXCEED THE MAXIMUM AMOUNT LISTED.

PHONE # \_\_\_\_\_ MAX AMT \_\_\_\_\_  
 CASE NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_

LOCALITY \_\_\_\_\_

ACCT # \_\_\_\_\_ FUEL \_\_\_\_\_  
 ACCT NAME \_\_\_\_\_  
 TO CORRECT, LINE THROUGH PRINTED DATA & WRITE CHANGE IN RED INK.

CASE # \_\_\_\_\_ VENDOR # \_\_\_\_\_  
 COMPLETE, ATTACH BILL AND MAIL TO:  
 BOX K-440, RICHMOND, VA 23268-0440  
 DELIVERY/ BILL DATE \_\_\_\_/\_\_\_\_/\_\_\_\_ BILL AMT \$ \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

(SIGNATURE CERTIFIES ACCURACY OF BILL)  
 \*\*\*INCOMPLETE FORMS WILL BE RETURNED\*\*\*

TO:

YOU ARE AUTHORIZED TO PROVIDE HEATING FUEL TO THE INDIVIDUAL NAMED BELOW NOT TO EXCEED THE MAXIMUM AMOUNT LISTED.

PHONE # \_\_\_\_\_ MAX AMT \_\_\_\_\_  
 CASE NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_

LOCALITY \_\_\_\_\_

ACCT # \_\_\_\_\_ FUEL \_\_\_\_\_  
 ACCT NAME \_\_\_\_\_  
 TO CORRECT, LINE THROUGH PRINTED DATA & WRITE CHANGE IN RED INK.

CASE # \_\_\_\_\_ VENDOR # \_\_\_\_\_  
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 BOX K-440, RICHMOND, VA 23268-0440  
 DELIVERY/ BILL DATE \_\_\_\_/\_\_\_\_/\_\_\_\_ BILL AMT \$ \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

(SIGNATURE CERTIFIES ACCURACY OF BILL)  
 \*\*\*INCOMPLETE FORMS WILL BE RETURNED\*\*\*

COMMONWEALTH OF VIRGINIA ENERGY ASSISTANCE PROGRAM

RECAPTURE OF REGULATIONS 92 JUL 28 PM 3:02

REQUEST FOR CRISIS/COOLING ASSISTANCE

AGENCY USE ONLY Local DSS Date Rec'd Date Proc'd Worker # Case #

Applicant Name, Address, City, State, Zip, Sex, Race, Spouse's SSN, How many people live in your home?

Is anyone living in your home disabled? 16 years or younger? If yes, when? If no, if yes, when?

Was everyone living in your home born in the U.S.? If no, who was not born in the U.S.?

LIVING ARRANGEMENTS

- A. Homeowner responsible for paying heating bills... B. Homeowner not responsible for paying heating bills... C. Renter responsible for paying heating bills... D. Renter not responsible for paying heating bills... E. Renter with heat included in rent...

INCOME

GIVE THE FOLLOWING INFORMATION ABOUT HOUSEHOLD MEMBERS WHO WORK:

Table with columns: Name of Person, Employer's Name, How Often Paid, Earnings before Deductions

If any person living in your home receives any of the following types of unearned income or benefits, check the type received and write the amount received.

Table with columns: Amount, Food Stamps, AOC, Veterans Benefits, Retirement Benefits, Child Support, Unemployment, Worker's Compensation, Other

RESOURCES

Do you or anyone living in your home have any of the following resources? If yes, give the value of each resource.

Table with columns: Checking Account, Savings Account, Cash, Stocks, Bonds, Prepaid Funeral, Have you or anyone in your home given away or transferred any resources in the past twelve months?

HAVE YOU CONTACTED ANY COMMUNITY AGENCIES TO HELP YOU IN MEETING YOUR ENERGY CRISIS? IF YES, WHAT AGENCY OR AGENCIES? IF YOUR CASE IS APPROVED, WHAT PERSON OR COMPANY WOULD YOU LIKE TO PROVIDE EMERGENCY SERVICES TO ASSIST YOU WITH YOUR ENERGY NEEDS?

CRISIS ASSISTANCE

Check all that apply: My heating stove or furnace is not working... My heating stove or furnace is unsafe or dangerous... My electricity which is needed to run my stove or furnace was cut off...

COOLING ASSISTANCE

Do you or someone in your household have a medical need for cooling assistance? Do you have a cutoff notice? If you checked purchase or repair of a fan or air conditioner, do you know someone who can install or repair it?

APPLICANT'S CERTIFICATION

- I request assistance and certify that the above statements and attachments are true and correct to the best of my knowledge and belief. I agree to let the Department of Social Services know immediately or the next working day of any changes that occur in my situation.

I understand that I have the right to file a complaint if I feel I have been discriminated against because of my race, color, national origin, religion, sex, age, handicap or religious belief. I understand that if I give false information or withhold information, or fail to report changes promptly, or on purpose, I may be breaking the law and could be prosecuted for perjury, larceny and/or welfare fraud.

This application was completed on behalf of the applicant by: Applicant's Signature, Date, Signature, Date

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF SOCIAL SERVICES  
CRISIS/COOLING CREDIT AUTHORIZATION

REGISTER OF REGULATIONS

92 JUL 28 PM 3:02 No. 624101

LOCAL AGENCY NAME AND ADDRESS		FOR: (Client name and address)	
VENDOR NAME & ADDRESS		CASE NO. _____	TELEPHONE NO. _____
		ACCOUNT NAME _____ (If different from above)	ACCOUNT NO. _____
PLEASE PROVIDE MERCHANDISE OR SERVICE AS FOLLOWS: _____			
MAXIMUM AUTHORIZATION \$ _____			
COST OF SERVICE OR MERCHANDISE \$ _____	DATE OF SERVICE OR DELIVERY _____	I CERTIFY THAT I RECEIVED THE MERCHANDISE OR SERVICE.	
		_____ Recipient's Signature (Optional)	
		_____ Date	
<b>INSTRUCTIONS TO VENDOR:</b> 1) Do not exceed the maximum authorization above. 2) Enter actual cost and date. 3) Attach a copy of the itemized bill as verification. 4) Return signed original to the local agency named above. I CERTIFY THAT THIS BILL IS CORRECT AND THAT THE MERCHANDISE OR SERVICE HAS BEEN PROVIDED AS DESCRIBED.			
VENDOR _____		DATE _____	
Authorized By _____ (Signature of Agency Representative)		Date _____	

632-03-185/2

LOCAL AGENCY

DEPARTMENT OF TRANSPORTATION  
(COMMONWEALTH TRANSPORTATION BOARD)

Title of Regulation: VR 385-01-09. Public Participation Guidelines.

Statutory Authority: § 33.1-12 of the Code of Virginia.

Effective Date: September 9, 1992.

Summary:

*The Virginia Department of Transportation is required by the Administrative Process Act (§ 9-6.14.1 et seq. of the Code of Virginia) to establish public participation guidelines. These guidelines are used to notify citizens of the Commonwealth whenever the department enacts or amends a regulation subject to the provisions of the Act so that they may have the chance to comment on the proposed regulation.*

*The amendments to the regulation combine updating references with attempts to simplify the requirements the department must follow, as well as eliminating some of the length of time that must elapse in promulgating regulations.*

*The Commonwealth Transportation Board has the authority under § 33.1-12 to review or approve policies of the Department.*

VR 385-01-09. Public Participation Guidelines.

§ 1. Authority.

*These guidelines are promulgated under the authority granted by Chapter 1.1:1 (§ 9-6.14.1 et seq.) of Title 9 of the Code of Virginia and § 33.1-12 of the Code of Virginia.*

§ 2. Purpose.

*These guidelines outline the manner in which the Department of Highways and Transportation will encourage the participation of interested parties in the formation and development of regulations promulgated under the Virginia Administrative Process Act.*

*The guidelines are to be used by the department to identify and notify interested parties of the intent to enact or amend regulations, and to provide opportunities, including public hearings, for public participation in the formulation of such regulations.*

§ 3. Identification of interested parties.

*A. Because of the nature of its mission to construct, maintain, and operate facilities included in the state highway system and to assist public transit systems, the department recognizes that all citizens of the Commonwealth have an interest in certain regulatory matters, such as those regarding public use of highway*

*rest areas and waysides. In those instances, For the purpose of promulgating regulations subject to the Administrative Process Act, the department will regard the public at large as the interested party. This acknowledgement is made in recognition of the fact that department regulations have an impact on Virginia citizens*

*B. When a proposed regulation will be more limited in its effect, the department will identify individuals, corporations, professional or trade associations, public interest groups, and other organizations which express, or have expressed, an interest in the matter under consideration. [ This step will be accomplished in the following ways: ]*

*[ 1. Identification of those who have expressed interest to the department previously notified the department of an interest in specific regulatory matters in the past :*

*2. Listing those parties who express an interest by writing the Commissioner of the department at 1221-1401 East Broad Street, Richmond, Virginia 23219; to any member of the Highway and Transportation Commission Commonwealth Transportation Board ; or to any of the department's district offices about any particular area or specific subjects, or those of general interest.*

*3. Listing those who are identified by operating divisions of the department parties whom VDOT operating divisions identify as interested in participating in the formation of regulations within their the divisions' specific areas of responsibility.*

*This step will be accomplished by identifying those who have expressed interest to the department of an interest in specific regulatory matters in the past. ]*

*C. On occasion, the public interest may best be served by the formation of obtaining the widest possible public participation; this objective will be accomplished by forming advisory committees composed of knowledgeable individuals from outside the department ; as an additional means of public participation . The Commissioner of the Department of Highways and Transportation will be responsible for determining such instances and for appointment of the , and will appoint members of such advisory committees.*

§ 4. Notification of interested parties.

*A. In coordination with the Registrar of Regulations, the department will publish Notices of Intent to develop regulations in general circulation daily newspapers in various metropolitan areas of the Commonwealth at least 30 days before submitting the Notice to the Registrar to begin the formal hearing process.*

*B. In matters considered to be of interest to the general*

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public, the department will also prepare news releases and disseminate them to all daily and weekly newspapers, radio, and television stations, and news wire services serving Virginia. The news releases will include, in plain language, information about the subject matter and purpose of regulations under consideration and about provisions for public comment, including the time, date, and place of scheduled public hearings.

C. Notices of Intent to develop regulations and information about the formal hearing process will be mailed to all parties included on the list maintained by the department at or near the same time the Notices are sent to the Registrar.

D. Organizations included on the list will be asked to convey information about the Notices of Intent in their newsletters or in other membership communications media which may be available to them.

A. Once a decision is made to enact or amend a regulation, the department will submit Form RR01 ("Notice of Intended Regulatory Action") to the Registrar of Regulations for publication in *The Virginia Register*. After publication of the notice, a 30-day comment period must elapse for interested parties to make comments before the draft of the regulation may be completed.

B. If applicable, the public notification provision contained in subsection A may be supplemented by the following:

1. Sending a copy of the "Notice of Intended Regulatory Action" to those parties previously identified as expressing an interest in the regulation; or

2. Requesting that those business or professional organizations who received copies of the notice publish it in their journals or newsletters.

E. C. Upon request, the department will provide speakers to discuss regulatory matters with interested private and public sector organizations.

D. The administration of emergency regulations is discussed in § 6 of these guidelines.

## § 5. Opportunities for public participation.

Opportunities for public participation will be at two stages:

A. By the deadline indicated in the Notice of Intent, and prior to initiation of the formal hearing process, the department will receive written suggestions and comments about the proposed regulation. Any written material received after the deadline will be placed on the public hearing docket and considered at the time of the hearing.

It is to be understood that the department, while

considering the information submitted as a result of public participation, reserves the right to prepare the proposed regulation to be considered during the formal regulation adoption process.

A. After the 30-day notification period provided for in § 4 has elapsed, the department may decide to hold informal meetings to obtain more specific information from interested parties, depending on the level of interest. The department may also ask those parties who responded to the "Notice of Intended Regulatory Action" to provide written comments, as needed. Any written material received after the deadline specified in the notice will be made part of the public record and will be considered at the time of the hearing.

The department will consider the information submitted as part of the public participation, but reserves the right to prepare the proposed regulation according to its best judgment during the public participation process.

B. The department will hold formal public hearings on all proposed regulations as required by the Administrative Process Act.

1. Public hearings ordinarily will be conducted at the department's central office in Richmond. If the unique nature of a proposed regulation makes it of primary interest in one specific geographic area, the hearing will be held in that area.

2. The hearing will be conducted at a time believed generally convenient for persons and organizations most directly affected by the issue under consideration.

3. The department will make suitable arrangements for responsible officials to attend the hearing, to discuss the proposed regulations and its purpose, and to respond to questions.

4. At least 60 days before a public hearing, the department will make available at its central office in Richmond and at each of its nine district offices a notice of the hearing, a clear statement of the purpose of the proposed regulation, and other written explanatory material which may have been prepared, for public review and copying. The department will submit a "Notice of Comment Period" (Form RR02) and a "Proposed Action on Regulations" (Form RR03) to the Registrar for publication in *The Virginia Register*.

Form RR03 will be accompanied by the regulation and a brief summary explaining the regulation or amendment in a general way. Form RR02 will include the following information: (i) statement of the basis, purpose, substance, issues, and estimated impact of the regulation; (ii) statement of the date, time and place of the hearing at which the regulation will be considered; (iii) reference of the department's legal

authority to act; (iv) the name, address, and phone number of the individual to contact for further information.

The notice of opportunity for oral or written submittals shall be published in a newspaper of general circulation published at the state capital [ ; plus any other newspapers in localities affected by the regulation ] . Press releases and other media may also be used by district offices or divisions to publicize the proposed action and opportunity for comment. If the department wishes, it may request publication of the statement of basis, purpose, substance, issues, and estimated impact in one or more newspapers.

Publication in *The Virginia Register* or newspapers shall be made at least sixty days in advance of the last date prescribed in the notice for such submittals. If a hearing is required by law, it may be held at any time before or after expiration of the sixty-day period specified for publication of the meeting notice in *The Virginia Register* [ or state newspapers ] .

5. Provision will be made for submission of written statements and other exhibits in place of, or in addition to, oral statements at the public hearings. This opportunity will be extended to both those present at the hearing and to those who are unable or who do not desire to attend the hearing.

6. All records of written or oral communications, notices, or summaries, including agency action thereon, shall be retained by the department as matters of public record.

## § 6. Emergency regulations.

Emergency regulations shall be promulgated according to the provisions of the § 9-6.14:9 of the Administrative Process Act.

## § 7. Effective date of guidelines.

These guidelines will become effective November 1, 1984 as provided for by § 9-6.14:9.3 of the Code of Virginia .

## BOARD OF YOUTH AND FAMILY SERVICES

Title of Regulation: VR 690-10-001. Regulations Governing the Certification Process.

Statutory Authority: §§ 16.1-233, 16.1-234, 16.1-311, 16.1-312, and 66-10 of the Code of Virginia.

Effective Date: September 9, 1992

### Summary:

These regulations govern the process used to certify all programs funded by the Department of Youth and

Family Services. The regulations provide:

1. Policy criteria for the administration of the certification process by the Department of Youth and Family Services.
2. Policy criteria enabling the Board of Youth and Family Services to take positive or negative action with regard to programs funded by the Department of Youth and Family Services.
3. Policy criteria enabling the Director of the Department of Youth and Family Services to take positive or negative action, under specific circumstances, with regard to programs funded by the Department Youth and Family Services pending official board action.

Changes made to the regulations since published in their proposed form are:

1. Addition of references to the "Appropriate Chief" throughout the regulations to indicate the inclusion of the Chief of Operations for Community Funding in the process where appropriate.
2. Deletion of the word "alleged" to the list of Grounds for Decertification.

VR 690-01-001. Regulations Governing the Certification Process.

## PART I. GENERAL PROVISIONS.

### § 1.1. Definitions.

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

"Administrative review" means the audit of the administrative records of a local jurisdiction or governing commission. [ The administrative review involves only a review of documentation housed at a central office. ]

"Administrative probation" means the status granted to a program or facility in an emergency situation at the discretion of the director pending the next regularly scheduled board meeting.

"Appeal" means the action taken by a unit, facility or program administrator after an audit when there is disagreement with a team finding of noncompliance.

[ Appropriate regional administrator or chief" means the regional administrator, Chief of Operations for Learning Centers or Chief of Operations for Community Funding responsible for planning, implementing, coordinating, monitoring and evaluating the program in question. ]

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*"Board"* means the Virginia Board of Youth and Family Services (BYFS).

*"Certified"* means that a program has achieved an acceptable level of compliance with standards [ promulgated by the board ] .

*"Certification audit report"* means the report prepared for review by the board.

*"Certification inspector"* means a staff member of the DYFS Certification Unit who serves as the chairperson of the certification team. This person is referred to as team leader.

*"Certification status"* means the three-year period of time during which the program must maintain its standards compliance levels and have acceptable plans of action.

*"Certification team"* means those persons designated by the Department of Youth and Family Services to conduct compliance audits, including the Certification Inspector.

[ *"Certification training"* means training provided by the certification unit for prospective team members or facility staff in need of audit preparation assistance. ]

*"Certification unit"* means the organizational unit of the Department of Youth and Family Services responsible for organizing and facilitating inspections of programs funded by the department.

*"Certification unit manager"* means that person employed by the Department of Youth and Family Services responsible for the administration of the certification unit.

[ *Chief of Operations for Community Funding"* means the individual responsible for the planning, implementing, coordinating, monitoring and evaluating of the DYFS funding of locally or privately operated community programs. ]

*"Chief of Operations for Information and Evaluation"* means that individual employed by the Department of Youth and Family Services accountable for the administration of information and evaluation. [ *This individual also acts as the direct supervisor to the certification unit manager.* ]

*"Chief of Operations for Learning Centers"* means that individual employed by the Department of Youth and Family Services accountable for the administration and operation of learning centers.

*"Complaint"* means a report of a problem or concern made by staff, clients, parents or guardians, other agencies or the general public about a facility or program certified by the Board of Youth and Family Services.

*"Compliance"* means meeting the requirements of a standard.

*"Compliance audit"* means an on-site review by a certification team of a program's compliance with standards promulgated by the board.

*"Compliance documentation"* means those records, reports, pictures, blueprints, observations and interviews required to verify a program's adherence to standards.

*"Decertification"* means the Board of Youth and Family Services has determined that a program has not met a minimum acceptable level of compliance with standards.

*"Department"* means the Virginia Department of Youth and Family Services (DYFS).

*"Deputy Director for Programs"* means the individual employed by the Department of Youth and Family Services, and designated by the director as the administrator of program operations and funding.

*"Deputy Director for Administration and Finance"* means the individual employed by the Department of Youth and Family Services, and designated by the director as responsible for the management of administrative and financial operations.

*"Director"* means the Director of the Department of Youth and Family Services.

[ *"Interim audit"* means an audit that occurs by special order of the board or the director. ]

*"Interim certification report"* means the program's verification of continued compliance with the standards.

*"Life, health, safety standards (LHS)"* means those standards related to the life, health or safety of the youth and staff in residential programs as defined by the board that must be maintained in 100% compliance at all times.

*"Mandatory standards"* means those standards of performance for nonresidential programs as defined by the board which must be maintained in 100% compliance at all times.

*"Not applicable standards"* means standards which are not relevant to the program because of the structure of the program or the services it provides.

*"Plan of action"* means a written document which explicitly states what has or will be done to bring all deficiencies into compliance with standards.

*"Preparatory audit"* means an on-site review of a new program by regional office staff prior to an audit by a certification unit staff member to provide guidance in audit documentation and standards compliance.

"Probationary status" means the temporary status granted to a program by the Board of Youth and Family Services to provide a period of time in which to come into compliance with standards.

"Program administrator" means the staff member responsible for the operation of a program, facility or institution.

"Quality of life and services statement" means the portion of the audit report to the board which describes issues regarding staff (such as motivation, commitment to the program, personal development, interaction between staff and clients and team work), the building (such as suitability of building and furnishings for program and population, provisions for privacy, maintenance, safety); and program (such as use of community resources, community interaction, interagency cooperation, individualized treatment).

[ "Regional administrator" means the individual responsible for the direction of activities in a designated area in the Commonwealth to include planning, implementing, coordinating, monitoring, and evaluating DYFS and DYFS utilized programs. ]

[ "Regional office staff" means those individuals assigned to a particular regional office responsible for assisting the regional administrator in the duties described above. ]

"Related professional agencies" means any unit within the Department of Youth and Family Services or any public or private agency, which serves a similar clientele or provides services similar to those of the program to be certified.

"Standard deficiency" means that the performance of a unit, facility or program, or evidence supporting this performance, is insufficient to meet the requirements of a standard.

"Suggested compliance determination list" means a list of suggested documents or information sources which can be used to verify compliance with a standard.

"Unannounced interim visits" means periodic visits to a facility to monitor compliance with standards.

"Variance" means a decision by the Board of Youth and Family Services to relieve a program of having to develop a plan of action for a specified standard.

## § 1.2. References.

Code of Virginia:

§ 16.1-233. Department to develop court services, ...appointment and removal of employees, salaries.

§ 16.1-234. Duties of Department...(to insure that minimum standards are adhered to).

§ 16.1-311. Board to prescribe certain standards; how order of board enforced.

§ 16.1-312. Visitation and management of detention homes.

§ 66-10. Board to adopt regulations for the operation of halfway houses.

[ ~~§ 66-10~~ § 66-28 ] . Board to adopt standards for Delinquency Prevention and Youth Development Act Programs.

## [ PART II. ADMINISTRATION. ]

[ ~~§ 1-3~~ § 2.1. ] Legal base [ and regulatory history ].

Section 66-10 of the Code of Virginia requires the Board of Youth and Family Services to prescribe program standards and to monitor the activities of the department in implementing the standards.

## [ PART II. ADMINISTRATION.

§ 2.1. Regulatory history. ]

These regulations replace and supersede Department of Corrections Regulations Governing the Certification Process, VR 230-01-003.

§ 2.2. Effective date.

These regulations shall become effective on [ September 9, 1992. ]

## PART III. AUDITS.

§ 3.1. Preaudit process.

A. The certification unit manager shall develop a compliance audit schedule to cover a one-year period for dissemination to affected programs and staff.

Requests for rescheduling the compliance audit may be granted [ by the certification unit manager. ] provided the program requests the schedule change 90 days prior to the scheduled audit. Audits must occur before the expiration of the current certification.

B. Certification team members shall be appointed and notified of their appointment in writing by the [ appropriate ] regional administrator or the chief [ of Operations for Learning Centers where appropriate ] . Team members shall have completed certification training and shall be approved by [ the ] certification unit manager and the director or designee. [ The appropriate regional administrator or the chief shall be informed at least 10 days prior to the audit of any unacceptable team



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members. The appropriate regional administrator or chief shall be responsible for finding a replacement within five days of the audit and notifying the certification unit manager of that replacement. ]

C. The [ program administrator of the ] agency to be audited shall receive a list of team members and shall have the right to request alternate team members. The request shall be in writing and shall be approved by the [ appropriate ] regional administrator [ or chief ] assigning the team member. The [ appropriate ] regional administrator [ or chief ] shall be responsible for finding a replacement for the team member if approved.

D. The certification unit inspector shall notify the program administrator [ in writing ] at least 60 days in advance of the audit.

E. The certification inspector shall visit the program administrator prior to the audit to discuss the compliance audit process and procedures. Exceptions to this previsit shall be approved by the certification unit manager.

F. In instances where several programs are operated under the administration of a single commission, the certification unit manager and the program administrator may agree to an administrative review audit.

## § 3.2. Frequency of audits.

A. All state and local facilities, programs and units operated by or affiliated with the Department of Youth and Family Services shall be audited every three years by the certification unit or a designee of the unit. More frequent audits may occur as required by the board.

B. All programs referenced in § 3.2 A shall receive announced or unannounced documented interim audits by [ the ] regional office staff [ or staff of the appropriate chief ] at least once every six months. More frequent audits may occur as required.

C. Exceptions to the frequency of audits as stated above shall be granted for the following reasons:

1. When a new program opens it shall undergo a documented preparatory audit by regional office staff [ or staff of the appropriate chief ] during the first six months of operation. A compliance audit shall be conducted between the sixth and twelfth month of operation as arranged by the certification unit manager and every three years thereafter. More frequent audits may occur as required by the board.

2. Exceptions to the required frequency of audits may be granted when circumstances beyond the control of the program staff prohibit compliance with the standards [ (for example, natural disaster) ] . In no case shall the audit be postponed for more than six months [ after the original audit date ] .

## § 3.3. Agency narrative.

No later than 30 days prior to the audit, the agency [ /program administrator ] shall submit a written description of the program to be audited.

## § 3.4. On-site audit procedures.

A. On-site audit procedures shall include the following:

1. Program administrator interview.
2. Facility tour.
3. Team orientation.
4. Data-gathering.
5. Team voting on standards compliance.
6. Assessment and discussion of quality of life issues.
7. Prebriefing with the program administration to discuss audit findings.
8. Debriefing to inform program staff of audit findings.

B. [ Burden of proof Evidence of proof of compliance ] .

1. The burden of [ providing evidence of ] proof of compliance with standards rests with the program staff. Documentation [ generated created ] once the audit has begun shall not be accepted.

2. It is permissible to provide additional documentation should the [ audit certification ] team request it; however, such documentation shall already have been in existence when the audit began. Once the audit is concluded, an agency cannot bring itself into compliance with a standard for the purpose of changing the compliance rating for that standard. The changes become part of the program's plan of action.

3. The certification unit manager, the appropriate regional administrator or the chief [ of operations for learning centers ] where appropriate, and the director or designee shall be informed immediately of any serious problems or issues revealed to the team.

## § 3.5. Reports.

A. Post reporting process.

1. A report of the team's findings shall be submitted to the program administrator and the appropriate regional administrator or the chief of operations for learning centers where appropriate, within 10 working days following the compliance audit.

2. The program administrator may respond to the

findings described in the report in one of three ways:

- a. Submit a plan of action as described below.
  - b. Request a variance as described in § 3.5 C.
  - c. Appeal the findings as described in § 3.5 D.
3. The program administrator with assistance from the [ appropriate ] regional office [ or chief ] shall develop a plan of action to correct all noncompliance findings. The plan of action shall be submitted to the appropriate regional administrator or [ the ] chief [ of operations for learning centers, where appropriate, ] within 15 days of receipt of the report of the team's findings. [ In exceptional situations, the certification unit manager may grant a 30-day extension to a program administrator for the development of an action plan. ]
4. Each plan of action shall identify:
- a. The deficiency(ies).
  - b. The tasks required to correct each deficiency, including the steps necessary to prevent its recurrence.
  - c. The responsible agency and staff position, which may include the regional office.
  - d. The deadlines for the accomplishment of tasks.
5. Acceptable plans of action. Within five working days of receipt the [ appropriate ] regional administrator or chief [ of learning centers, if applicable, ] shall review and upon finding the plan acceptable, approve the plan of action and forward it to the certification unit manager. Within five working days the certification unit manager shall review, and forward the plan of action to the director or designee with recommendations regarding certification and recommendations to deny or approve variance requests. Within five working days the director or designee shall sign the plan of action indicating review and approval and return it to the certification unit for inclusion in the audit report to the board.

6. Unacceptable plans of action.

- a. Regional office [ or appropriate chief ] level. Within five working days of receipt the regional administrator shall review the plan of action and upon finding the plan unacceptable, return it to the program administrator with a cover letter clearly stating what areas are unacceptable and suggestions for appropriate corrective action. The program administrator shall have five working days in which to resubmit an acceptable action plan. If the [ resubmitted ] action plan is unacceptable, the [ appropriate ] regional administrator [ or chief ] shall

forward it to the director or designee for referral to the board for action with a copy to the certification unit manager.

- b. Certification unit level. If a plan of action approved by the [ appropriate ] regional administrator [ or chief ] is unacceptable to the certification unit manager, the certification unit manager within five working days shall return the plan of action to the [ appropriate ] regional administrator [ or chief ] with a cover letter clearly stating what areas are unacceptable and suggestions for appropriate corrective action. The [ appropriate ] regional administrator [ or chief ] shall return the plan of action to the program administrator within five working days for revision. If the program administrator fails to submit an acceptable action plan within five working days, or the [ appropriate ] regional administrator [ or chief ] does not agree with the certification unit manager, the matter shall be referred to the director or designee for a decision or referral to the board for action.

- c. Director or designee level. If a plan of action is unacceptable to the director or designee, it shall be returned within five working days to the [ appropriate ] regional administrator [ or chief ] with a cover letter clearly stating what areas are unacceptable and suggestions for appropriate corrective action. The certification unit manager shall receive a copy. The [ appropriate ] regional administrator [ or chief ] shall then have three working days to return the plan of action to the program administrator for revision. The program administrator shall have five working days to resubmit an acceptable plan of action. If an acceptable plan of action is not submitted within the required time frame, the director or designee shall refer the matter to the board for action.

B. Failure to submit an acceptable action plan.

When a program administrator fails to submit an acceptable plan of action within the time frame specified in § 3.5 A, the department shall refer the matter to the Board of Youth and Family Services with recommendations for action. [ In exceptional situations, the certification unit manager may grant a 30-day extension to a program administrator for the development of an action plan. ]

C. Variance request.

1. A variance may be requested in those instances where a facility is unable to comply with a standard [ or a portion of a standard ] .
2. A variance shall state:
  - a. The standard for which a variance is requested;

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- b. The justification for the request;
- c. [ ~~The Any~~ ] actions [ ~~being~~ ] taken to come into compliance;
- d. The person and agency responsible for such action;
- e. The date at which time compliance is expected; and
- f. The specific number of months requested for this variance.

3. Variance requests approved by the [ appropriate ] regional administrator [ or chief ] reviewed by the certification unit manager, and approved by the director or designee shall be forwarded to the board for final approval. [ The board shall be made aware of any denied requests. ]

4. Should the program be subject to a compliance audit during the period of the variance, a copy of the approved variance shall be provided to the certification team during the on-site audit.

## D. Appeal process.

1. If an appeal of any audit findings is being made, the program administrator shall attach the appeal request to any plan of action.

2. A plan to correct the deficiency should the appeal be denied shall be included in the plan of action.

3. Appeals shall be forwarded to the certification unit manager by the [ appropriate ] regional administrator or the chief [ ~~of operations for learning centers~~ ] along with the plan of action. The certification unit manager shall prepare a report on the appeal for review [ by the appropriate levels of appeal ] . The levels of appeal review are as follows:

a. [ Appropriate ] regional administrator [ or chief ] upon review of plan of action. [ The appropriate regional administrator or chief shall make every effort to resolve the appeal with the program administrator. If the program administrator is not satisfied, the appeal must be forwarded to the certification unit manager. ]

b. Chief of operations for information and evaluation;

c. Deputy director of administration and finance and the deputy director for programs;

d. Director for the Department of Youth and Family Services; and

e. Board of Youth and Family Services.

4. The certification unit manager shall distribute required documents within three working days of receipt of appeal documents. The administrators cited above shall complete required reviews or appeal decisions within five working days from receipt of the appeals.

5. Upon completion of each appeal level, the certification unit manager shall notify all parties involved of the appeal decisions within three workdays. The parties involved shall then have five working days from receipt of [ ~~the each~~ ] decision notification to decide whether or not to appeal to the next level and to inform the certification unit manager of that decision [ in writing ] .

6. If the appeal is granted [ at the administrative level, ] the certification unit manager shall note this decision on the plan of action and the deficiency shall be removed from the audit report.

## E. Board review of audit report.

The certification unit manager shall submit audit reports at the first regular board meeting which occurs 75 days or more after the audit. [ The board shall be notified of any extensions granted.

Audit reports shall be distributed to the regional offices, and to the appropriate chief, after official board action for distribution to the applicable programs. ]

## § 3.6. Board action on audit results.

Based upon the information submitted by the department, the board shall make one of the following findings:

1. The program is certified.

2. The program is placed on probationary status.

3. The program is decertified (or not certified if a new program.)

The board may also place a program on administrative probation in emergency situations or continue an administrative probation status initiated by the director.

## § 3.7. Notification of certification status.

1. Information regarding program status shall be made available to the appropriate departmental, state and local authorities within two weeks of the board's actions.

2. Administrators shall receive notification of their program's certification status in the following manner:

a. A certificate shall be issued by the board to each certified program.

b. A letter shall be issued by the board to programs that are placed on probationary status or decertified.

3. Public notification of certification status certificates and status letters shall be posted upon receipt in a conspicuous place in the facility or program offices [ visible to the public ] .

D. When a certifiable level of compliance is not achieved, the director or designee shall:

1. Notify the program administrator of the board's action and provide 15 days to respond in writing to the board's action.

2. Send a copy of such notice to the person or entity authorized to take action.

§ 3.8. Failure to achieve certification.

When a program fails to achieve certification, the following actions may be taken in compliance with statutes, policies, and procedures established by the board, the department and other state or federal agencies.

1. Department-administered. If the Department of Youth and Family Services administers the program, actions may include, but are not limited to, the following:

a. The program administrator may reorganize the program, take necessary personnel action(s) and any other steps that will bring the program into compliance;

b. The program may be closed. The procedure for such action shall be in compliance with all board, department, state and federal regulations, policies, or requirements of law.

2. Locally or privately operated. If the program is locally or privately operated, and affiliated with the Department of Youth and Family Services, actions may include, but are not limited to, the following:

a. A recommendation may be made to the person or entity authorized to take action, to reorganize the program structure or take necessary personnel action or any other steps as may be necessary to bring the program into compliance with standards;

b. The Director of the Department or the Board of Youth and Family Services may initiate proceedings, and under authority of §§ 16.1-311, 16.1-322.1 through 16.1-322.3, and § 66-30 as well as any other applicable laws relating to child abuse to withdraw funding or to prohibit placement of children.

§ 3.9. Grounds for decertification.

[ A. ] A facility or program may be decertified [ by the

board ] at any time for the following reasons:

1. Staff of the facility or program [ are alleged to ] have permitted, aided or abetted the commission of any illegal act in the facility or program;

2. Staff of the facility or program [ are alleged to ] have engaged in conduct or practices which are in violation of statutes related to abuse or neglect of children;

3. Staff of the facility or program [ are alleged to ] have deviated significantly from the program or services for which a certificate was issued without obtaining prior approval from the Board of Youth and Family Services, failing to correct such deviations within the time specified by the board, or both; or

[ 4. Falsification of records. ]

[ B. If the program administrator wishes to appeal the decertification status, he shall forward the request to the appropriate regional administrator or chief for forwarding to the certification unit manager who shall, within five days, prepare a report on the appeal request at the first regularly scheduled board meeting following receipt by the board of the report from the certification unit manager. ]

[ 4. C. ] A program or facility may also be placed on administrative probation at any time pending investigation of alleged occurrences of any or all of the items stated above, or in an emergency situation at the discretion of the director pending board approval at its next regularly scheduled meeting.

§ 3.10. Newly adopted standards.

A. When standards are adopted for newly developed programs, or when new standards are adopted for existing programs, the programs affected shall be held responsible for demonstrating compliance with the standards 90 days after [ board approval the effective date ] of the new standards.

B. New programs to be certified under existing standards will undergo a preparatory audit by the regional office [ or staff of the appropriate chief ] within 90 days of accepting the first client (residential programs) or hiring of the director (nonresidential programs). A full audit by the certification unit staff will be conducted no more than six months after the preparatory audit.

\* \* \* \* \*

Title of Regulation: VR 690-15-001. Regulations for State Reimbursement of Local Juvenile Residential Facility Costs.

Statutory Authority: §§ 16.1-313, 16.1-322.5 through 16.1-322.7 and 66-10 of the Code of Virginia.

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Effective Date: September 9, 1992.

## Summary:

*This is a new regulation issued by the Board of Youth and Family Services to provide guidance to localities in requesting reimbursement for construction costs.*

### *This regulation:*

- 1. Serves as a guideline in evaluating requests for reimbursement of local facility costs;*
- 2. Includes criteria to assess need and establish funding priorities;*
- 3. Ensures the fair and equitable distribution of state funds provided for reimbursing local facility construction costs;*
- 4. Provides criteria for private construction of detention or other residential facilities;*
- 5. Provides guidelines for the submission, review and approval of preliminary design documents and final construction documents; and*
- 6. Provides guidelines for the construction phase and final inspection of the facility.*

*Changes made in the proposed regulations were primarily based on comments received during the public comment period. General comments provided more flexibility to the locality in the submission of required documents.*

VR 690-15-001. Reimbursement of Local Juvenile Residential Facility Costs.

## [ PART I. GENERAL INFORMATION. ]

### [ § 1.1. ] Introduction.

*The State Board of Youth and Family Services is charged with the responsibility for approving all requests from localities for financial assistance relative to the development and operation of new programs and services; for purchase of property; and for construction, enlargement, or renovation of detention homes, group homes or other residential care facilities for children, whether publicly or privately constructed.*

*The Department of Youth and Family Services exercises oversight responsibility in the establishment and maintenance of programs, services and residential care facilities for children.*

*The Office of Capital Outlay Management within the Department of Youth and Family Services is responsible for architectural and engineering review of residential*

*care facilities which are constructed, enlarged or renovated, and reimbursed with state funds.*

*Approval of projects for which state funding is requested is vested by the Governor in the Office of the Secretary of Public Safety. Such projects are best accomplished as a cooperative venture between a locality and the Department of Youth and Family Services. [ By Using BYFS approved and ACA standards and ] working together as partners from project planning to project implementation, the locality and the department ensure that an optimum number of children are provided high quality services at a minimum cost to the locality and to the Commonwealth.*

### *As a basis for this regulation:*

*1. "The Virginia Public Procurement Act" applies generally to every public body in the Commonwealth which § 11-37 of the Code of Virginia defines to include any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty. Therefore, The Commonwealth of Virginia Agency Procurement and Surplus Property Manual, current addition, will apply when construction of juvenile facilities is reimbursed by state funds.*

*2. The Agency Procurement and Surplus Property Manual incorporates the Commonwealth of Virginia Capital Outlay manual for policy and guidelines for "Capital Outlay Projects." Generally, construction or renovation of juvenile facilities would constitute "Capital Outlay." The Department of Youth and Family Services shall therefore apply the Commonwealth of Virginia Capital Outlay Manual, current addition, whenever reimbursement with state funds is requested. [ Special emphasis on Chapters V, VIII, and X shall be considered whenever reimbursement is requested. ]*

*3. The Department of Youth and Family Services does not intend to replace or relieve responsibilities of the architectural and engineering firms and applicable regulatory authorities (i.e., Building Official, State Fire Marshal, etc.). [ For the purposes of these reimbursement reviews, the Department of Youth and Family Services or its designee, will act in lieu of the Virginia Department of General Services and its applicable subdivisions. ]*

*[ For the purposes of these regulations and reimbursement recommendations to the Secretary and the Governor, the DYFS or its designee shall be the reviewing authority. ]*

## PART [ I. II. ] DEFINITIONS AND LEGAL BASIS.

### [ § 1.1. § 2.1. ] Definitions.

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

[ "ACA" means American Correctional Association. ]

"Architectural/Engineering (A/E) Services" means an individual or firm that is licensed by the Virginia Department of Commerce to provide professional services appropriate for the specific project, and is hired by the owner to provide those specific services for the project.

"Board" means the Virginia Board of Youth and Family Services.

"Board approved standards" means standards approved by the Board of Youth and Family Services. These standards include:

1. VR 690-40-004, Standards for Interdepartmental Regulation of Residential Facilities for Children;
2. VR 690-30-001, Standards for Secure Detention; and
3. VR 690-20-001, Standards for Pre and Post Dispositional Group Homes.

"Department" means the Department of Youth and Family Services.

"Enlargement" or "Expansion" means to expand an existing local facility by constructing additional area(s).

"Furnishing and equipment" means built-in equipment or fixtures normally included in a structure at the time of construction.

"Local facility" means a juvenile residential facility which is owned, maintained, or operated by any political subdivision or combination of political subdivisions of the Commonwealth, or a privately owned or operated juvenile residential facility which has contracted with any political subdivision or combination of political subdivisions of the Commonwealth.

[ "Locality's representative" means an individual that is licensed by the Virginia Department of Commerce as an architect or engineer.

"Needs assessment" means an evaluation of trends and factors at the local or regional level which may affect current and future local facility needs, and the assessment of local facilities and nonresidential programs available to meet such needs [ which is used as the basis for a locality's request for reimbursement of local facility construction costs ].

"New construction" means to erect a new local facility, or replace an outdated existing local facility.

"Operating capacity" means operating capacity as

established by the Department of Youth and Family Services, based on "per bed area allowances." (Ref. § [ 2-3 3.3 ] C 2 of this regulation.)

[ "Planning study" means an overall description of a proposed project consisting of new construction, renovation of existing facilities, or both. ]

"Procedures" means the Department of Youth and Family Services Procedures for Receiving State Reimbursement for Local Facility Construction, Enlargement [ or , ] Renovation [ , and Operating Funds, and for the Development and Operation of New Programs. ]

"Renovation" means altering or otherwise modifying an existing local facility or piece of stationary equipment for the purpose of modernizing or changing its use or capability. Renovation does not include routine maintenance. Renovation renders the facility, item or area superior to the original.

"Replacement" means constructing a local facility in place of a like local facility or purchasing stationary equipment to replace stationary equipment which cannot be economically renovated or repaired.

"Reviewing authority" means the department, division or agency to which the Governor has delegated authority to act in his behalf in reviewing local facility construction projects for reimbursement approval.

"Routine maintenance" means the normal and usual type of repair or replacement necessary as the result of periodic maintenance inspections or normal wear and tear of a local facility or equipment.

[ "Substantive change" means user generated design changes affecting operational and functional performance of the facility. ]

[ § 1-2. § 2.2. ] Legal basis.

A. This regulation has been promulgated by the board to carry out the provisions of §§ 16.1-313 and 16.1-322.5 through 16.1-322.7 of the Code of Virginia. This regulation:

1. Serves as a guideline in evaluating requests for reimbursement of local facility construction costs;
2. Includes criteria to assess need and establish priorities;
3. Ensures the fair and equitable distribution of state funds provided for reimbursing local facility construction costs; and
4. Provides criteria for private construction of detention or other residential facilities.

B. The board is authorized to promulgate regulations

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pursuant to § 66-10 of the Code of Virginia.

## PART [ H III ]. REIMBURSEMENT REQUEST PROCEDURES.

[ § ~~2-1~~ § 3.1. ] Reimbursement request.

A. Requests for reimbursement shall be submitted as follows:

1. Requests for reimbursement shall be approved by the board by June 1 of each year for inclusion in the department's budget request to the Governor and consideration during the next General Assembly session. Incomplete submissions, or submissions not received by the department prior to [ June 1, ~~will not be considered~~ or on April 1 will not be submitted to the board ] for inclusion in the department's budget request.

2. The locality shall direct a letter to the department requesting the board to recommend to the Governor reimbursement for construction, enlargement or renovation. The letter shall be accompanied by the information required by § [ ~~2-1~~ 3.1 ] B.

[ 3. The department shall submit the completed request for reimbursement to the board for review and approval by the second board meeting or within 60 days following submission by the locality. ]

B. Requests for reimbursement of local facility construction, enlargement or renovation costs shall be accompanied by:

1. A Needs Assessment as specified in the Procedures;
2. A Resolution from the locality(s) requesting reimbursement;
3. An estimate of the reimbursement amount being requested;
4. A Planning Study as specified in the Procedures; and
5. [ Requests for regional facilities shall also include ] a copy of the agreement between the participating localities including the allocation of financial and operational responsibilities [ ; shall be included for requests for regional facilities. ]

[ § ~~2-2~~ § 3.2. ] Preliminary review.

Localities wishing a review of their needs assessment prior to formally submitting a reimbursement request may submit only the Needs Assessment as specified in § [ ~~2-1~~ 3.1 ] B. Upon review of the Needs Assessment, the board will notify the locality(s) as to whether it appears to the board that they are ready to proceed with the formal reimbursement request.

[ § ~~2-2~~ § 3.3. ] Criteria for board funding recommendation.

A. [ Demonstrated need. ]

The board will evaluate the need for the project as demonstrated by the information provided in the Needs Assessment and Planning Study.

B. [ Operational cost efficiency. ]

The board shall take into consideration the operational cost efficiency of the interior design of the facility with special concern for the number of staff required, functional layout, material selection and energy efficiency [ , with special emphasis on meeting the needs of youth and the mission of the facility. Design of the respective program facility shall meet the standards of the board and ACA ].

C. [ Construction cost. ]

Construction economy shall be reviewed in relation to the adjusted median cost of local facilities. The adjusted median cost of local facilities will be calculated by the department as a per bed cost using the following procedure:

1. A cost per square foot base figure will be the national median square-foot cost for jails (location factor applied), published in the latest edition of "Means Facilities Cost Data" published by R. S. Means Company Inc. [ The "Means Facilities Cost Data" takes into consideration the "location factor" which is the materials and labor cost differential specific to geographical location ];

2. The adjusted square-foot costs will be converted to per-bed costs using per-bed area allowances based on the average gross square footage of actual and proposed local facilities in Virginia; the area allowances will be (area allowance must be in accordance with all applicable codes and standards):

National cost per square foot (Means)

x Location Factor (Means)

x Area allowance per bed (maximum 900 sq. ft. per bed)

= Adjusted median construction cost of local facility;

3. The total project cost will include:

a. Construction (subdivision C 2 above);

b. Site and utilities (Means);

c. Architectural and engineering (Virginia Capital Outlay Manual);

d. Furnishings and equipment (as itemized);

e. Project inspection (Virginia Capital Outlay Manual); [ and ]

f. Contingency (3.0%) [ ; ]

[ g. Property purchased specifically for this facility; and

h. Other. ]

D. [ Phased projects. ]

When localities wish to meet the requirements outlined in the needs assessment in phases, the board may approve reimbursement based on the total estimated cost of the project as if it were to be completed as a single endeavor; however, reimbursement will be in amounts proportional to the phases of construction.

[ § 2-4 § 3.4. ] Funding priorities.

A. The following criteria, [ ~~listed in order of priority~~, as determined by the needs assessment ] shall serve as a guide for determining the level of priority given to requests for reimbursement:

1. New construction/renovation is needed because the existing facility is closed by the court, Board of Youth and Family Services or local governing authority, due to its failure to meet state or local operating standards;
2. An unsafe physical plant which fails to meet life, health, safety standards, or a court-ordered renovation, expansion, or new construction;
3. Replacement or renovation of bedspace lost due to fire, earthquake or other disaster;
4. An existing local facility is experiencing overcrowding [ ~~(at least, operational capacity plus an additional 25%)~~ ] which is expected to continue based on population forecasts;
5. A locality with no existing local facility;
6. An addition to or renovation of support facilities;
7. Phased projects; and
8. Cost overruns.

B. [ Regional projects. ]

The board will ordinarily give preference to requests for reimbursement for regionalized local facilities. [ Regionalized local facilities shall normally serve three or more localities as determined by the needs assessment. ]

[ § 2-5 § 3.5. ] Board recommendations to the Governor.

A. The department will direct a letter to the locality notifying the governing body of the board's decision to recommend or not to recommend a project for reimbursement, and the rationale for the decision.

B. The board shall submit to the Governor, or his designee (i) its recommendations with respect to reimbursement requests and the rationale therefor; and (ii) such information as the Governor may require with respect to a request for approval of reimbursements.

C. Final appropriations are subject to the Governor's approval and legislative enactment.

Sections 16.1-313 and 16.1-322.7 of the Code of Virginia establish the rate of reimbursement to localities for construction, enlargement or renovation.

## PART [ III IV ], PROJECT DEVELOPMENT.

[ § 3-1 § 4.1. ] Preliminary design.

A. The locality shall submit preliminary design documents to the department, as specified in the Procedures and the Virginia Capital Outlay Manual. The locality may also be required to submit preliminary design documents to other regulatory agencies.

B. Preliminary design documents shall be approved by the department.

[ § 1. ] If the department requires changes to the [ ~~construction~~ preliminary design ] documents, all such required changes will be communicated in writing to the locality.

[ § 2. ] The [ locality shall require locality's representative or ] its A/E [ to shall ] respond in writing to the department to all comments in the preliminary design review. Necessary revisions to the project documents may be incorporated in the submission of the construction documents; however, all issues in question between the [ locality's representative or ] A/E and the department shall be resolved before the construction document phase is begun.

[ § 3-2 § 4.2. ] Construction documents.

A. Localities shall submit construction documents to the department as specified in the Procedures and the Virginia Capital Outlay Manual. The locality may also be required to submit construction documents to other regulatory agencies. The fire official of the authority having jurisdiction over the proposed facility shall conduct a plans review and approve the construction.

B. The department will review construction documents



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for compliance with board standards, Code requirements, and incorporation of all changes required by the department at the preliminary document review stage. This review in no way releases the A/E from their responsibilities and requirements.

[ ~~C~~. 1. ] If the department requires changes to the construction documents, all such required changes will be communicated in writing to the locality.

[ ~~D~~. 2. ] The [ ~~locality shall require~~ locality's representative or ] its A/E [ ~~to shall~~ ] respond in writing to the department to all comments in the construction document review. All issues in question between the architect [ , the locality ] and the department shall be resolved before the project is bid.

[ ~~E~~. C. ] Upon satisfactory resolution of all review comments, the department shall approve construction documents and advise the locality in writing [ within 10 working days ].

[ ~~§ 3-2~~ § 4.3. ] Changes during project development [ ; suspension of project ].

If, during the project development stage, any substantive change in the scope of the project, any increase in the estimated cost of construction, or any change in the operational staff requirements occurs, the review process will be suspended until the project is resubmitted to the board for further review and possible change in the status of reimbursement recommendation.

## PART [ ~~IV~~. V. ] PROJECT CONSTRUCTION.

[ ~~§ 4-1~~ § 5.1. ] Bids.

After bids for construction have been received and opened, and the locality has determined to proceed with the project, the locality shall require its A/E to submit to the department a bid tabulation, analysis and recommendation as to the award of the contract. [ Any comments by the department shall be forwarded to the locality within 10 working days of receipt. ]

[ ~~§ 4-2~~ § 5.2. ] Construction.

A. During construction the locality shall require its architect to submit monthly inspection or progress reports to the department. [ The department must respond in writing within 10 working days after receipt if there are any problems. Failure to do so serves as acceptance of the inspection and progress report. ]

[ ~~B~~. Any change ordered during the construction phase shall be submitted in writing to the department for review and approval. Only those changes that are approved by the department shall be eligible for reimbursement.

B. Any substantive changes, single change orders of

\$10,000 or more, and accumulative change orders exceeding the project contingency during the construction phase shall be submitted in writing to the department for review and approval. Only those changes that are approved through this procedure shall be eligible for reimbursement. ]

C. A representative of the department may visit the project site during the construction period to observe the work in progress. Any observed deviations from approved documents having the effect of voiding or reducing compliance with board standards or Code requirements shall be reported in writing to the locality [ within 10 working days ] and shall be corrected.

[ ~~§ 4-2~~ § 5.3. ] Final inspection.

A. Upon construction completion, the [ ~~locality shall require its A/E to~~ locality's representative will or the A/E shall ] establish a schedule for final inspection of the project as follows:

1. The locality shall notify the department and all regulatory agencies which reviewed preliminary design or construction documents of the schedule for final inspection. The fire official of the authority having jurisdiction shall conduct a plan review and approve the construction;

2. The locality(s) shall request personnel or agencies involved in the final inspection to submit comments or recommendations in writing to the locality and forward copies to the department.

3. The locality shall require its architect to take necessary corrective action on all deficiencies noted in the comments and submit a report of completed actions to the appropriate reviewing agencies and forward a copy of the report to the department.

B. Upon completion of the final inspection and corrective actions as required, the locality shall provide to the department copies of all regulatory agency letters verifying approval of the completed project. [ The A/E shall certify to the department the completion of the project. ]

[ ~~§ 4-4~~ § 5.4. ] Record documents.

The locality shall require its architect to modify original drawings and specifications to reflect the condition of the project as actually constructed and such documents shall be marked "Record." The record documents shall be prepared in accordance with procedures.

## PART [ ~~V~~. VI. ] PRIVATE CONSTRUCTION OF JUVENILE FACILITIES.

[ ~~§ 5-1~~ § 6.1. ] Legal basis.

Section 16.1-322.5 of the Code of Virginia provides for the Board of Youth and Family Services to authorize a county or city or any combination of counties, cities or towns established pursuant to § 16.1-315 of the Code of Virginia to contract with a private entity for the financing, site selection, acquisition or construction of a local or regional detention home or other secure facility. Localities authorized to contract for private construction of a juvenile detention facility shall receive state reimbursement authorized by § 16.1-313, of the Code of Virginia, in accordance with Parts I through VI of these regulations.

[ § 5-2: § 6.2. ] Contract authorization.

Prior to receiving the Board of Youth and Family Services authorization to enter into a contract for private construction, localities shall certify and submit documentation demonstrating that all requirements mandated by § 16.1-322.5 of the Code of Virginia have been met by both the locality and the contractor.

PART [ VI. VII. ]  
FINAL REIMBURSEMENT.

[ § 6-1: § 7.1. ] Request for final reimbursement.

A. Upon completion of the project, the locality shall submit the documentation specified by the procedures to the department.

[ B. If the final amount of reimbursement requested is no more than the reimbursement amount initially recommended, including the contingency, the department will authorize reimbursement within 90 days of receiving a complete reimbursement request. The reimbursement request shall be in the form specified by the department. ]

[ B. C. ] If the final amount of reimbursement requested is more than the reimbursement amount initially recommended, the cost increase shall be justified by the locality and resubmitted to the board and the Governor, or his designee, for approval.

[ § 6-2: § 7.2. ] Compliance.

Failure to comply with these regulations will delay the review process and recommendation for disbursement of funds, and may result in the denial of reimbursement.

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**REGISTRAR'S NOTICE:** The final regulation entitled "Holdover Standards (VR 690-75-001)," filed by the Department of Youth and Family Services pursuant to § 9-6.18 of the Virginia Register Act, is exempt from the provisions of the Administrative Process Act pursuant to § 9-6.14:4.1 B 10 of the Code of Virginia, which exempts agency action relating to the custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or

discharge of such persons. The regulation was adopted by the Board of Youth and Family Services on July 9, 1992.

Title of Regulation: VR 690-75-001. Holdover Standards.

Statutory Authority: §§ 16.1-311 and 66-10 of the Code of Virginia.

Effective Date: September 9, 1992.

Summary:

This is a new standard issued by the Board of Youth and Family Services to provide the policy and procedure for the establishment of holdover programs. This standard (i) provides the policy and procedure criteria for the administration and operation of a holdover program; (ii) includes criteria for selection of staff; (iii) establishes policy and procedure for space furnishings of the residential environment; and (iv) defines the policy and procedure for admission, supervision, and release of youth in the program.

VR 690-75-001. Holdover Standards.

PART I.  
INTRODUCTION.

§ 1.1. Definitions.

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

"Actively supervising" means that staff are awake, alert, monitoring the behavior and needs of the residents in his care.

"Chief administrator" means the individual responsible for the overall operation of the holdover facility and program, and the implementation of these standards.

"Contraband" means any item possessed by youth within the facility which is illegal by law or expressly prohibited or unauthorized by those legally charged with the responsibility for administration and operation of the facility, including but not limited to weapons, pocket knives, money, matches, lighters, and cigarettes.

"Corporal punishment" means the inflicting of pain, discomfort to the body through actions such as, but not limited to, striking or hitting with any part of the body or with an implement; or through pinching, pulling or shaking; or through any similar action which normally inflicts pain or discomfort.

"Crisis intervention" means the systematic use of various techniques selected according to specific crisis situations and designed to reduce or to eliminate the immediate crisis.

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"Department" means the Department of Youth and Family Services.

"Holdover" means a nonsecure facility designed to provide supervision pursuant to Article 4 (§ 16.1-246 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia, for a period of no more than 24 hours, for no more than two youth at any given time who are awaiting release to parents or guardians, court appearance, or transportation to another facility.

"Major rule violation" means any action which is illegal by law or expressly prohibited by those legally charged with the responsibility for administration and operation of the facility. These actions include all which threaten life, safety and security of persons or property.

"Mechanical restraint" means the application of devices as a means of physically restraining or controlling a youth's behavior, such as handcuffs, shackles or strait jackets.

"Minor rule violation" means any action which is expressly prohibited by those legally charged with the responsibility for administration and operation of the facility that is not considered a major rule violation.

"Physical restraint" means any act by staff which exercises the use of force with a youth as a method or technique for managing harmful youth behavior.

"Program" means the planned application of staff and resources to achieve the stated mission of the facility.

"Release" means transfer of youth and the authority to supervise that youth to another agency or individual.

"Right" means that to which one has a natural, legal or moral claim.

"Self-protection" means the use of force necessary to protect oneself or others from serious injury or loss of life.

"Serious incident" means a harmful or potentially harmful situation involving staff or youth. This includes but is not limited to death, fire, assault, escape, serious injury, and allegations or evidence of child abuse.

"Weapon" means an instrument designed or intended to disable or incapacitate, including but not limited to: firearms, knives, mace, nightsticks, blackjacks, and stun guns.

"Youth" means any person defined as a child under state law.

## § 1.2. Legal base.

The Code of Virginia is the foundation for the development of Minimum Standards for Holdover. Section

16.1-311 directs the State Board of Youth and Family Services to establish minimum standards for the construction and equipment of facilities and for feeding, clothing, medical attention, supervision and care of youth detained therein.

The State Board of Youth and Family Services is authorized to monitor the activities of the department and its effectiveness in implementing the standards and goals of the board as specified by § 66-10 of the Code of Virginia.

## PART II. ADMINISTRATION AND ORGANIZATION.

### § 2.1. Administration.

The primary responsibility for application of these standards shall be with the chief administrator who shall ensure that staff read these and all other applicable standards.

### § 2.2. Organization.

A. Each program shall be managed by one chief administrator to whom all employees shall be ultimately responsible.

B. When a holdover is located on property shared with another agency or facility, it shall be physically separated and have a completely separate program.

C. There shall be a written statement describing mission, philosophy, objectives, programs and services.

D. Written policy shall prohibit holding a youth for more than 24 continuous hours in a holdover facility.

E. The program shall not exceed rated capacities determined by the Board of Youth and Family Services.

F. The program shall not be staffed with fewer youth care and treatment personnel than provided for in staffing patterns established by these and other applicable standards promulgated by the State Board of Youth and Family Services.

G. There shall be a written policy and procedure manual available 24 hours a day to all staff. The content of this manual shall be approved by the parent agency or authority, reviewed annually by the chief administrator, updated as necessary and communicated to all staff.

### § 2.3. Insurance.

There shall be premises and professional liability insurance, physical plant insurance, and employees blanket bond.

### § 2.4. Case records management.

A. Written policy, procedure, and practice shall require that each youth's behavior and condition be monitored and documented in the youth's case file.

B. All entries in youths' case files shall be dated and signed or initialed.

C. Written policy, procedure, and practice shall stipulate that written records of youth admitted to holdovers shall be maintained by the authorized court service unit.

D. Written policy, procedure, and practice shall restrict access to youth records and information to only those legally authorized to have access to such records and information pursuant to all applicable laws and regulations.

E. Written policy, procedure, and practice shall protect the confidentiality of records, including access, acquisition, duplication, and dissemination of any portion of the records. The policy and procedure shall specify what information is available to youth.

F. Records shall be kept in areas which are accessible only to authorized staff.

G. Records shall be stored in a metal file cabinet or other metal compartment.

H. When not in use, records shall be kept in a locked compartment or in a locked room.

I. Written policy, procedure and practice shall govern the retention and disposition of all facility records in accordance with all applicable laws and regulations and schedules issued by the Virginia State Library and Archives.

J. Written policy, procedure, and practice shall govern the security of information and data collection systems.

### PART III. PERSONNEL

#### § 3.1. Preemployment.

A. A physical examination that has been conducted by a licensed physician within 60 days of employment shall be required for all staff prior to contact with youth.

B. Prior to employment, a criminal record check to include finger printing, driving record check and central registry check shall be obtained on all staff to ascertain whether there have been criminal acts or circumstances that would be detrimental to the health, safety and well-being of youth in care.

C. Prior to assumption of duties, all staff shall be provided a written description of duties and activities, and staff shall sign and date an acknowledgement that they have received and read the description.

#### § 3.2. Staff development.

A. Prior to assuming sole responsibility for the supervision of youth, staff shall receive at least 48 hours of training which includes, but is not limited to, the following:

1. Program philosophy for serving youth;
2. Youth's rules and regulations;
3. Youth's rights and responsibilities;
4. Confidentiality of youth and youth records;
5. Documentation requirements;
6. Review of facility policies, procedures, and applicable standards;
7. Procedures for accessing local emergency and routine medical services;
8. Procedures for dealing with substance abusing youth, screening and monitoring for substance abuse, and accessing substance abuse services;
9. Implementation of safety and emergency procedures, including participation in at least one fire evacuation drill;
10. Services provided by the program;
11. Adolescent development;
12. CPR;
13. Multimedia first aid;
14. Behavioral documentation;
15. Department sanctioned behavioral and crisis intervention techniques, including physical restraint and self-defense;
16. Suicide prevention;
17. Report writing; and
18. Communicable disease training.

Any of the training requirements listed above may be satisfied by similar prior training, provided that such training was received within two years of employment by the holdover, is documented, and approved by the chief administrator of the holdover facility.

B. Staff shall receive additional annual training as determined by a written staff development plan issued by the chief administrator.

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C. All staff shall hold a valid certificate in multimedia first aid and cardiopulmonary resuscitation (CPR).

## PART IV. RESIDENTIAL ENVIRONMENT.

### § 4.1. Inspections.

A. Written policy, procedure, and practice shall require fire, safety and sanitation inspections and approvals of all spaces used by the facility. These inspections shall be documented and signed by the appropriate local officials.

B. Written policy, procedure, and practice shall require safety and sanitation inspections by staff of all spaces used by the facility prior to each use. These inspections shall be documented and signed or initialed, and deficiencies shall be reported to designated staff.

C. Written policy, procedure, and practice shall require monthly inspections by properly oriented staff of standby lighting, flashlights, smoke detectors, fire extinguishers, fire fighting apparatus, communication systems, and alarm systems. These inspections shall be documented, signed or initialed and dated, and deficiencies shall be reported to designated staff. Any defective equipment shall be repaired or replaced as necessary. A record of these inspections shall be maintained for at least two years.

### § 4.2. Personal hygiene equipment and laundry.

A. Written policy, procedure, and practice shall provide for cleaning and laundering of washable items and other similar items used by youth after each use.

B. There shall be provisions for bagging of youth's personal clothing when contaminated or soiled.

C. Written policy, procedure, and practice shall require that youth admitted to holdovers be provided clean, appropriate clothing as needed.

D. At all times an adequate supply of personal necessities shall be available to the youth for purpose of personal hygiene and grooming, including but not limited to: soap, toilet tissue, toothpaste, individual tooth brushes, individual combs and shaving equipment. The inventory of these supplies shall be reviewed and documented at least once every month.

E. Clean, individual washcloths and towels, if necessary, shall be available for each youth admitted.

### § 4.3. Space, equipment, and furnishings.

A. Each holdover facility shall be located in, adjoining, or within less than five minutes response time of a 24-hour-a-day staffed agency capable of providing backup security assistance in an emergency. There shall be a written agreement between the holdover facility and the backup agency outlining their relationship.

B. Single occupancy holdover rooms shall not be less than 144 square feet in area.

C. Double occupancy holdover rooms shall not be less than 220 square feet in area.

D. All ceilings shall be at least 7-1/2 feet in height.

E. Toilet facilities shall be easily accessible to the holdover occupants, and at such times not open to the public.

F. Heat shall be evenly distributed in all rooms occupied by youth such that a temperature of no less than 65°F is maintained.

G. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by youth when the temperature in those rooms exceeds 85°F.

H. Written policy shall prohibit smoking in the holdover facility, and signs prohibiting smoking shall be posted.

I. All areas shall be lighted for safety.

J. All plumbing shall be maintained in good operating condition.

K. Holdover facilities shall be furnished with the following:

1. Comfortable chairs or sofas sufficient to seat youth and staff.

2. A dining table with chairs sufficient to seat youth and staff.

L. Holdover facilities shall have lighting adequate for reading.

M. Holdover facilities shall have an adequate supply of recreational materials available for youth, including but not limited to reading material and board games.

N. Windows in the holdover facility shall provide for privacy.

O. The holdover facility and its furnishings shall be clean and in good repair.

P. There shall be at least one continuously operable, nonpay telephone accessible to staff in each holdover facility.

Q. Written policy shall prohibit the use, possession, or storage of weapons in the holdover facility.

R. A well-stocked first aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

S. The holdover facility shall have department approved substance abuse screening and monitoring equipment.

T. The holdover facility shall have the equipment necessary to maintain essential lights in the event of an emergency.

U. The holdover facility shall be equipped with emergency supplies including, but not limited to, two battery-operated flashlights, a resuscitation mask, and a portable fire extinguisher having at least a 2A rating which is readily accessible.

V. Fire extinguishers shall be mounted on a wall or a post where they are clearly visible and it shall be installed so that the top is not more than 2-1/2 feet from the floor. They shall be easy to reach and remove and they shall not be tied down, locked in a cabinet, or placed in a closet or on the floor, except that where extinguishers are subject to malicious use, locked cabinets may be used provided they include a means of emergency access.

W. All required fire extinguishers and smoke detectors shall be maintained in operable condition at all times and professionally maintained and documented at least once each year.

X. Smoke detectors or smoke detection systems shall be installed and maintained in the holdover facility in accordance with state and local fire and building code requirements.

Y. If the facility is provided with an automatic fire alarm system, the system shall be inspected by a qualified professional firm at least annually. A record of these inspections shall be maintained for at least two years and shall include the date and the name of the firm making the inspection.

Z. Each holdover facility shall be equipped with an emergency alarm system which is directly connected to the designated 24-hour backup facility.

#### § 4.4. Storage and inventory.

Flammable, toxic and caustic materials shall not be stored in holdover facilities.

### PART V. PROGRAMS AND SERVICES.

#### § 5.1. Admissions.

A. Written policy, procedure, and practice shall govern the admission of youth to holdovers, based upon department approved admission criteria.

B. Written criteria for admissions to holdover facilities shall be made available to all parties when placement for a youth is being considered. Such criteria shall include:

1. A description of the population to be served;
2. A description of the types of services offered; and
3. Intake and admission procedures including necessary referral documentation.

C. Written policy and admission criteria shall stipulate that there is no discrimination in accepting youth on the basis of race, creed or national origin.

D. Written policy and admission criteria shall prohibit admitting youth with apparent serious medical or mental conditions, except for youth who are able to self-administer medications for diabetic or asthmatic conditions.

E. Written policy, procedure and practice shall prohibit admitting youth who are seriously impaired by the influence of alcohol or other substances unless written medical clearance has been obtained.

F. Written policy, procedure, and practice shall provide for admitting only those youth whose apparent needs are compatible with the services provided through the holdover facility, and referring to other agencies those youth who are initially admitted to the holdover facility but whose needs are later determined to be incompatible with the program's services.

G. Written policy, procedure, and practice shall require that each youth be searched by a law-enforcement officer before being admitted to the holdover facility. Contraband found in such searches which is not illegal shall be sealed in a bag in the presence of the youth, placed in a locked drawer or locker, and a list of the contents of the bag shall be signed by the youth and staff. The contraband shall be surrendered to the parents, guardian, or agent to whom the youth is released and a signed receipt shall be obtained for the property.

H. An admission form shall be completed for every admitted youth and contain at least the following information:

1. Admission number;
2. Date and time of admission and release;
3. Name;
4. Last known address;
5. Authority for admission;
6. Name of attorney if any;
7. Name, title and signature of delivering officer;
8. Reason for admission;

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9. Sex;

10. Date of birth;

11. Place of birth;

12. Race or nationality;

13. Health status;

14. Physical evidence or verbal report of possible child abuse;

15. Name, relationship, address and phone number of parent(s), guardian(s), or person(s) youth resides with at time of admission;

16. Space for remarks (to include notation of any open wounds or sores requiring treatment, evidence of disease or body vermin or tattoos);

17. Name and signature of person recording data;

18. Screening for substance use or abuse; and

19. Written medical clearance if applicable.

I. Written policy, procedure, and practice shall require that all admitted youth indicating evidence of being under the influence of behavior-altering substances be monitored through department approved protocols and equipment.

J. Written policy, procedure and practice shall require that a written list be made of all personal property in the possession of a newly admitted youth and all property surrendered to the staff. A copy of this list, which itemizes all property shall be given to the youth. The youth shall be asked to sign the form, verifying the contents of the list.

K. Written policy, procedure and practice shall require that admitted youth be informed verbally and in writing of safety and emergency evacuation procedures for the holdover facility, and that youth sign an acknowledgement of having been so informed.

L. Written policy, procedure and practice shall require that admitted youth be informed verbally and in writing of the facility's rules and disciplinary procedures and youth's rights and responsibilities, and that youth sign an acknowledgement of having been so informed. A summary of these rules, disciplinary procedures, youth rights and responsibilities shall be conspicuously posted in the holdover facility.

## § 5.2. Supervision and residential services.

A. There shall be no less than one youth care staff awake, on duty and responsible for the continuous sight and sound supervision of each youth present in the holdover facility.

B. Written policy, procedure, and practice shall require that staff be of the same sex as the youth present in the holdover facility.

C. Written policy, procedures, and practice shall govern staff supervision of youth, which include but are not limited to the following:

1. Required sight and sound supervision of youth;

2. Designations or descriptions of appropriate versus inappropriate interactions between staff and youth.

D. Written procedure and practice shall provide for the continued sight and sound supervision of youth when staff use the lavatory.

E. A daily activity log shall be maintained as a means of informing staff of significant happenings or problems experienced by youth, including but not limited to health and dental complaints or injuries.

F. At the beginning of each shift, staff responsible for supervision of youth shall read and sign the daily log(s) for significant happenings or problems.

G. Staff shall initial all entries made in the log.

H. There shall be one or more daily log books, bound, consecutively numbered and written in ink, containing at a minimum for each shift the following information:

1. Intake and release of youth;

2. Name of staff on duty, signature, and date;

3. Information on significant events that occurred during a shift, and issues that need to be communicated to subsequent shifts.

I. Any serious incident shall be documented in the daily log and the youth's file. The youth's file shall contain the following:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name of the person who made the report to the parent/guardian or placing agency; and

6. The name of the person to whom the report was made.

J. Written policy, procedure, and practice shall govern the reporting of serious incidents, including accidents or injury. Such procedures shall require that the appropriate

court service unit intake officer be informed as soon as possible.

K. Written policy, procedure, and practice shall require immediate reporting of runaways from the holdover facility to the local law-enforcement agency and the court service unit intake officer.

L. Written policy, procedure, and practice shall require that suspected instances of child abuse or neglect shall be reported immediately to the local department of public welfare or social services, as required by § 63.1-248.3 of the Code of Virginia. The youth's record shall include:

1. Date and time the suspected abuse or neglect occurred;
2. Description of the incident and reasons for suspicion;
3. Action taken as result of the incident; and
4. Name of the person to whom the report was made at the local department.

M. Written policy, procedure, and practice shall promote and govern youth's constructive use of leisure time while in the holdover facility.

N. Upon request, religious counseling shall be available to any youth by appropriate organizations or persons.

O. Written policy, procedure and practice shall govern telephone communication by youth.

#### § 5.3. Food service.

A. Staff responsible for the supervision of youth during meals shall be seated with the youth during meals and served the same meal except for necessary special diets required for such staff and residents.

B. The quantity of food served shall be adequate for the ages of the youth in care.

C. Youth shall be offered a meal upon admission and one meal at least every six hours while awake.

D. Youth shall be offered snacks at least once every three hours while awake.

#### § 5.4. Health care.

A. Written policy, procedure, and practice shall provide that when a youth is in need of emergency medical services or hospitalization, a staff member accompanies the youth to the clinic or hospital and stays with the youth until authorized to leave by the court service unit intake officer.

B. Medical care shall be paid for through the youth's

parents' medical insurance or other forms of health coverage whenever possible and the efforts to accomplish this shall be documented.

#### § 5.5. Medication.

Written policy shall prohibit youth possessing and staff dispensing medication, except for youth who are able to self-administer medications for diabetic or asthmatic conditions.

#### § 5.6. Discipline and behavior management.

A. Written policy, procedure, and practice shall prohibit the use of physical restraint on youth, except in instances of justifiable self-protection or imminent danger to the safety of the youth.

B. Written policy shall prohibit corporal punishment.

C. Written policy shall prohibit the use of mechanical restraints.

D. Written policy shall prohibit placing a youth in a room with the door secured in any manner that will prevent the youth from opening it.

E. Written policy shall prohibit any youth from exercising supervision and control over other youth.

F. Written policy shall prohibit disciplinary actions which interfere with the daily functions of living, such as eating, sleeping or exercising.

#### § 5.7. Release.

Written procedures and practice for the release of youth shall include, but are not limited to:

1. Verification of identity of the receiving agent or guardian;
2. Verification of release papers, if applicable;
3. Completion of release arrangements (to whom or what agency the youth may be released); and
4. Return of personal property to youth.

### PART VI. EMERGENCY AND SAFETY PROCEDURES.

#### § 6.1. Emergency and safety procedures.

A. A written agreement shall exist between the CSU Director and a nearby hospital for all medical services.

B. Written policy, procedure and practice shall specify actions to be followed in emergency situations, including but not limited to medical emergencies, fire, power outages, floods, weather emergencies, and runaways. These



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*procedures shall be reviewed annually, updated when necessary, and communicated to all staff and residents.*

*C. Each facility with the consultation and approval of the appropriate local fire authority shall develop a written plan to be implemented in case of a fire at the facility. This plan shall include at a minimum the following:*

- 1. A system for alerting fire fighting authorities;*
- 2. Use, maintenance and operation of fire fighting and fire warning equipment;*
- 3. Fire containment procedures including closing of fire doors, fire windows or other fire barriers;*
- 4. Posting of floor plans showing primary and secondary means of egress; and*
- 5. Other special procedures developed with the local fire authority.*

*The written fire plan shall be reviewed with the local fire authority at least annually and updated, if necessary.*

*D. The telephone number of the fire department to be called in case of fire shall be prominently posted on or next to each telephone in the holdover facility.*

# EMERGENCY REGULATIONS

## BOARD OF DENTISTRY

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

Statutory Authority: § 54.1-2700 of the Code of Virginia.

Effective Dates: July 21, 1992 through July 20, 1993.

### Request for Approval:

I recommend approval of this emergency regulation of the Board of Dentistry. The regulation is necessary to permit dental assistants to receive training and certification to continue to administer Schedule VI topical medicinal agents to dental patients. Legislation requiring this certification was enacted by the General Assembly during the 1992 Session and became effective on July 1, 1992. A copy of Acts of Assembly is attached.

The emergency regulation will expire one year from the effective date, or upon the promulgation of revised regulations under the normal procedures of the Administrative Practice Act, whichever date is sooner.

/s/ Bernard L. Henderson, Jr., Director  
Department of Health Professions  
Date: July 6, 1992

I recommend approval of the above regulation:

/s/ Howard M. Cullum  
Secretary of Health and Human Resources  
Date: July 7, 1992

I approve the proposed regulation:

/s/ L. Douglas Wilder  
Governor  
Date: July 17, 1992

I acknowledge receipt of the attached emergency regulation to be effective on this date:

/s/ Ann M. Brown  
Deputy Registrar of Regulations  
Date July 21, 1992

### Summary:

*The proposed emergency regulation establishes the requirements and fee to train and certify dental assistants to administer Schedule VI topical medicinal agents as authorized under § 54.1-3408 of the Code of Virginia which became effective July 1, 1992.*

*The regulation is necessary to implement the authority granted by the General Assembly to the Board of Dentistry to certify individuals to administer Schedule VI medicinal agents who have completed board approved training. A review of current regulations*

*resulted in proposals to amend existing regulations and propose new provisions. All relevant documents are available for inspection at the Office of the Board of Dentistry, 1601 Rolling Hills Drive, Richmond, Virginia 23229, (804) 662-9906.*

### Preamble:

*These regulations state the requirements for licensure of dentists and dental hygienists in the Commonwealth of Virginia. The regulations are adopted by the Virginia Board of Dentistry under the authority of Title 54.1 Chapters 1, 24 and 27, Dentistry, §§ 54.1-2700 through 54.1-2728 of the Code of Virginia.*

*The board believes that each practitioner in the field of dentistry is accountable to the state and to the public to maintain high professional standards of practice in keeping with the ethics of the profession of dentistry.*

*The licensed dentist and dental hygienist shall be responsible and accountable for making decisions that are based upon educational preparation and experience in dentistry and dental hygiene respectively. The practitioner shall be held accountable for the quality and quantity of dental care given to patients by himself or others who are under his direction as set forth in these regulations.*

*The practitioner shall be held accountable for the quality and quantity of dental care given to patients by himself based upon educational preparation and experience.*

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

## PART I. GENERAL PROVISIONS.

Authority: §§ 54.1-103, 54.1-2700, 54.1-2706, 54.1-2709, 54.1-2711, 54.1-2713, 54.1-2714, 54.1-2715, 54.1-2716, 54.1-2722, 54.1-2724, and 54.1-2728.

### § 1.1. Definitions.

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

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

*"Analgesia"* means the diminution or elimination of pain

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in the conscious patient.

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

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

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

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

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

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

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

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

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

*"General anesthesia"* means a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical

stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof.

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

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

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

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

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

*"Recognized governmental clinic"* means any clinic operated or funded by any agency of state or local government which provides dental services to the public, the dental services of which shall be provided by a licensed dentist or by persons who may be authorized herein to provide dental services under the direction of a dentist.

## § 1.2. Public participation guidelines.

### A. Mailing list.

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

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

### B. Being placed on list and deletion.

Any person wishing to be placed on the mailing list may have his or her name added by writing the board. In addition, the agency or board may, in its discretion, add to the list any person, organization, or publication whose

inclusion it believes will further the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in subsection A of this section. Individuals and organizations will be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. Where mail is returned as undeliverable, individuals and organizations will be deleted from the list.

## C. Notice of intent.

At least 30 days prior to publication of the notice to conduct an informational proceeding as required by § 9-6.14:1 of the Administrative Process Act, the board will publish a "notice of intent." This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

## D. Informational proceedings or public hearings for existing rules.

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

## E. Petition of rulemaking.

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

## F. Notice of formulation and adoption.

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

## G. Advisory committees.

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

## § 1.3. License renewal and reinstatement.

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

### A. Dental renewal fees.

Every person licensed to practice dentistry shall, on or before March 31, renew their license to practice dentistry and pay an annual renewal fee of \$65 except as otherwise provided in § 1.4 of these regulations.

### B. Dental hygiene renewal fees.

Every person licensed to practice dental hygiene by this board shall, on or before March 31, renew their license to practice dental hygiene and pay an annual renewal fee of \$25 except as otherwise provided in § 1.4 of these regulations.

### C. Penalty Fees.

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

### D. Reinstatement fees and procedures.

The license of any person who does not return the completed renewal form and fees by April 30 shall automatically expire and become invalid and their practice of dentistry/dental hygiene shall be illegal. Upon such expiration, the board shall immediately notify the affected person of the expiration and the reinstatement procedures. Any person whose license has expired who wishes to reinstate such license shall submit to the board a reinstatement form, the application fee, the penalty fee, renewal fee and an assessment of \$50 per month for each month or part of a month the individual has practiced in Virginia without a valid license. The board may reinstate the license of an applicant who satisfactorily completes the board-approved examinations unless the applicant demonstrates that he has maintained continuous ethical, legal and clinical practice during the period of licensure expiration or demonstrate that the lapse was due to factors beyond the applicant's control or was other than voluntary.

## § 1.4. Other fees.

### A. Dental licensure application fees.

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

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## B. Dental hygiene licensure application fees.

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

## C. Duplicate wall certificate.

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

## D. Duplicate license.

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

## E. Licensure certification.

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

## F. Restricted license.

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

## G. Teacher's license.

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

## H. Temporary permit.

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

## I. Radiology safety examination.

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

## J. Jurisprudence examination.

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

## K. Full-time faculty license.

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

## L. Endorsement license.

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

## M. Schedule VI topical medicinal agents certification.

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

## § 1.5. Refunds.

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

## PART II.

### ENTRY AND LICENSURE REQUIREMENTS.

## § 2.1. Education.

### A. Dental licensure.

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

### B. Dental hygiene licensure.

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

## § 2.2. Licensure examinations.

### A. Dental examinations.

1. All applicants shall have successfully complete

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

2. For the purpose of § 54.1-2713 of the Code of Virginia, all persons desiring to practice dentistry in the Commonwealth of Virginia will be required to satisfactorily pass the complete board-approved examinations in dentistry as a precondition for licensure, except those persons eligible for licensure pursuant to § 54.1-103 of the Code of Virginia and subsection A of § 2.3 of these regulations. Applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board will be required to retake the examinations unless they demonstrate that they have maintained continuous clinical, ethical and legal practice since passing the board-approved examinations.

## B. Dental hygiene examinations.

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

2. For the purpose of § 54.1-2722 of the Code of Virginia, all persons desiring to practice dental hygiene in the Commonwealth of Virginia shall be required to successfully complete the board-approved examinations in dental hygiene as a precondition for licensure, except those persons eligible for licensure pursuant to § 54.1-103 of the Code of Virginia and subsection B of § 2.3 of these regulations. Applicants who successfully complete the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board will be required to retake the board-approved examinations unless they demonstrate that they have maintained continuous clinical, ethical and legal practice since passing the board-approved examinations.

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

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

### A. Dental reciprocal licensure.

An applicant for dental reciprocal licensure must:

1. Be a graduate of an accredited dental school recognized by the Commission on Dental Accreditation of the American Dental Association, and
2. Be currently licensed and engaged in the active,

legal and ethical practice of dentistry in a state having licensure requirements comparable to those established by the Code of Virginia with which the Virginia Board of Dentistry has established reciprocity.

### B. Dental hygiene.

An applicant for dental hygiene endorsement licensure shall:

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

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

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

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

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

6. Be of good moral character;

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

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

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

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

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

B. A temporary permit will not be renewed unless the

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permittee shows that extraordinary circumstances prevented the permittee from taking the first examination given immediately after the issuance of the permit. Such permit reissuance shall expire seven days after the release of grades of the next examination given.

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

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

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

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

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

## PART III. GENERAL ANESTHESIA AND CONSCIOUS SEDATION.

§ 3.1. Requirements to administer general anesthesia.

### A. Educational requirements.

A dentist may employ or use general anesthesia on an outpatient basis by meeting one of the following educational criteria and by posting the educational

certificate, in plain view of the patient, which verifies completion of the advanced training as required in § 3.1 A 1 or 2. The foregoing shall not apply nor interfere with requirements for obtaining hospital staff privileges.

1. Has completed a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with Part II of the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry" as currently published by the American Dental Association; or

2. Is board certified or board eligible in any dental specialty which incorporates into its curriculum the standards of teaching comparable to those set forth in Part II of the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry."

### B. Exemptions.

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

§ 3.2. Conscious sedation; intravenous and intramuscular.

### A. Automatic qualification.

Dentists qualified to administer general anesthesia may administer conscious sedation.

### B. Educational requirements.

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

§ 3.3. General information.

### A. Emergency equipment and techniques.

A dentist who administers general anesthesia and conscious sedation shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation, and shall maintain th

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following emergency airway equipment in the dental facility:

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

## B. Posting requirements.

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

## C. Other.

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

## D. Scope of regulation.

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

## § 3.4. Report of adverse reactions.

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

## PART IV. RECORD KEEPING AND REPORTING.

### § 4.1. Records.

#### A. Laboratory work orders.

Written work order forms and subwork order forms to

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

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

#### B. Patient records.

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

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

### § 4.2. Reporting.

#### A. Dental students as hygienists.

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

#### B. Current business addresses.

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



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writing within 30 days of such changes.

## § 4.3. Unprofessional conduct.

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

1. Fraudulently obtaining, attempting to obtain or cooperating with others in obtaining payment for services.
2. Performing services for a patient under terms or conditions which are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress.
3. Misrepresenting to a patient and the public the materials or methods and techniques the licensee uses or intends to use.
4. Committing any act in violation of the Code of Virginia reasonably related to the practice of dentistry and dental hygiene.
5. Delegating any service or operation which requires the professional competence of a dentist or dental hygienist to any person who is not a dentist or dental hygienist except as otherwise authorized by these regulations.
6. Certifying completion of a dental procedure that has not actually been completed.
7. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including, but not limited to, current regulations promulgated by the Virginia Department of Health.
8. Permitting or condoning the placement or exposure of dental x-ray film by an unlicensed person, except where the unlicensed person has complied with § 4.5 A 11 of these regulations.

## § 4.4. Advertising.

### A. Practice limitation.

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

### B. Fee disclosures.

Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services and products which, to a substantial likelihood will be necessary for the completion of the advertised

services as it would be understood by an ordinarily prudent person, shall be deemed to be deceptive or misleading. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of fees for specifically described dental services shall not be deemed to be deceptive or misleading.

### C. Discounts.

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

### D. Retention of broadcast advertising.

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

### E. Routine dental services.

The purpose of this subsection is to delineate those routine dental services which may be advertised pursuant to § 54.1-2706(7) of the Code of Virginia and subsection F of § 4.4 of these regulations. The definitions as set out in Regulation I are intended to set forth a minimum standard as to what constitutes such services for advertising purposes in order to allow the public to accurately compare the fees charged for a given service and to preclude potentially misleading advertisement of fees for a given service which may be delivered on a superficial or minimum basis. Advertising of fees pursuant to of § 4.4 F 3 of these regulations is limited to the following routine dental services:

1. "Examination." A study of all the structures of the oral cavity, including the recording of the conditions of all such structures and an appropriate history thereof. As a minimum, such study shall include charting of caries, identification of periodontal disease, occlusal discrepancies, and the detection of oral lesions.
2. "Diagnosis." An opinion of findings in an examination.
3. "Treatment planning." A written statement of treatment recommendations following an examination and diagnosis. This statement shall include a written itemized treatment recommendation and written itemized fee statement.
4. "Radiographs." Shall document type and quantity. (See definitions).
5. "Complete or partial dentures and crowns." Any

advertisement shall include full disclosure of all related fees and procedures.

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

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

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

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

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

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

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

#### G. Signage.

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

#### § 4.5. Nondelegable duties.

A. Nondentists: The following duties shall not be delegated to a nondentist:

1. Final diagnosis and treatment planning.
2. Performing surgical or cutting procedures on hard or soft tissue.
3. Prescribing drugs, medicaments and work authorizations.
4. Adjusting fixed or removable appliances or restorations in the oral cavity.

5. Making occlusal adjustments in the oral cavity.

6. Performing pulp capping and pulpotomy procedures.

7. Administering and monitoring local or general anesthetics, conscious sedation and administering nitrous oxide oxygen inhalation analgesia, except as provided for in § 54.1-2701 of the Code of Virginia and § 5.4 A 17 of these regulations.

8. Condensing and carving amalgam restorations.

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

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

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

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

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

##### § 5.1. Employment of dental hygienists.

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

##### § 5.2. Required direction.

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

Dental hygienists and assistants shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency and under the direction and control of the employing dentist or the

# Emergency Regulations

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

## § 5.3. Dental hygienists.

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

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

## § 5.4. Dental hygienists and dental assistants.

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

1. ~~Application of~~ *No person not otherwise licensed by this Board shall apply Schedule VI topical medicinal agents, including topical fluoride or desensitizing agents (aerosol topical anesthesia excluded) unless the individual has (a) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association and been certified by the Board, or (b) satisfactorily completed a training program approved by the Board and been certified by the Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient .*

2. Acid etching in those instances where the procedure is reversible.

3. Application of sealants.

4. Serving as a chairside assistant aiding the dentist's treatment by concurrently performing supportive procedures for the dentist, including drawing up and compounding medications for administration by the dentist. The foregoing shall not prohibit the dentist from delegating to another licensed health care professional duties within the scope of their respective practice.

5. Placing and removing matrixes for restorations.

6. Placing and removing rubber dam.

7. Placing and removing periodontal packs.

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

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

10. Taking nonworking impressions for diagnostic study models.

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

12. Placing and removing elastic orthodontic separators.

13. Checking for loose orthodontic bands.

14. Removing arch wires and ligature ties.

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

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

17. Monitoring of nitrous oxide oxygen inhalation analgesia.

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

19. Removing socket dressings.

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

21. Removing sutures.

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

Any procedure not listed above is prohibited.

## § 5.5. What does not constitute practice.

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

B. Recording a patient's pulse, blood pressure,

# Emergency Regulations

temperature, and medical history.

APPLICATION FOR CERTIFICATION REGISTERED REGULATIONS  
TO ADMINISTER SCHEDULE VI MEDICINAL AGENTS  
FOR DENTAL ASSISTANTS 92 JUL 21 PM 3:43

THIS COMPLETED COPY MUST ACCOMPANY YOUR \$15.00 CERTIFICATION FEE

FULL NAME \_\_\_\_\_  
(LAST) (FIRST) (MIDDLE)

ADDRESS \_\_\_\_\_  
(STREET) (CITY) (ST) (ZIP)

TELEPHONE \_\_\_\_\_  
(HOME) (OFFICE) (SOCIAL SECURITY NUMBER)

CHECK ONE:

\_\_\_\_\_ I am applying for certification in accordance with Regulation 5.4.1.a which requires satisfactory completion of a course or examination recognized by the American Dental Association and I am enclosing a notarized copy of the original certificate issued by the recognized certifying entity.

\_\_\_\_\_ I am applying for certification in accordance with Regulation 5.4.1.b which requires satisfactory completion of training approved by the Board of Dentistry and I am enclosing the properly executed Board certification form for Administration of Schedule VI Medicinal Agents.

APPLICANT'S SIGNATURE: \_\_\_\_\_ DATE \_\_\_\_\_

THIS COMPLETED FORM MUST ACCOMPANY YOUR \$15.00 CERTIFICATION FEE  
MAKE CHECKS PAYABLE TO "TREASURER OF VIRGINIA"  
AND MAIL TO THE VIRGINIA BOARD OF DENTISTRY  
1601 ROLLING HILLS DRIVE  
RICHMOND, VA 23229-5005

FOR OFFICE USE: DATE APPLICATION RECEIVED: \_\_\_\_\_

DATE CERTIFICATION ISSUED: \_\_\_\_\_

VIRGINIA BOARD OF DENTISTRY REGISTER OF REGULATIONS  
CERTIFICATION FORM  
FOR ADMINISTRATION OF SCHEDULE VI MEDICINAL AGENTS  
AS PERMITTED UNDER REGULATION 5.4.A.1

92 JUL 21 PM 3:43

Board of Dentistry  
1601 Rolling Hills Drive  
Richmond, Va. 23229



REGISTER OF REGULATIONS  
COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HEALTH PROFESSIONS  
BOARD OF DENTISTRY

This certificate must be posted conspicuously.

I, \_\_\_\_\_ do certify that I have received  
(dental assistant)  
training in accordance with Board of Dentistry guidelines,  
provided by a licensed dentist, dental hygienist or certified  
dental assistant in the topical administration of Schedule VI  
medicinal agents.

I, \_\_\_\_\_ do certify that I have trained  
(instructor)  
the above named dental assistant in accordance with Board of  
Dentistry guidelines, provided by a licensed dentist, dental  
hygienist or certified dental assistant in the topical  
administration of Schedule VI medicinal agents.

CERTIFICATION IN ADMINISTRATION OF SCHEDULE VI  
TOPICAL MEDICINAL AGENTS

This certificate, in compliance with Board Regulation 5.4.A.1,  
permits

\_\_\_\_\_  
DENTAL ASSISTANT

to administer Schedule VI topical medicinal agents, including  
topical fluoride and desensitizing agents (aerosol topical  
anesthesia excluded) under the direction and supervision of a  
Virginia-licensed dentist.

\_\_\_\_\_  
SIGNATURE OF DENTAL ASSISTANT  
TO BE CERTIFIED

\_\_\_\_\_  
SIGNATURE OF LICENSED DENTIST

LICENSE #: \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
EXECUTIVE DIRECTOR  
VIRGINIA BOARD OF DENTISTRY

\_\_\_\_\_  
DATE OF ISSUE

The dental assistant may not administer Schedule VI medicinal  
agents until the Board has issued the required certification.  
This certification form must be accompanied by the application  
form and required fee.

# Emergency Regulations

## DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: ~~VR 355-30-000-06~~ VR 355-30-000-07E .  
Virginia Medical Care Facilities Certificate of Public  
Need Rules and Regulations.

Statutory Authority: §§ 32.1-12 and 32.1-102.2 et seq. of the  
Code of Virginia.

Effective Date: July 10, 1992 through July 9, 1993.

### Summary:

Nature of Emergency - On July 1, 1992, amendments to the Virginia Medical Care Facilities Certificate of Public Need Law will become effective (§§ 32.1-12 and 32.1-102.2, et seq., of the Code of Virginia). The amended law (i) expands the categories of medical care facility capital projects which require approval by the State Health Commissioner prior to initiation; (ii) eliminates registration and data reporting requirements for certain types of medical facility and capital projects; (iii) eliminates the scheduled sunset of certificate of public need (COPN) review requirements for ambulatory surgery centers and hospitals; (iv) extends the moratorium of the issuance of COPNs for nursing homes from June 30, 1993 to June 30, 1994 and provides several additional specific exceptions to this moratorium. This also allows extensions to the schedules for completion of certain previously authorized nursing home projects under certain conditions.

Purpose - To amend the existing Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations so that compliance with the amended law is possible on July 1, 1992.

Request: The emergency regulation is necessary to implement the amendments to the Virginia Medical Care Facilities Certificate of Public Need Law enacted during the 1992 session of the General Assembly. The effective date of the amendments to the law is July 1, 1992.

Recommendation: Approval to implement emergency regulations governing the Virginia Medical Care Facilities Certificate of Public Need Program and to initiate the process for promulgation of final regulations. It is anticipated that the Board of Health will approve the emergency regulations at its June 10, 1992 meeting.

/s/ Robert B. Stroube, M.D., M.P.H.  
Date: June 11, 1992

### CONCURRENCES:

/s/ Howard M. Cullum  
Secretary of Health and Human Resources  
Date: June 30, 1992

### AUTHORIZATION:

/s/ Lawrence Douglas Wilder, Governor  
Date: July 10, 1992

### FILED WITH:

/s/ Joan W. Smith  
Registrar of Regulations  
Date: July 10, 1992

VR 355-30-000-07E. Virginia Medical Care Facilities  
Certificate of Public Need Rules and Regulations.

## PART I. DEFINITIONS.

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

"*Acquisition*" means an expenditure of (i) \$700,000 or more that changes the ownership of a medical care facility or (ii) \$400,000 or more for the purchase of new major medical equipment. It shall also include the donation or lease of a medical care facility or new major medical equipment. An acquisition of a medical care facility shall not include a capital expenditure involving the purchase of stock.

"*Amendment*" means any modification to an application which is made following the public hearing and prior to the issuance of a certificate and includes those factors that constitute a significant change as defined in these regulations. An amendment shall not include a modification to an application which serves to reduce the scope of a project.

"*Applicant*" means the owner of an existing medical care facility or the sponsor of a proposed medical care facility project submitting an application for a certificate of public need.

"*Application*" means a prescribed format for the presentation of data and information deemed necessary by the board to determine a public need for a medical care facility project.

"*Application fees*" means fees required to be submitted with a project application and application for a significant change. Fees shall not exceed the lesser of 0.5% of the proposed capital expenditure or cost increase for the project or \$5,000.

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

"*Capital expenditure*" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. *Such expenditure shall also include a series of related expenditures during a 12 month period or a financial obligation or a series of related financial obligations made*

# Emergency Regulations

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during a 12 month period by or in behalf of a medical care facility. Capital expenditures need not be made by a medical care facility so long as they are made in behalf of a medical care facility by any person. See definition of person.

"Certificate of public need" means a document which legally authorizes a medical care facility project as defined herein and which is issued by the commissioner to the owner of such project.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Commissioner" means the State Health Commissioner who has authority to make a determination respecting the issuance or revocation of a certificate.

"Competing applications" means applications for the same or similar services and facilities which are proposed for the same planning district or medical service area and which are in the same review cycle. (See § 5.6.)

"Completion" means conclusion of construction activities necessary for substantial performance of the contract.

"Construction" means the building of a new medical facility or the expansion, remodeling, or alteration of an existing medical care facility.

"Construction, initiation of" means project shall be considered under construction for the purpose of certificate extension determinations upon the presentation of evidence by the owner of: (i) a signed construction contract; (ii) the completion of short term financing and a commitment for long term (permanent) financing when applicable; (iii) the completion of predevelopment site work; and (iv) the completion of building foundations.

"Date of issuance" means the date of the commissioner's decision awarding a certificate of public need.

"Department" means the State Department of Health.

"Ex parte" means any meeting which takes place between (i) any person acting in behalf of the applicant or holder of a certificate of public need or any person opposed to the issuance or in favor of the revocation of a certificate of public need and (ii) any person who has authority in the department to make a decision respecting the issuance or revocation of a certificate of public need for which the department has not provided 10 days written notification to opposing parties of the time and place of such meeting. An ex parte contact shall not include a meeting between the persons identified in (i) and staff of the department.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population

base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Informal fact-finding conference" means a conference held pursuant to § 9-6.14:11 of the Code of Virginia.

"Inpatient beds" means accommodations within a medical care facility with continuous support services (such as food, laundry, housekeeping) and staff to provide health or health-related services to patients who generally remain in the medical care facility in excess of 24 hours. Such accommodations are known by varying nomenclatures including but not limited to: nursing beds, intensive care beds, minimal or self care beds, isolation beds, hospice beds, observation beds equipped and staffed for overnight use, and obstetric, medical, surgical, psychiatric, substance abuse, medical rehabilitation and pediatric beds, including pediatric bassinets and incubators. Bassinets and incubators in a maternity department and beds located in labor or birthing rooms, recovery rooms, emergency rooms, preparation or anesthesia inductor rooms, diagnostic or treatment procedures rooms, or on-call staff rooms are excluded from this definition.

"Medical care facilities" means any institution, place, building, or agency, on contiguous property, whether or not licensed or required to be licensed by the board or the State Mental Health, Mental Retardation and Substance Abuse Services Board, whether operated for profit or nonprofit and whether privately owned or operated or owned or operated by a local governmental unit, (i) by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical, or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled or (ii) which is the recipient of reimbursements from third party health insurance programs or prepaid medical service plans. For purposes of these regulations, only the following medical care facility classifications shall be subject to review:

1. "Medical care facility classifications" means the following:

- a. General hospitals.
- b. Sanitariums.
- c. Nursing homes.
- d. Intermediate care facilities.
- e. Extended care facilities.
- f. Mental hospitals.

# Emergency Regulations

g. Mental retardation facilities.

h. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.

i. Specialized centers or clinics or that portion of a physician's office developed for the provision of out-patient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, single photon emission computed tomography (SPECT) scanning, or such other specialty services as may be designated by the board by regulation.

j. Rehabilitation hospitals.

2. "Exclusions" means that the following shall not be included as a medical care facility classification subject to review:

For purposes of the regulations, the following medical care facility classifications shall not be subject to review:

a. Any facility of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

b. Any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Mental Health, Mental Retardation and Substance Abuse Services Comprehensive Plan.

c. Any physician's office, except that portion of the physician's office which is described in item 9 of the definition of "medical care facility".

"Medical service area" means the geographic territory from which at least 75% of patients come or are expected to come to existing or proposed medical care facilities, the delineation of which is based on such factors as population characteristics, natural geographic boundaries, and transportation and trade patterns, and all parts of which are reasonably accessible to existing or proposed medical care facilities.

"Modernization" means the alteration, repair, remodeling, replacement or renovation of an existing medical care facility or any part thereto, including that which is incident to the initial and subsequent installation of equipment in a medical care facility. See definition of "construction."

"Operator" means any person having designated responsibility and legal authority from the owner to

administer and manage a medical care facility. See definition of "owner."

"Operating expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is properly chargeable as an expense of operation and maintenance and is not a capital expenditure.

"Other plans" means any plan(s) which is formally adopted by an official state agency or regional health planning agency and which provides for the orderly planning and development of medical care facilities and services and which is not otherwise defined in these regulations.

"Owner" means any person which has legal responsibility and authority to construct, renovate or equip or otherwise control a medical care facility as defined herein.

"Person" means an individual, corporation, partnership, association or any other legal entity, whether governmental or private. Such person may also include the following:

1. The applicant for a certificate of public need;
2. The regional health planning agency for the health planning region in which the proposed project is to be located;
3. Any resident of the geographic area served or to be served by the applicant;
4. Any person who regularly uses health care facilities within the geographic area served or to be served by the applicant;
5. Any facility or health maintenance organization (HMO) established under § 38.2-4300 et seq. which is located in the health planning region in which the project is proposed and which provides services similar to the services of the medical care facility project under review;
6. Third party payors who provide health care insurance or prepaid coverage to 5% or more patients in the health planning region in which the project is proposed to be located; and
7. Any agency which reviews or establishes rates for health care facilities.

"Physician's office" means a place, owned or operated by a licensed physician or group of physicians practicing in any legal form whatsoever, which is designed and equipped solely for the provision of fundamental medical care whether diagnostic, therapeutic, rehabilitative, preventive or palliative to ambulatory patients and which does not participate in cost-based or facility reimbursement from third party health insurance programs or prepaid



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medical service plans excluding pharmaceuticals and other supplies administered in the office. (See definition of "medical care facility".)

"Planning district" means a contiguous area within the boundaries established by the Department of Planning and Budget as set forth in § 15.1-1402 of the Code of Virginia.

"Predevelopment site work" means any preliminary activity directed towards preparation of the site prior to the completion of the building foundations. This includes, but is not limited to, soil testing, clearing, grading, extension of utilities and power lines to the site.

"Progress" means actions which are required in a given period of time to complete a project for which a certificate of public need has been issued. See § 6.3 on Progress.

"Project" means:

1. The establishment of a medical care facility. See definition of medical care facility.
2. An increase in the total number of beds or operating rooms in an existing or authorized medical care facility.
3. Relocation at the same site of 10 beds or 10% of the beds, whichever is less, from one existing physical facility to another in any two-year period; however, a hospital shall not be required to obtain a certificate for the use of 10% of its beds as nursing home beds as provided in § 32.1-132 of the Code of Virginia.
4. The introduction into any existing medical care facility of any new nursing home service such as intermediate care facility services, extended care facility services or skilled nursing facility services except when such medical care facility is an existing nursing home as defined in § 32.1-123 of the Code of Virginia.
5. The introduction into an existing medical care facility of any new open heart surgery, psychiatric, medical rehabilitation, or substance abuse treatment service which the facility has never provided or has not provided in the previous 12 months cardiac catheterization, computed tomography (CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care services, obstetrical services, open heart surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service, radiation therapy, single photon emission computed tomography (SPECT), substance abuse treatment, or such other specialty clinical services as may be designated by the board by regulation, which the facility has never provided or has not provided in the previous 12 months.

6. The addition or replacement by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomography (CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, single photon emission computed tomography (SPECT), or other specialized service designated by the board by regulation; except for the replacement of any medical equipment identified in this Part which the commissioner has determined to be an emergency in accordance with § 3.5 of these regulations.

7. Any capital expenditure of \$1 million or more by or on behalf of a medical care facility which is not defined as reviewable under parts A through F of this definition. (See definition of "capital expenditure".)

"Public hearing" means a proceeding conducted by a regional health planning agency at which an applicant for a certificate of public need and members of the public may present oral or written testimony in support or opposition to the application which is the subject of the proceeding and for which a verbatim record is made. See subsection A of § 5.7.

"Regional health plan" means the regional plan adopted by the regional health planning agency board.

"Regional health planning agency" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform health planning activities within a health planning region.

"Registration" means the recordation of the establishment of certain new or expansion of existing clinical health services; acquisition of certain major medical equipment or initiation of certain capital expenditures as required by §§ 3.2 and 3.3.

"Schedule for completion" means a timetable which identifies the major activities required to complete a project as identified by the applicant and which is set forth on the certificate of public need. The timetable is used by the commissioner to evaluate the applicant's progress in completing an approved project.

"Significant change" means any alteration, modification or adjustment to a reviewable project for which a certificate of public need has been issued or requested following the public hearing which:

1. Changes the site;
2. Increases the capital expenditure amount approved authorized by the certificate for the project by 10% or more;
3. Changes the service(s) proposed to be offered;

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4. Extends the schedule for completion of the project beyond 3 years (36 months) from the date of certificate issuance or beyond the time period approved by the commissioner at the date of certificate issuance, whichever is greater. See §§ 6.2 and 6.3.

"State health plan" means the document approved by the Virginia Health Planning Board which shall include, but not be limited to, analysis of priority health issues, policies, needs and methodologies for assessing statewide health care needs. The State Health Plan 1980-84 and all amendments thereto including all methodologies therein shall remain in force and effect until any such regulation is amended, modified or repealed by the Board of Health.

"State medical facilities plan" means the planning document adopted by the Board of Health which shall include, but not be limited to (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services. In developing the plan, the Board of Health shall take into consideration the policies and recommendations contained in the State Health Plan. The most recent applicable State Medical Facilities Plan shall remain in force until any such regulation is amended, modified or repealed by the Board of Health.

"Virginia Health Planning Board" means the statewide health planning body established pursuant to § 32.1-122.02 of the Code of Virginia which serves as the analytical and technical resource to the Secretary of Health and Human Resources in matters requiring health analysis and planning.

## PART II. GENERAL INFORMATION.

### § 2.1. Authority for regulations.

The Virginia Medical Care Facilities Certificate of Public Need Law, which is codified as §§ 32.1-102.1 through 32.1-102.11 of the Code of Virginia, requires the owners or sponsors of medical care facility projects to secure a certificate of public need from the State Health Commissioner prior to initiating such projects. Sections 32.1-102.2 and 32.1-12 of the Code of Virginia direct the Board of Health to promulgate and prescribe such rules and regulations as are deemed necessary to effectuate the purposes of this statute.

### § 2.2. Purpose of rules and regulations.

The board has promulgated these rules and regulations to set forth an orderly administrative process for making public need decisions.

### § 2.3. Administration of rules and regulations.

These rules and regulations are administered by the following:

#### A. State Board of Health.

The Board of Health is the governing body of the State Department of Health. The Board of Health has the authority to promulgate and prescribe such rules and regulations as it deems necessary to effectuate the purposes of the Act.

#### B. State Health Commissioner.

The State Health Commissioner is the executive officer of the State Department of Health. The commissioner is the designated decision maker in the process of determining public need under the Act.

### § 2.4. Public meetings and public hearings.

All meetings and hearings convened to consider any certificate of public need application shall be open to the public in accordance with the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.) of the Code of Virginia.

### § 2.5. Official records.

Written information including staff evaluations and reports and correspondence developed or utilized or received by the commissioner during the review of a medical care facility project shall become part of the official project record maintained by the Department of Health and shall be made available to the applicant, competing applicant and review bodies. Other persons may obtain a copy of the project record upon request. All records are subject to the Virginia Freedom of Information Act.

~~Exclusions: Information submitted to the commissioner to comply with registration requirements set forth in §§ 3-2 and 3-3 of these regulations shall be excluded from the provisions of the Virginia Freedom of Information Act until such time as the registered service or equipment becomes operational.~~

### § 2.6. Application of rules and regulations.

These rules and regulations have general applicability throughout the Commonwealth. The requirements of the Virginia Administrative Process Act (§ 9-6.14:1, et seq.) of the Code of Virginia apply to their promulgation.

### § 2.7. Effective date of rules and regulations.

These rules and regulations shall become effective June 6, July 10, 1992.

### § 2.8. Powers and procedures of regulations not exclusive.

The commissioner and the board reserve the right to

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authorize any procedure for the enforcement of these regulations that is not inconsistent with the provisions set forth herein and the provisions of § 32.1-102.1 et seq. of the Code of Virginia.

## § 2.9. Annual report.

The department shall prepare and shall distribute upon request an annual report on all certificate of public need applications considered by the State Health Commissioner. Such report shall include a general statement of the findings made in the course of each review, the status of applications for which there is a pending determination, an analysis of the consistency of the decisions with the recommendation made by the regional health planning agency and an analysis of the costs of authorized projects.

### PART III. MANDATORY REQUIREMENTS.

#### § 3.1. Requirements for reviewable medical care facility projects.

Prior to initiating a reviewable medical care facility project the owner or sponsor shall obtain a certificate of public need from the commissioner. In the case of an acquisition of an existing medical care facility, the notification requirement set forth in § 3.7 § 3.2 of these regulations shall be met.

#### § 3.2. Requirements for registration of affected clinical health services and major medical equipment.

At least 30 days prior to (i) establishing a new or expanding an existing clinical health service or (ii) the date of contractual obligation or other commitment to acquire any major medical equipment with an expenditure or expenditure value of \$400,000 or more which is not defined as a project under these regulations, and has not been previously authorized by the commissioner prior to July 1, 1989, the owner of any medical care facility listed in these regulations, physician's office, or specialized center or clinic shall register such services or acquisitions of equipment with the commissioner. The format for registration shall be prescribed by the commissioner and shall include information concerning the owner and operator, description, site, capital, financing and lease costs, beginning date and hours of operation of clinical health service and major medical equipment. For purposes of registration, (i) owner shall include any person offering affected clinical health services and major medical equipment and (ii) affected clinical health services and major medical equipment shall include only the following:

1. radiation therapy;
2. cardiac catheterization;
3. obstetrical;
4. neonatal special care unit;

5. lithotripsy;

6. magnetic resonance imaging;

7. position emission tomography (PET) scanning;

8. computed tomography (CT) scanning;

9. heart, lung, and kidney, other major internal organ or tissue transplants

10. other specialized services or major medical equipment that evolves through changes in medical technology upon designation by the commissioner.

The commissioner shall acknowledge the registration within 15 days of receipt.

#### § 3.3. Requirements for registration of capital expenditures.

At least 30 days prior to making a capital expenditure of \$1,000,000 or more which is not defined as a project under these regulations and has not been previously authorized by the commissioner, the owner of any medical care facility as defined in these regulations, physician's office, or specialized center or clinic, shall register in writing such expenditure with the commissioner. The format for registration shall be prescribed by the commissioner and shall include information concerning the purpose of such expenditure and projected impact that the expenditure will have upon the charges for services. For purposes of registration, the owner shall include any person making the affected capital expenditure.

#### § 3.4. Reporting requirements for registered services and equipment.

Owners of services and equipment registered in accordance with § 3.2 of these regulations shall report to the commissioner on a quarterly basis information concerning patient volumes, morbidity and mortality, aggregate costs and charges, and other information which is designated by the commissioner about the services provided. Data reports shall be provided on a format prescribed by the commissioner and shall cover the periods of July 1 through September 30; October 1 through December 31; January 1 through March 31; and April 1 through June 30. Reports shall be submitted to the commissioner within 30 days following the last day of the quarter report period in which the registered service or equipment becomes operational and 30 days following the last day of every quarter report period thereafter.

#### § 3.5. Penalties for noncompliance with registration and reporting requirements.

Any person willfully refusing, failing or neglecting to comply with registration or reporting requirements set forth in §§ 3.2, 3.3 and 3.4 of these regulations will be subject to a civil penalty of \$100 per violation per day

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from the date written notification is received from the department until the required registration or reporting forms are submitted to the department. Upon information and belief that a person has failed to comply with registration and reporting requirements in accordance with this provision, the department shall notify the person in writing, and 15 days shall be provided for a response in writing, including a plan for immediate correction. In the absence of adequate response or the necessary compliance or both, a judicial action shall be initiated in accordance with provisions of § 32.1-27 of the Code.

## § 3-6. Confidentiality of information.

Information provided to the department by persons to satisfy registration requirements set forth in §§ 3-2 and 3-3 of these regulations shall be excluded from the provisions of the Virginia Freedom of Information Act as provided in § 2-1-342 of the Code of Virginia until such time as the new or expanded clinical health service becomes operational. In accordance with this provision, the department shall not provide information it receives about registered services to any person until the new or expanded service becomes operational. Persons registering the new service or equipment or capital expenditure shall notify the department in writing of the date the service or equipment becomes operational or the expenditure is made and provide a copy of this notification to the appropriate regional health planning agency.

## § 3-7. § 3.2. Requirement for notification of proposed acquisition of medical care facilities.

At least 30 days before any person is contractually obligated to acquire an existing medical care facility, the cost of which is \$700,000 or more, that person shall provide written notification to the commissioner and the regional health planning agency that serves the area in which the facility is located. Such notification shall identify the name of the medical care facility, the current and proposed owner, the cost of the acquisition, the services to be added or deleted, the number of beds to be added or deleted, and the projected impact that the cost of the acquisition will have upon the charges of the services to be provided in the medical care facility. The commissioner shall provide written notification to the person who plans to acquire the medical care facility within 30 days of receipt of the required notification. If the commissioner finds that a reviewable clinical health service or beds are to be added as a result of the acquisition, the commissioner may require the proposed new owner to obtain a certificate prior to the acquisition. If such certificate is required, an application will be considered under an appropriate batch group which will be identified at the time of written notification by the commissioner to the applicant for such acquisition.

## § 3-8. § 3.3. Significant change limitation.

No significant change in a project for which a certificate of public need has been issued shall be made

without prior written approval of the commissioner. Such request for a significant change shall be made in writing by the owner to the commissioner with a copy to the appropriate regional health planning agency. The owner shall also submit the application fee to the department if applicable at the time the written request is made. The written request shall identify the nature and purpose of the change. The regional health planning agency shall review the proposed change and notify the commissioner of its recommendation with respect to the change within 30 days from receipt of the request by both the department and the regional health planning agency. Failure of the regional health planning agency to notify the commissioner within the 30-day period shall constitute a recommendation of approval. The commissioner shall act on the significant change request within 35 days of receipt. A public hearing during the review of a proposed significant change request is not required unless determined necessary by the commissioner. The commissioner shall not approve a significant change in cost for a project which exceeds the authorized capital expenditure by more than 20%. The commissioner shall not extend the schedule for completion of a project beyond three years from the date of issuance of the certificate or beyond the time period approved by the commissioner at the date of certificate issuance, whichever is greater, except when delays in completion of a project have been caused by events beyond the control of the owner and the owner has made substantial and continuing progress toward completion of the project.

## § 3-9. § 3.4. Requirements for health maintenance organizations (HMO).

An HMO must obtain a certificate of public need prior to initiating a project. Such HMO must also adhere to the requirements for the acquisition of medical care facilities if appropriate. See definition of "project" and § 3-7 § 3.2.

## § 3.5. Requirements for emergency replacement of equipment.

The commissioner shall consider requests for emergency replacement of medical equipment as identified in Part I of these regulations. Such an emergency replacement is not a "project" of a medical care facility requiring a certificate of public need. To request authorization for such replacement, the owner of such equipment shall submit information to the commissioner to demonstrate that (i) the equipment is inoperable as a result of a mechanical failure, Act of God, or other reason which may not be attributed to the owner and the repair of such equipment is not practical or feasible; or (ii) the immediate replacement of the medical equipment is necessary to maintain an essential clinical health service or to assure the safety of patients or staff.

For purposes of this section, inoperable shall mean that the equipment cannot be put into use, operation, or practice to perform the diagnostic or therapeutic clinical health service for which it was intended.

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*Notification of decision. Within 15 days of the receipt of such requests the commissioner will notify the owner in the form of a letter of the decision to deny or authorize the emergency replacement of equipment.*

## PART IV.

### DETERMINATION OF PUBLIC NEED (REQUIRED CONSIDERATIONS).

§ 4.1. In determining whether a public need exists for a proposed project, the following factors shall be taken into account when applicable:

A. The recommendation and the reasons therefor of the appropriate regional health planning agency.

B. The relationship of the project to the applicable health plans of the regional health planning agency, and the Virginia Health Planning Board and the Board of Health.

C. The relationship of the project to the long-range development plan, if any, of the person applying for a certificate.

D. The need that the population served or to be served by the project has for the project.

E. The extent to which the project will be accessible to all residents of the area proposed to be served.

F. The area, population, topography, highway facilities and availability of the services to be provided by the project in the particular part of the health planning region in which the project is proposed.

G. Less costly or more effective alternate methods of reasonably meeting identified health service needs.

H. The immediate and long-term financial feasibility of the project.

I. The relationship of the project to the existing health care system of the area in which the project is proposed.

J. The availability of resources for the project.

K. The organizational relationship of the project to necessary ancillary and support services.

L. The relationship of the project to the clinical needs of health professional training programs in the area in which the project is proposed.

M. The special needs and circumstances of an applicant for a certificate, such as a medical school, hospital, multidisciplinary clinic, specialty center or regional health service provider, if a substantial portion of the applicant's services or resources or both is provided to individuals not residing in the health planning region in which the project is to be located.

N. The need and the availability in the health planning region for osteopathic and allopathic services and facilities and the impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

O. The special needs and circumstances of health maintenance organizations. When considering the special needs and circumstances of health maintenance organizations, the commissioner may grant a certificate for a project if the commissioner finds that the project is needed by the enrolled or reasonably anticipated new members of the health maintenance organizations or the beds or services to be provided are not available from providers which are not health maintenance organizations or from other maintenance organizations in a reasonable and cost effective manner.

P. The special needs and circumstances for biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

Q. The costs and benefits of the construction associated with the proposed project.

R. The probable impact of the project on the costs of and charges for providing health services by the applicant for a certificate and on the costs and charges to the public for providing health services by other persons in the area.

S. Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness.

T. In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities in the area similar to those proposed.

## PART V.

### REVIEW PROCESS.

§ 5.1. Preconsultation.

Each regional health planning agency and the department shall provide upon request advice and assistance concerning community health resources needs to potential applicants. Such advice and assistance shall be advisory only and shall not be a commitment on behalf of the regional health planning agency or the commissioner.

§ 5.2. Application forms.

A. Letter of intent.

~~At least 30 days prior to submission of an application,~~ An applicant shall file a letter of intent with the commissioner to request appropriate application forms by ~~the later of (i) thirty days prior to the submission of an~~

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application for a project included within a particular batch group or (ii) ten days after the first letter of intent is filed for a project within a particular batch group to be located within the same health planning region as that of the applicant. The letter shall identify the owner, the type of project for which an application is requested, and the proposed scope (size) and location of the proposed project. A copy of the letter shall also be submitted by the applicant to the appropriate regional health planning agency. The department shall transmit application forms to the applicant within seven days of the receipt of the letter of intent.

### B. Application fees.

The department shall collect application fees for applications submitted requesting a certificate of public need. The fee required for an application is the lesser of 0.5% of the proposed capital expenditure for the project or \$5,000. No application will be deemed to be complete for review until the required application fee is paid.

### C. Filing application forms.

Applications must be submitted at least 40 days prior to the first day of a scheduled review cycle to be considered for review in the same cycle. All applications including the required data and information shall be prepared in triplicate; two copies to be submitted to the department; one copy to be submitted to the appropriate regional health planning agency, and the application fee has been paid to the department. No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate regional health planning agency.

### § 5.3. Review for completeness.

The applicant shall be notified by the department within 15 days following receipt of the application if additional information is required to complete the application or the application is complete as submitted. No application shall be reviewed until the department has determined that it is complete. To be complete, all questions must be answered to the satisfaction of the commissioner and all requested documents supplied, when applicable and the application fee submitted. Additional information required to complete an application shall be submitted to the department and the appropriate regional health planning agency at least five days prior to the first day of a review cycle to be considered complete for review in the same review cycle. In the event that the first day of a review cycle falls on the weekend, the review of the completed application will begin on the next work day.

### § 5.4. One hundred twenty-day review cycle.

The department shall review the following groups of completed applications in accordance with the following 120 day scheduled review cycles and the following descriptions of projects within each group, except as

provided for in § 5.6.

BATCH GROUP	GENERAL DESCRIPTION	REVIEW CYCLE	
		Begins	Ends
A	General hospitals/ Ambulatory Surgery Centers Obstetrical Services/ Neonatal Special Care Services	Feb. 10	Jun. 10
		Aug. 10	Dec. 8
B	Psychiatric Facility Beds/ Services	Apr. 10	Aug. 8
		Oct. 10	Feb. 7
B	Open Heart Surgery/Cardiac Catheterization/Ambulatory Surgery Centers/ Operating Room Additions/Transplant Services	Mar. 10	Jul. 8
		Sep. 10	Jan. 8
C	Medical Rehabilitation Beds/ Services Psychiatric Facilities/ Substance Abuse Treatment/ Mental Retardation Facilities	Jun. 10	Oct. 8
		Dec. 10	Apr. 8
D	Open Heart Surgery Services	Feb. 10	Jun. 10
		Aug. 10	Dec. 8
D	Diagnostic Imaging Facilities/ Services	May 10	Sep. 7
		Nov. 10	Mar. 6
E	Substance Abuse Treatment Beds/Services/Mental Retardation Facilities	Apr. 10	Aug. 8
		Oct. 10	Feb. 7
E	Medical Rehabilitation Beds/ Services	Jun. 10	Oct. 8
		Dec. 10	Apr. 9
F	Selected Therapeutic Facilities/ Services	Jul. 10	Nov. 7
		Jan. 10	May 9
F	G. Nursing Home Beds/Services	Planning Districts 6, 11 & 22	
		Feb. 10	Jun. 10
		Planning Districts 1, 9, 13 & 20	
		Apr. 10	Aug. 8
		Planning Districts 3, 8, 14 & 16	
		Jun. 10	Oct. 8
Planning Districts 5, 17, 18 & 19			
Aug. 10	Dec. 8		
Planning Districts 2, 10 & 15			
Oct. 10	Feb. 7		
Planning Districts 4, 7, 12 & 21			
Dec. 10	Apr. 9		

Batch Group A includes:

1. The establishment of a new general hospital.
2. An increase in the total number of general acute care beds in an existing or authorized general

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hospital.

3. The relocation *at the same site* of 10 general hospital beds or 10% of the general hospital beds of a *general hospital medical care facility*, whichever is less, from one existing physical facility to any other in any two-year period.

4. The establishment of a new ambulatory surgery center *The introduction into an existing medical care facility of any new neonatal special care or obstetrical services which the facility has never provided or has not provided in the previous twelve months.*

5. Any capital expenditure of \$1 million or more, not defined as a project category included in Batch Groups B through G, by or in behalf of a general hospital.

Batch Group B includes:

1. The establishment of a new mental hospital or psychiatric hospital.

2. An increase in the total number of beds in an existing or authorized mental hospital or psychiatric hospital.

3. An increase in the total number of mental hospital or psychiatric hospital beds in an existing or authorized medical care facility which is not a dedicated mental hospital or psychiatric hospital which increases the total number of beds in the existing or authorized medical care facility.

4. The relocation of 10 mental hospital or psychiatric hospital beds or 10% of the mental hospital or psychiatric hospital beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period.

5. The introduction into an existing medical care facility of any new psychiatric service which the facility has never provided or has not provided in the previous 12 months.

1. *The establishment of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.*

2. *An increase in the total number of operating rooms in an existing medical care facility or establishment of operating rooms in a new facility.*

3. *The introduction into an existing medical care facility of any new cardiac catheterization, open heart surgery, or organ or tissue transplant services which the facility has never provided or has not provided in the previous twelve months.*

4. *The addition or replacement by an existing medical care facility of any medical equipment for the provision of cardiac catheterization services.*

5. *Any capital expenditure of \$1 million or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.*

6. *Any capital expenditure of \$1 million or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a medical care facility, which is primarily related to the provision of outpatient or ambulatory surgery, cardiac catheterization, open heart surgery, or organ or tissue transplant services.*

Batch Group C includes:

1. The establishment of a new medical rehabilitation hospital.

2. An increase in the total number of beds in an existing or authorized medical rehabilitation hospital.

3. An increase in the total number of medical rehabilitation beds in an existing or authorized medical care facility which is not a dedicated medical rehabilitation hospital which increases the total number of beds in the existing or authorized medical care facility.

4. The relocation of 10 medical rehabilitation beds or 10% of the medical rehabilitation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period.

5. The introduction into an existing medical care facility of any new medical rehabilitation service which the facility has never provided or has not provided in the previous 12 months.

1. *The establishment of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.*

2. *A increase in the total number of beds in an existing or authorized mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.*

3. *An increase in the total number of mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds in an*

existing or authorized medical care facility which is not a dedicated mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility which increases the total number of beds in the existing or authorized medical care facility.

4. The relocation at the same site of ten mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds or 10% of the mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period.

5. The introduction into an existing medical care facility of any new psychiatric or substance abuse treatment service which the facility has never provided or has not provided in the previous twelve months.

6. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A and B or Batch Groups D through G, by or in behalf of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facilities.

7. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A and B or Batch Groups D through G, by or in behalf of a medical care facility, which is primarily related to the provision of mental health, psychiatric, substance abuse treatment or rehabilitation, or mental retardation services.

#### Batch Group D includes:

The introduction into an existing medical care facility of any new open heart surgery service which the facility has never provided or has not provided in the previous 12 months:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).

2. The introduction into an existing medical care facility of any new computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed

tomography (SPECT) services which the facility has never provided or has not provided in the previous twelve months.

3. The addition or replacement by an existing medical care facility of any equipment for the provision of computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).

4. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through C or Batch Groups E through G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).

5. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through C or Batch Groups E through G, by or in behalf of a medical care facility, which is primarily related to the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).

#### Batch Group E includes:

1. The establishment of an intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

2. An increase in the total number of beds in an existing or authorized intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts or a mental retardation facility.

3. An increase in the total number of substance abuse treatment beds or mental retardation beds in an existing or authorized medical care facility which is not a dedicated intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or a mental retardation facility, which increases the total number of beds in the existing or authorized medical care facility.

4. The relocation of 10 substance abuse treatment beds or 10% of the substance abuse treatment or mental retardation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period.



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6. The introduction into an existing medical care facility of any new substance abuse treatment service which the facility has never provided or has not provided in the previous 12 months.

1. The establishment of a medical rehabilitation hospital.

2. An increase in the total number of beds in an existing or authorized medical rehabilitation hospital.

3. An increase in the total number of medical rehabilitation beds in an existing or authorized medical care facility which is not a dedicated medical rehabilitation hospital which increases the total number of beds in the existing or authorized medical care facility.

4. The relocation at the same site of ten medical rehabilitation beds or ten percent of the medical rehabilitation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period.

5. The introduction into an existing medical care facility of any new medical rehabilitation service which the facility has never provided or has not provided in the previous twelve months.

6. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through D or Batch Groups F and G, by or in behalf of a medical rehabilitation hospital.

7. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through D or Batch Groups F and G, by or in behalf of a medical care facility, which is primarily related to the provision of medical rehabilitation services.

Batch Group F includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

2. Introduction into an existing medical care facility of any new gamma knife surgery, lithotripsy, or radiation therapy services which the facility has never provided or has not provided in the previous twelve months.

3. The addition or replacement by an existing medical care facility of any medical equipment for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

4. Any capital expenditure of \$1 million or more, not defined as a project in Batch Groups A through E or Batch Group G, by or in behalf of a specialized

center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

5. Any capital expenditure of \$1 million or more, not defined as a project in Batch Groups A through E or Batch Group G, by or in behalf of a medical care facility, which is primarily related to the provision of gamma knife surgery, lithotripsy, or radiation therapy.

Batch Group F G includes:

1. The establishment of a nursing home, intermediate care facility, or extended care facility.

2. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility.

3. An increase in the total number of nursing home beds, intermediate care facility beds, or extended care facility beds in an existing or authorized medical care facility which is not a dedicated nursing home, intermediate care facility, or extended care facility.

4. The relocation at the same site of 10 nursing home, intermediate care facility, or extended care facility beds or 10% of the nursing home, intermediate care facility, or extended care facility beds of a medical care facility, whichever is less, from one physical facility to another in any two-year period.

5. The introduction into any existing medical care facility of any new nursing home service such as intermediate care facility services, extended care facility services or skilled nursing facility services except when such medical care facility is an existing nursing home as defined in § 32.1-123 of the Code of Virginia .

6. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through F, by or in behalf of a nursing home, intermediate care facility, or extended care facility.

7. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through F, by or in behalf of a medical care facility, which is primarily related to the provision of nursing home, intermediate care, or extended care services.

## § 5.5. Requests for application (RFA).

The commissioner may request the submission of applications for his consideration which address a specific need for services and facilities as identified in the State Medical Facilities Plan. The department shall give notice of such RFA in a newspaper of general circulation in the locality or the planning district where the specific services or facility is requested. Such notice shall be published at least 120 days prior to the first day of the appropriate

review cycle for the type of project being requested. A written copy of an RFA shall also be available upon request from the department and the regional health planning agency in the appropriate geographic area. The process for adoption of an RFA by the commissioner shall be set forth in the State Medical Facilities Plan.

## § 5.6. Consideration of applications.

Applications for the same or similar services which are proposed for the same planning district or medical service area shall be considered as competing applications by the commissioner. The commissioner shall determine *if whether* an application is competing and shall provide written notification to the competing applicants and the regional health planning agency. The commissioner may, upon the request of an applicant, waive the review schedule requirements of § 5.4 in the case of a documented emergency *or in cases where, as of the deadline for filing a letter of intent for the otherwise applicable cycle, there are no competing applicants, and the applicant who has filed a letter of intent for a particular project proposes to combine the intended project with another related project for which an application will be filed in a subsequent batch group.*

## § 5.7. Review of complete application.

### A. Review cycle.

At the close of the work day on the 10th day of the month, the department shall provide written notification to applicants specifying the acceptance date and review schedule of completed applications including a proposed date for any informal fact-finding conference that may be held. The regional health planning agency shall conduct no more than two meetings, one of which must be a public hearing conducted by the regional health planning agency board or a subcommittee of the board and provide applicants with an opportunity, prior to the vote, to respond to any comments made about the project by the regional health planning agency staff, any information in a staff report, or comments by those voting in completing its review and recommendation by the 60th day of the cycle. By the 70th day of the review cycle, the department shall complete its review and recommendation of an application and transmit the same to the applicant(s) and other appropriate persons. Such notification shall also include the proposed date, time and place of any informal fact-finding conference.

An informal fact-finding conference shall be held when (i) determined necessary by the department or (ii) requested by any person opposed to a project seeking to demonstrate good cause at the conference. Any person seeking to demonstrate good cause shall file, no later than seven days prior to the conference, written notification with the commissioner, applicant(s) and other competing applicants, and regional health planning agency stating the grounds for good cause.

For purposes of this section, "good cause" shall mean that (i) there is significant, relevant information not previously presented at and not available at the time of the public hearing, (ii) there have been significant changes in factors or circumstances relating to the application subsequent to the public hearing or (iii) there is a substantial material mistake of fact or law in the department staff's report on the application or in the report submitted by the regional health planning agency. See § 9-6.14:11 of the Code of Virginia.

The commissioner shall render a final determination by the 120th day of the review cycle. Unless agreed to by the applicant and, when applicable, the parties to any informal fact-finding conference held, the review schedule shall not be extended.

### B. Regional health planning agency required notifications.

Upon notification of the acceptance date of a complete application as set forth in subsection A of § 6.6 of these regulations, the regional health planning agency shall provide written notification of its review schedule to the applicant. The regional health planning agency shall notify health care providers and specifically identifiable consumer groups who may be affected by the proposed project directly by mail and shall also give notice of the public hearing in a newspaper of general circulation in such county or city wherein a project is proposed or a contiguous county or city at least nine days prior to such public hearing. Such notification by the regional health planning agency shall include: (i) the date and location of the public hearing which shall be conducted on the application except as otherwise provided in these rules and regulations, in the county or city wherein a project is proposed or a contiguous county or city and (ii) the date, time and place the final recommendation of the regional health planning agency shall be made. The regional health planning agency shall maintain a verbatim record which may be a tape recording of the public hearing. Such public hearing record shall be maintained for at least a one year time period following the final decision on a certificate of public need application. See definition of "public hearing."

### C. Ex parte contact.

After commencement of a public hearing and before a final decision is made, there shall be no ex parte contacts between the State Health Commissioner and any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need, unless written notification has been provided. See definition of "ex parte."

## § 5.8. Participation by other persons.

Any person affected by a proposed project under review may directly submit written opinions, data and other

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information to the appropriate regional health planning agency and the commissioner for consideration prior to their final action.

## § 5.9. Amendment to an application.

The applicant shall have the right to amend an application at any time. Any amendment which is made to an application following the public hearing and prior to the issuance of a certificate unless otherwise specified in these regulations shall constitute a new application and shall be subject to the review requirements set forth in Part V of the regulations. If such amendment is made subsequent to the issuance of a certificate of public need, it shall be reviewed in accordance with § 3.3 of the regulations.

## § 5.10. Withdrawal of an application.

The applicant shall have the right to withdraw an application from consideration at any time, without prejudice by written notification to the commissioner.

## § 5.11. Action on an application.

### A. Commissioner's responsibility.

Decisions as to approval or disapproval of applications or a portion thereof for certificates of public need shall be rendered by the commissioner. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Health Plan or State Medical Facilities Plan. However, if the commissioner finds, upon presentation of appropriate evidence, that the provisions of either such plan are inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan.

Conditions of approval. The commissioner may condition the approval of an application for a project on the agreement by the applicant to provide an acceptable level of free care or care at a reduced rate to indigents or to provide care to persons with special needs. The terms of such agreements shall be specified in writing prior to the commissioner's decision to approve a project. Any person willfully refusing, failing or neglecting to honor such agreement shall be subject to a civil penalty of \$100 per violation per day from the date of receipt from the department of written notice of noncompliance until the date of compliance. Upon information and belief that a person has failed to honor such agreement in accordance with this provision, the department shall notify the person in writing and 15 days shall be provided for response in writing including a plan for immediate correction. In the absence of an adequate response or necessary compliance or both, a judicial action shall be initiated in accordance with the provisions of § 32.1-27 of the Code of Virginia.

### B. Notification process-extension of review time.

The commissioner shall make a final determination on an application for a certificate of public need and provide written notification detailing the reasons for such determination to the applicant with a copy to the regional health planning agency by the 120th day of the review cycles unless an extension is agreed to by the applicant and an informal fact-finding conference described in § 5.7 is held. When an informal fact-finding conference is held, the 120 day review cycle shall not be extended unless agreed to by the parties to the conference. Such written notification shall also reference the factors and bases considered in making a decision on the application and, if applicable, the remedies available for appeal of such decision and the progress reporting requirements. The commissioner may approve a portion of a project provided the portion to be approved is agreed to by the applicant following consultation, which may be subject to the ex parte provision of these regulations, between the commissioner and the applicant.

## PART VI. DURATION/EXTENSION/REVOCAION OF CERTIFICATES.

### § 6.1. Duration.

A certificate of public need shall be valid for a period of 12 months and shall not be transferrable from the certificate holder to any other legal entity regardless of the relationship, under any circumstances.

### § 6.2. Extension.

A certificate of public need is valid for a 12-month period and may be extended by the commissioner for additional time periods which shall be specified at the time of the extension.

#### A. Basis for certificate extension within 24 months.

An extension of a certificate of public need beyond the expiration date may be granted by the commissioner by submission of evidence to demonstrate that progress is being made towards the completion of the authorized project as defined in § 6.3 of the regulations. Such request shall be submitted to the commissioner in writing with a copy to the appropriate regional health planning agency at least 30 days prior to the expiration date of the certificate or period of extension.

#### B. Basis for certificate extension beyond 24 months.

An extension of a certificate of public need beyond the two years following the date of issuance may be granted by the commissioner when substantial and continuing progress is being made towards the development of the authorized project. In making the determination, the commissioner shall consider whether: (i) any delays in development of the project have been caused by events beyond the control of the owner; (ii) substantial delays in development of the project may not be attributed to the

owner; and (iii) a schedule of completion has been provided and determined to be reasonable. Such request shall be submitted in writing with a copy to the appropriate regional health planning agency at least 30 days prior to the expiration date of the certificate of period of extension. The commissioner shall not grant an extension to the schedule for completion of a project beyond three years (36 months) of the date of certificate issuance or beyond the time period approved at the date of certificate issuance, whichever is greater, unless such extension is authorized in accordance with the provisions for a significant change. (See § 3.8. Significant change limitation.)

#### C. Basis for indefinite extension.

A certificate shall be considered for an indefinite extension by the commissioner when satisfactory completion of a project has been demonstrated as set forth in subsection C of § 6.3.

#### D. Regional health planning agency review.

All requests for an extension of a certificate of public need shall be reviewed by the appropriate regional health planning agency within 30 days of receipt by the department and the regional health planning agency. The recommendations on the request by that agency shall be forwarded to the commissioner who shall act upon the progress report within 35 days of receipt by the department and the regional health planning agency. Failure of the regional health planning agency to notify the commissioner within the time frame prescribed shall constitute a recommendation of approval by such regional health planning agency.

#### E. Notification of decision.

Extension of a certificate of public need by the commissioner shall be made in the form of a letter from the commissioner with a copy to the appropriate regional health planning agency and shall become part of the official project file.

#### § 6.3. Demonstration of progress.

The applicant shall provide reports to demonstrate progress made towards the implementation of an authorized project in accordance with the schedule of development which shall be included in the application. Such progress reports shall be filed in accordance with the following intervals and contain such evidence as prescribed at each interval:

A. Twelve months following issuance. Documentation that shows: (i) proof of ownership or control of site; (ii) the site meets all zoning and land use requirements; (iii) architectural planning has been initiated; (iv) preliminary architectural drawings and working drawings have been submitted to appropriate state reviewing agencies and the State Fire Marshal; (v) construction financing has been

completed or will be completed within two months and (vi) purchase orders of lease agreements exist for equipment and new service projects.

B. Twenty-four months following issuance. Documentation that shows that (i) all required financing is completed; (ii) preconstruction site work has been initiated; (iii) construction bids have been advertised and the construction contractor has been selected; (iv) the construction contract has been awarded and (v) construction has been initiated.

C. Upon completion of a project. Any documentation not previously provided which: (i) shows the final costs of the project, including the method(s) of financing; and (ii) shows that the project has been completed as proposed in accordance with the application originally submitted, including any subsequent approved changes. (See "completion" in § 1.1.)

#### § 6.4. Revocation of certificate.

##### A. Lack of progress.

Failure of any project to meet the progress requirements stated in § 6.3 shall be cause for certificate revocation, unless the commissioner determines sufficient justification exists to permit variance, considering factors enumerated in § 6.3.

##### B. Failure to report progress.

Failure of an applicant to file progress reports on an approved project in accordance with § 6.3 of these regulations shall be cause for revocation, unless, due to extenuating circumstances, the commissioner, in his sole discretion, extends the certificate, in accordance with subsection B of § 6.2 of these regulations.

##### C. Unapproved changes.

Exceeding a capital expenditure amount not authorized by the commissioner or not consistent with the schedule of completion shall be cause for revocation. See definition of "significant change" and "schedule of completion."

##### D. Failure to initiate construction.

Failure to initiate construction of the project within two years following the date of issuance of the certificate of public need shall be cause for revocation, unless due to extenuating circumstances the commissioner extends the certificate, in accordance with subsection B of § 6.2 of these regulations.

##### E. Misrepresentation.

Upon determination that an applicant has knowingly misrepresented or knowingly withheld relevant data or information prior to issuance of a certificate of public need, the commissioner may revoke said certificate.

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## F. Noncompliance with assurances.

Failure to comply with the assurances or intentions set forth in the application or written assurances provided at the time of issuance of a certificate of public need shall be cause for revocation.

## PART VII. APPEALS.

### § 7.1. Court review.

A. Appeal to circuit court. Appeals to a circuit court shall be governed by applicable provisions of Virginia's Administrative Process Act, § 9-6.14:15 et seq. of the Code of Virginia.

Any applicant aggrieved by a final administrative decision on its application for a certificate, any third party payor providing health care insurance or prepaid coverage to 5.0% or more of the patients in the applicant's service area, a regional health planning agency operating in the applicant's service area or any person showing good cause or any person issued a certificate aggrieved by a final administrative decision to revoke said certificate, within 30 days after the decision, may obtain a review, as provided in § 9-6.14:17 of the Code of Virginia by the circuit court of the county or city where the project is intended to be or was constructed, located or undertaken. Notwithstanding the provisions of § 9-6.14:16 of the Administrative Process Act, no other person may obtain such review.

### B. Designation of judge.

The judge of the court referred to in subsection A of § 7.1 of these regulations shall be designated by the Chief Justice of the Supreme Court from a circuit other than the circuit where the project is or will be under construction, located or undertaken.

### C. Court review procedures.

Within five days after the receipt of notice of appeal, the department shall transmit to the appropriate court all of the original papers pertaining to the matter to be reviewed. The matter shall thereupon be reviewed by the court as promptly as circumstances will reasonably permit. The court review shall be upon the record so transmitted. The court may request and receive such additional evidence as it deems necessary in order to make a proper disposition of the appeal. The court shall take due account of the presumption of official regularity and the experience and specialized competence of the commissioner. The court may enter such orders pending the completion of the proceedings as are deemed necessary or proper. Upon conclusion of review, the court may affirm, vacate or modify the final administrative decision.

### D. Further appeal.

Any party to the proceeding may appeal the decision of the circuit court in the same manner as appeals are taken and as provided by law.

## PART VIII. SANCTIONS.

### § 8.1. Violation of rules and regulations.

Commencing any project without a certificate required by this statute shall constitute grounds for refusing to issue a license for such project.

### § 8.2. Injunctive relief.

On petition of the commissioner, the Board of Health or the Attorney General, the circuit court of the county or city where a project is under construction or is intended to be constructed, located or undertaken shall have jurisdiction to enjoin any project which is constructed, undertaken or commenced without a certificate or to enjoin the admission of patients to the project or to enjoin the provision of services through the project.

## PART IX. OTHER.

### § 9.1. Certificate of public need moratorium.

Notwithstanding any law to the contrary, the Commissioner shall not approve, authorize or accept applications for the issuance of any certificate of public need pursuant to the regulations for a medical care facility project which would increase the number of nursing home beds from the effective date of the regulations through June 30, ~~1993~~ 1994. However, the commissioner may approve or authorize the issuance of a certificate of public need for the following projects:

1. The renovation or replacement on site of a nursing home, intermediate care or extended care facility or any portion thereof or replacement off-site of an existing facility at a location within the same city or county and within reasonable proximity to the current site when replacement on the current site is proven unfeasible when a capital expenditure is required to comply with life safety codes, licensure, certification or accreditation standards. Under no circumstances shall the State Health Commissioner approve, authorize, or accept an application for the issuance of a certificate for any project which would result in the continued use of the facility replaced as a nursing home.

2. The conversion on site of existing licensed beds of a medical care facility other than a nursing home, extended care, or intermediate care facility to beds certified for skilled nursing services (SNF) when (i) the total number of beds to be converted does not exceed the lesser of 20 beds or 10% of the beds in the facility; (ii) the facility has demonstrated that the

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SNF beds are needed specifically to serve as specialty heavy care patient population, such as ventilator-dependent and AIDS patients and that such patients otherwise will not have reasonable access to such services in existing or approved facilities; and (iii) the facility further commits to admit such patients on a priority basis once the SNF unit is certified and operational.

3. The conversion on site of existing beds in a home for adults facility licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 as of March 1, 1990, to beds certified as nursing facility beds when (i) the total number of beds to be converted does not exceed the less of 30 beds or 25% of the beds in the home for adults facility; (ii) the home for adults facility has demonstrated that nursing facility beds are needed specifically to serve a patient population of AIDS, or ventilator-dependent, or head and spinal cord injured patients, or any combination of the three, and that such patients otherwise will not have reasonable access to such services in existing or approved nursing facilities; (iii) the home for adults facility further commits to admit such patients once the nursing facility beds are certified and operational; and (iv) the licensed home for adults facility otherwise meets the standards for nursing facility beds as set forth in the regulations of the Board of Health.

4. Any project for an increase in the number of beds in which nursing home or extended care services are provided, or the creation of new beds in which such services are to be provided, by a continuing care provider registered as of January 15, 1991, with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of this Code, if (i) the total number of new or additional nursing home beds does not exceed 32 when the beds are to be added by new construction, or 25 when the beds are to be added by conversion on site of existing beds in a home for adults facility licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 as of January 15, 1991, and (ii) such beds are necessary to meet existing or reasonably anticipated obligations to provide care to present or prospective residents of the continuing care facility pursuant to continuing care contracts meets the requirements of § 38.1-4905. No application for a certificate of public need for the creation or addition of nursing home beds pursuant to this section shall be accepted from a provider who, as of January 15, 1991, had an existing complement of beds, unless such provider agrees in writing not to seek certification for the use of such new or additional beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act. Further, if a certificate is approved, pursuant to this section, to increase the number of nursing home beds for a provider who has an existing complement of such beds, admissions to such beds shall, thereafter, be restricted to persons who have entered into continuing care contracts

meeting the requirements of § 38.2-4905.

5. Notwithstanding the foregoing and other provisions of Article 1.1 (§ 32.1-102.2 et seq.) of Chapter 4 of Title 32.1, of the Code of Virginia, the state home for aged and infirm veterans authorized by Chapter 668, 1989 Acts of Assembly, shall be exempt from all certificate of public need review requirements as a medical care facility.

6. *The development of a project in an existing nursing facility owned and operated by the governing body of a county when (i) the total number of new beds to be added by construction does not exceed the lesser of 30 beds or 25% of the existing nursing home beds in the facility; (ii) the facility has demonstrated that the nursing home beds are needed specifically to serve a specialty heavy care patient population, such as dementia, ventilator-dependent, and AIDS patients; and (iii) the facility has executed an agreement with a state-supported medical college to provide training in geriatric nursing.*

7. *The development of a nursing facility project located in Albemarle County when (i) the total number of new beds to be constructed does not exceed 30 beds; (ii) the facility is owned by and will be operated as a nonprofit entity; (iii) the project was under construction on February 1, 1992; and (iv) the facility will be ready for occupancy by November 1, 1992.*

## § 9.2. Expiration of requirements for general hospitals and outpatient or ambulatory surgery centers or clinics.

Notwithstanding any law to the contrary, as of July 1, 1993, general hospitals and specialized centers or clinics developed for the provision of outpatient or ambulatory surgery shall no longer be medical care facilities subject to review pursuant to these Regulations except with respect to the establishment of nursing home beds in general hospitals.

## § 9.3. § 9.2. Extension of the schedule of completion for nursing home projects approved prior to January 1, 1991.

Notwithstanding the authority of the commissioner to grant an extension of a schedule for completion of the project pursuant to Part VI of these regulations, no extension shall be granted beyond June 30, 1992, for any nursing home project approved prior to January 1, 1991. However, the commissioner may grant an extension of a schedule for completion for an additional ~~six~~ nine months upon determining that (i) substantial and continuing progress has been made toward completion of the project; and (ii) the project owner had agreed in writing prior to February 13, 1991, to delay the project to facilitate cost savings for the Commonwealth; and (iii) construction of the project was initiated on or before April 15, 1992. The commissioner may also grant an extension of a schedule for completion for an additional six months to project

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owners who did not agree in writing prior to February 13, 1991, to delay their projects upon determining that (i) substantial and continuing progress has been made toward completion of the project and (ii) construction of the project was initiated on or before April 15, 1992. The certificate for any such nursing home bed project approved prior to January 1, 1991, which has not been completed by June 30, 1992, or by the expiration date of any approved extension, which in no case shall be later than March 31, 1993, shall be revoked. However, the commissioner shall not revoke the certificate of public need for:

1. Any nursing home bed project for 60 beds proposed as part of a retirement community that is not a continuing care provider as defined in § 38.2-4900 if (i) the certificate of public need was issued after May 1, 1988, and was in force on November 1, 1991, (ii) construction of the nursing home bed project is initiated by June 30, 1992, and (iii) the facility is completed by June 30, 1993.

2. Any nursing home bed project to add 40 beds to an existing facility if (i) the project owner had agreed to delay the project to facilitate cost savings for the Commonwealth prior to February 13, 1991, (ii) the owner was seeking funding from the Department of Housing and Urban Development prior to February 13, 1992, (iii) the facility receives a feasibility approval for such funding from the Department of Housing and Urban Development by May 1, 1992, and (iv) the facility is completed by June 30, 1993.

3. Any nursing home bed project for less than 30 beds proposed as part of a retirement community that is not a continuing care provider as defined in § 38.2-4900 if (i) the certificate of public need was issued after May 1, 1988, and was in force on November 1, 1991, (ii) construction of the nursing home bed project was initiated before December 1, 1991, (iii) the owner of the nursing home bed project agrees in writing prior to July 1, 1992, to restrict use of the nursing home beds to residents of such retirement community, (iv) construction on the nursing home bed project that was not completed by August 27, 1991, is resumed by August 1, 1993, and (v) the nursing home bed project is completed by July 31, 1994.

\* \* \* \* \*

**REGISTRAR'S NOTICE:** Due to its length, the following emergency regulation filed by the Department of Health is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Health.

Title of Regulation: VR 355-30-100.E. The State Medical

## Facilities Plan.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Effective Dates: July 10, 1992 through July 9, 1993.

## Decision Brief:

1. Request: The emergency State Medical Facilities Plan is necessary to implement the amendments to the Virginia Medical Care Facilities Certificate of Public Need Law enacted during the 1992 session of the General Assembly. The effective date of the amendments to the law is July 1, 1992.

2. Recommendation: Approval to implement an emergency State Medical Facilities Plan governing the Virginia Medical Care Facilities Certificate of Public Need Program and to initiate the process for promulgation of a permanent State Medical Facilities Plan. It is anticipated that the Board of Health will approve the emergency State Medical Facilities Plan at its June 10, 1992 meeting.

/s/ Robert B. Stroube, M.D., M.P.H.

Date: June 11, 1992

Concur:

/s/ Howard M. Cullum

Secretary of Health and Human Resources

Date: June 30, 1992

Approve:

/s/ Lawrence Douglas Wilder, Governor

Date: July 10, 1992

Filed:

/s/ Joan W. Smith

Registrar of Regulations

Date: July 10, 1992

## Preface:

Virginia's Certificate of Public Need law defines the State Medical Facilities Plan as the "planning document adopted by the Board of Health which shall include, but not be limited to, (i) methodologies for projecting need for medical facility beds and services; (ii) statistical information on the availability of medical facility beds and services; and (iii) procedures, criteria and standards for the review of applications for projects for medical care facilities and services." (§ 32.1-102.1 of the Code of Virginia).

Section 32.1-102.3 of the Code states that, "Any decision to issue or approve the issuance of a certificate (of public need) shall be consistent with the most recent applicable provisions of the State Health



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Plan and the State Medical Facilities Plan; provided, however, if the Commissioner finds, upon presentation of appropriate evidence, the provisions of either such plan are inaccurate, outdated, inadequate or otherwise inapplicable, the Commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan."

Subsection B of § 32.1-102.3 of the Code requires the Commissioner to consider "the relationship" of a project "to the applicable health plans of the Board" in "determining whether a public need for a project has been demonstrated."

This 1992 State Medical Facilities Plan is a comprehensive revision of the criteria and standards for COPN reviewable medical care facilities and services contained in the Virginia State Health Plan established from 1982 through 1987, and the Virginia State Medical Facilities Plan, last updated in July, 1988.

## Summary:

Nature of Emergency - On July 1, 1992, amendments to the Virginia Medical Care Facilities Certificate of Public Need Law will become effective (§ 32.1-12 and § 32.1-102.2, et seq., of the Code of Virginia). The amended law 1) expands the categories of medical care facility capital projects which require approval by the State Health Commissioner prior to initiation; 2) eliminates registration and reporting requirements for certain types of medical care facility capital projects; 3) eliminates the scheduled sunset of certificate of public need (COPN) review requirements for ambulatory surgery centers and hospitals; 4) extends the moratorium on the issuance of COPNs for nursing home beds from June 30, 1993, to June 30, 1994, and provides two additional specific exceptions to this moratorium. The amendments also allow for the extension of schedules for completion of certain previously authorized nursing home projects under certain conditions.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-01-22. Services.  
VR 460-03-3.1100. Amount, Duration and Scope of Services.  
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.  
VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates—Other Types of Care.

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

Effective Dates: July 14, 1992, through July 13, 1993.

## Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled EPSDT and Inpatient Psychiatric Services. This policy incorporates federally required language concerning EPSDT and inpatient psychiatric services into the State Plan.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding EPSDT and Inpatient Psychiatric Services. 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 30, 1992

## 3. CONCURRENCES:

/s/ Howard M. Cullum  
Secretary of Health and Human Resources  
Date: June 7, 1992

## 4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder  
Governor  
Date: July 10, 1992

## 5. FILED WITH:

/s/ Joan W. Smith  
Registrar of Regulations  
Date: July 14, 1992

## DISCUSSION

6. BACKGROUND: The sections of the State Plan for Medical Assistance (the Plan) affected by this emergency regulation are: preprinted pages 22 and 27; the Amount, Duration, and Scope of Services narrative (Supplement 1 to Attachment 3.1 A and B); Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C); and Methods and Standards for Establishing Payment Rates - Other Types of Care (Attachment 4.19 B).

The Omnibus Budget Reconciliation Act of 1989 (OBRA '89) requires that state Medicaid programs provide to recipients any and all services permitted to be covered under federal law, when the need for those services are identified as a result of screenings through the Early and Periodic Screening, Diagnosis, and Treatment Program. Such services must be provided even if they are not otherwise covered under the Plan, and are thus not available to recipients independent of EPSDT referral.

The EPSDT program provides for screening and



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diagnostic services to determine physical and mental defects in recipients up to age 21; and health care, treatment, and other services to correct or ameliorate any defects or chronic conditions discovered. EPSDT is a mandatory program which must be provided for all Medicaid-eligible recipients who are 18 years old or younger and, at the state's option, up to age 21. The Commonwealth provides EPSDT for recipients to age 21.

One service now required to be covered for recipients because of EPSDT is inpatient psychiatric services in psychiatric hospitals. These regulations reflect the definition of covered services and the fee-for-service reimbursement methodology.

During the development of the Department's policy concerning EPSDT, the Health Care Financing Administration (HCFA) provided initial guidance to the states. DMAS incorporated this guidance into its first emergency regulation. Subsequent to DMAS' adoption of that emergency regulation, HCFA provided additional guidance, necessitating a second emergency regulation action.

Subsequent negotiations with HCFA over the location and content of DMAS' inpatient psychiatric services language as related to EPSDT resulted in further changes to the language content. DMAS has tightened its definition of covered psychiatric services to be those provided in psychiatric hospitals when the services are the result of EPSDT. HCFA has assured DMAS that it will approve these further changes. Therefore, DMAS is seeking to adopt this superseding emergency regulation.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed for the agency to have earliest possible effective date.

8. FISCAL/BUDGETARY IMPACT: Prior to the changes mandated by OBRA '89, states only covered those services (detected by screening programs) that were included in their Medicaid plans. The law now

requires that Medicaid programs pay for all health care services authorized under the federal Medicaid program whether or not those services are covered in a state's Plan. The costs of these EPSDT-related services are accounted for in the current appropriation for FY 1992 - 94.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective upon its filing with the Registrar of Regulations. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department lacks the authority to expend General Funds in the administration of EPSDT and inpatient psychiatric services as federally required.

10. APPROVAL SOUGHT for VR 460-01-22, 460-03-3.1100, 460-02-3.1300, 460-02-4.1920.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

**VR 460-01-22. Services.**

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

Citation

3.1(A)(5) (Continued)

(iii) Services made available to the medically needy are equal in amount, duration, scope for each person in a medically needy coverage group.

Yes.

Not applicable. The medically needy are not included in the plan.

441.55 50 FR 43654,  
P.L. 101-239 (§6403)  
and 1902(a)(43),  
1905(a)(4), and 1905(r)  
of the Act.

(a)(6) The Medicaid agency meets the requirements of 42 CFR 441.56 through 441.62 and P.L. 101-239 with respect to early and periodic screening, diagnosis, and treatment (EPSDT) services.

The Medicaid agency has in effect agreements with continuing care providers. Described below are the methods employed to assure the providers' compliance with their agreements.

TN.No. 91-18 Approval Date \_\_\_\_\_ Effective Date 7/16/91  
Supersedes \_\_\_\_\_  
TN.No. \_\_\_\_\_

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

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

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

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

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

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

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

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

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.

## VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.

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

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

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

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

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

*"CFR" means the Code of Federal Regulations.*

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

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

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

*"JCAHO" means Joint Commission on Accreditation of Hospitals.*

*"Medical necessity" means that the use of the hospital setting under the direction of a physician has been demonstrated to be necessary to provide such services in lieu of other treatment settings and the services can reasonably be expected to improve the recipient's condition or to prevent further*

regression so that the services will no longer be needed.

"VDH" means the Virginia Department of Health.

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

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

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

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

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

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

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

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

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

a. be a psychiatric hospital accredited by JCAHO;

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

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

d. demonstrate that it is their policy to provide services to individuals in need of comprehensive services without regard to the individual's ability to pay or eligibility for Medicaid reimbursement; and

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

screening.

## VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates—Other Types of Care.

### o. Refund of Overpayments (continued)

(e) Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (bi2) the issue date of any administrative decision issued by DMAS after an informal fact finding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

p. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, reimbursement shall be provided for services resulting from early and periodic screening, diagnostic, and treatment services. Reimbursement shall be provided for such other measures described in Social Security Act § 1905(a) required to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State Plan.

1. Payments to fee-for-service providers shall be in accordance with § (e) of Attachment 4.19B the lowest of (i) State agency fee schedule; (ii) actual charge (charge to the general public); (iii) or Medicare (Title XVIII) allowances.

2. Payments to outpatient cost-based providers 4.19B(d) shall be in accordance with § (d) in 4.19B.

3. Psychiatric services delivered in a psychiatric hospital for individuals under age 21 shall be

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reimbursed at a uniform all-inclusive per diem fee and shall apply to all service providers. The fee shall be all-inclusive to include physician and pharmacy services. The methodology to be used to determine the per diem fee shall be as follows. The base period uniform per diem fee for psychiatric services resulting from an EPSDT screening shall be the median (weighted by children's admissions in State-operated psychiatric hospitals) variable per day cost of State-operated psychiatric hospitals in the fiscal year ending June 30, 1990. The base period per diem fee shall be updated each year using the hospital market basket factor utilized in the reimbursement of acute care hospitals in the Commonwealth.

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

**Title of Regulation:** VR 615-01-49. Aid to Families with Dependent Children Program - Disqualification for Intentional Program Violations.

**Statutory Authority:** § 63.1-25 and 63.1-124.2 of the Code of Virginia.

**Effective Dates:** July 21, 1992 through July 20, 1992.

### Preamble:

Federal regulations in volume 45 of the Code of Federal Regulations, part 235.112-113, promulgated by the United States Department of Health and Human Services to implement Section 416 of the Social Security Act, allow for the imposition of disqualification penalties for those individuals found to have committed an intentional program violation either by a court or pursuant to an administrative disqualification hearing.

Section 63.1-124.2 of the Code of Virginia was amended by the 1992 General Assembly to allow for a disqualification process in the Aid to Families with Dependent Children program.

Emergency approval by the Governor is needed to allow the Virginia Department of Social Services to implement the disqualification process as allowed by the Code of Virginia and permitted by the Code of Federal Regulations. The absence of such regulations would result in an annual projected expenditure by the Commonwealth of \$10,452 in Aid to Families with Dependent Children grant payments and \$11,758 in fraud investigative administrative costs.

Furthermore, court action and their associated costs are avoided by the establishment of administrative disqualification hearings.

Additionally, establishment of administrative disqualification hearings will provide a means, other than the court system, of addressing the commission

of intentional program violations. A determination of an intentional program violation by a hearings officer will not result in a conviction; thus recipients will not be stigmatized as a felon or a misdemeanant.

### Summary:

Pursuant to sections 63.1-25 and 63.1-124.2 of the Code of Virginia, as amended, the State Board of Social Services has been authorized to establish regulations governing the denial of benefits for the commission of an intentional program violation and the establishment of regulations governing the conduct of administrative disqualification hearings.

Federal regulations volume 45 of the Code of Federal Regulations, part 235.112-113, promulgated by the United States Department of Health and Human Services, to implement Section 416 of the Social Security Act allow states to impose disqualification penalties on individuals determined to have committed an intentional program violation by a court or pursuant to an administrative disqualification hearing. In addition these regulations allow states to receive 75 per cent enhanced federal funding for the costs associated with the operation of a fraud control program that includes disqualification provisions.

Concurrent with the approval of this emergency regulation, the Department of Social Services will initiate the procedure for the development of the regulation using the regular procedure. Public comment will be solicited through a sixty day comment period.

VR 615-01-49. Aid to Families with Dependent Children Program - Disqualification for Intentional Program Violations.

## PART I. DEFINITIONS.

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

"Aid to Families with Dependent Children Program" means the program administered by the Virginia Department of Social Services through which a relative can receive a monthly assistance payment for the support of his children. impartial review by a hearing officer of an individual's actions involving an alleged intentional program violation for the purpose of rendering a decision of guilty or not guilty of committing an intentional program violation.

"Hearing Officer" means an impartial representative of the Department of Social Services to whom requests for administrative disqualification hearings are assigned and by whom they are heard. The hearing officer has the authority to conduct and control hearings and to render

decisions.

"Intentional Program Violation (IPV)" means any action by an individual for the purpose of establishing or maintaining the family's eligibility for Aid to Families with Dependent Children (AFDC) or for increasing or preventing a reduction in the amount of the grant which is intentionally a false or misleading statement or misrepresentation, concealment or withholding of facts or any act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

## PART II. REFERRAL OF ALLEGED INTENTIONAL PROGRAM VIOLATIONS.

§ 2.1. The agency must ensure and document that a clear and full explanation is given to the applicant/recipient of the eligibility requirements for the type of assistance he is requesting or receiving; of his responsibility to give complete and accurate information related to his eligibility and to report promptly and fully any changes in his circumstances; and of the provisions of the law with respect to giving false information knowingly or deliberately withholding information that would affect his eligibility for assistance or the amount thereof. The worker must explain fully what types of changes in his circumstances would have an effect on the grant.

§ 2.2. The local agency must conduct an investigation of an allegation that an individual has committed an IPV, regardless of the AFDC payment status. A determination as to whether IPV has occurred must be based on careful consideration of the particular circumstances. A determination must be made that there has been a deliberate misrepresentation on the part of the applicant/recipient. Consideration should be given to: (1) whether the correct or unreported information was, in fact, known to the applicant/recipient and (2) whether the applicant/recipient understood the eligibility and reporting requirements.

§ 2.3. An individual may be charged with an IPV even if the individual's application for assistance was denied. It is not required that an overpayment actually exist for there to be a determination of IPV.

§ 2.4. The local agency is required to proceed against any individual alleged to have committed an IPV by referring the matter to the appropriate authorities for criminal action in a Federal or State court or through an administrative disqualification hearing (ADH).

§ 2.5. The local agency may refer a case for prosecution or initiate an ADH regardless of the current eligibility of the individual.

§ 2.6. The local agency must coordinate its actions with any corresponding actions being taken against the individual under the Food Stamp program if the factual issues involved arise out of the same or related

circumstances.

§ 2.7. The local agency shall confer with the appropriate legal authorities to determine the types of cases that will be accepted for prosecution and cases of alleged IPV will be referred for prosecution in accordance with the agreement established between the legal authority and the local agency. This agreement shall include information on how and under what circumstances cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for prosecution, such as a minimum amount of overpayment which resulted from the IPV. The local agency is encouraged to refer for prosecution those individuals suspected of committing an IPV where large amounts of overpaid benefits are involved or more than one act of IPV is suspected.

## PART III. INTENTIONAL PROGRAM VIOLATION PENALTIES.

§ 3.1. Individuals found to have committed an IPV by either of the following:

- A. a court of appropriate jurisdiction
- B. pursuant to an administrative disqualification hearing
- C. waiving his right to an administrative disqualification hearing shall be ineligible to participate in the AFDC program for the following time periods:
  - A. Six months for the first offense
  - B. Twelve months for the second offense
  - C. Permanently for the third offense

§ 3.2. The disqualification penalty imposed on an individual in one state or locality shall be used in determining the appropriate disqualification penalty.

§ 3.3. Only the individual found guilty of committing an IPV shall be disqualified. The local agency shall not take the individual's needs into account when determining the assistance unit's need and the amount of assistance. However, any resources and income of the disqualified individual will be considered available to the assistance unit.

§ 3.4. The period of disqualification shall begin no later than the first day of the second month which follows the court's decision of guilty or the date on the notice of ADH decision by the hearing officer. If the individual is not eligible for the program at the time the disqualification is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

§ 3.5. The disqualification penalty shall be in addition to, and cannot substitute for, any other sanctions or penalties which may be imposed by law for the same offense.

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§ 3.6. The disqualification penalty cannot substitute for other sanctions under the AFDC program.

§ 3.7. Any period for which a disqualification period is imposed shall remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based, is subsequently reversed by a court of appropriate jurisdiction. In no event shall the duration of the period for which such penalty is imposed be subject to review in a fair hearing.

§ 3.8. The local agency must provide all applicants with a written notice of the disqualification penalties for IPV at the time of application.

## PART IV. INITIATION OF AN ADMINISTRATIVE DISQUALIFICATION HEARING.

§ 4.1. In order to request an ADH, the local agency shall ensure that a pre-hearing investigation has occurred and that the evidence supports the charge of intentional program violation. There must be clear and convincing evidence which demonstrates the individual committed or intended to commit an IPV. Examples of evidence include:

A. Written verification of unreported income or resources received by the individual

B. Verification that the individual understands his reporting responsibilities by signature on the application/redetermination form or some other form

C. An application, monthly report or change report submitted during the period the IPV is alleged to have occurred that omits the information in question

D. Documented contacts with the individual during the period the IPV is alleged to have occurred in which the individual failed to report the information in question

§ 4.2. Prior to submitting the request for an ADH to the state hearing authority, the local agency shall provide written notification to the individual suspected of an intentional program violation that the individual can waive his right to an ADH by signing a waiver request and returning it to the local agency within 10 days from the date notification is sent to the individual in order to avoid submission of the request for an ADH.

§ 4.3. If a signed waiver is received, no ADH is conducted and the disqualification period is imposed in accordance with federal regulations.

§ 4.4. If a case is referred for an ADH, it shall not be simultaneously referred for prosecution. Cases dismissed in court or individuals acquitted by the court shall not be referred for an ADH.

§ 4.5. The local agency shall request an ADH be scheduled by submitting a written request to the state

hearing authority. The form must include the following information:

A. Identifying information

B. Summary of the allegation(s)

C. Summary of the evidence

D. Copies of documents supporting the allegation(s)

The referral is to be signed and dated by the supervisor or local agency director.

§ 4.6. The local agency may combine a fair hearing and an ADH into a single hearing if the factual issues arise out of the same or related circumstances provided that the individual receives prior notice of the consolidation.

## PART V. ADVANCE NOTICE OF AN ADH.

§ 5.1. Upon receipt of the request for an ADH from the local agency, the state hearing authority will forward the request to the appropriate regional hearing officer.

§ 5.2. The hearing officer will schedule a date for the ADH and provide written notice to the individual suspected of committing an IPV at least 30 days in advance of the date the ADH has been scheduled.

## PART VI. TIME AND PLACE OF THE ADH.

§ 6.1. The time and place of the ADH shall be arranged so that the hearing is accessible to the individual suspected of committing an IPV. The individual may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. The ADH shall not be postponed for more than a total of 30 days and the state hearing authority may limit the number of postponements.

## PART VII. FAILURE OF INDIVIDUAL TO APPEAR AT THE ADH.

§ 7.1. The ADH can be held even if the individual fails to appear. The individual has 10 days after the date of the scheduled ADH to present reasons indicating good cause for failure to appear.

§ 7.2. Even though the individual is not represented, the hearing officer must carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence.

§ 7.3. If the household member is found to have committed an IPV but a hearing officer later determines there was good cause for not appearing, the previous decision is no longer valid and a new ADH shall be

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conducted. The hearing officer who conducted the original hearing may conduct the new hearing. The good cause decision must be entered into the hearing record by the hearing officer.

## PART VIII.

### PARTICIPATION WHILE AWAITING A HEARING.

§ 8.1. A pending ADH shall not affect the individual's right to participate in the AFDC program. The local agency may not disqualify an individual until the hearing officer finds that the individual has committed an IPV. This does not preclude, however, the local agency from reducing, suspending or terminating assistance for other reasons.

## PART IX.

### CONDUCT OF THE ADH.

§ 9.1. The ADH is attended by persons directly concerned with the issue at hand. This normally means a representative of the local agency and the individual alleged to have committed the IPV.

§ 9.2. The hearing officer shall:

A. Identify those present for the record

B. Advise the individual that he may refuse to answer questions during the hearing and that anything said or signed by the individual concerning the charge(s) may be used against him in a court of law.

C. Explain the purpose of the ADH, the procedure, how and by whom a decision will be reached and communicated, and the option of either the individual or the local agency to request State Board review of the hearing officer's decision

D. Consider all relevant issues. Even if the individual is not present, the hearing officer is to carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence.

E. Request, receive and make part of the record all evidence determined necessary to render a decision.

F. Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing.

G. Advise the local agency to obtain a medical assessment at local agency expense if the hearing officer considers it necessary.

§ 9.3. The individual alleged to have committed an IPV must be given adequate opportunity to:

A. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well

as during the ADH. The contents of the case file, including the application form and documents of verification used by the local agency to establish the alleged IPV, shall be made available.

B. Present his own case or with the aid of an authorized representative.

C. Bring witnesses.

D. Establish all pertinent facts and circumstances.

E. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses.

F. Advance arguments without any undue influence,

## PART X.

### NOTIFICATION OF DECISION OF THE ADH.

§ 10.1. The hearing officer is responsible for rendering a decision based on clear and convincing evidence from the facts as presented in the hearing. The hearing officer must substantiate his decision by identifying supporting evidence and applicable regulations.

§ 10.2. The hearing officer shall prepare a written report of the hearing which shall include findings, conclusions, decisions and appropriate recommendations. The decision shall specify the reasons for the decision, identify the supporting evidence, identify pertinent AFDC regulations and respond to reasoned arguments made by the individual or representative.

§ 10.3. The hearing officer shall notify the individual of the decision in writing and of the individual's right to request State Board review of the decision.

§ 10.4. If the individual is found guilty of committing an IPV, the written decision shall advise the individual that disqualification shall occur.

§ 10.5. The determination of IPV by the hearing officer cannot be reversed by a subsequent fair hearing.

## PART XI.

### IMPLEMENTATION OF THE HEARING DECISION.

§ 11.1. Upon receipt of the notice of a decision from the hearing officer finding the individual guilty of an IPV, the local agency shall inform the individual of the reason for the disqualification and the date the disqualification will take effect.

Submitted by:

/s/ Larry D. Jackson  
Commissioner  
Date: June 22, 1992



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Approved by:

/s/ L. Douglas Wilder  
Governor  
Date: July 17, 1992

Filed by:

/s/ Ann M. Brown  
Deputy Registrar of Regulations  
Date: July 21, 1992

\* \* \* \* \*

**Title of Regulation:** VR 615-34-01. Voluntary Registration of Small Family Day Care Homes-Requirements for Contracting Organizations.

**Statutory Authority:** § 63.1-196.04 C of the Code of Virginia.

**Effective Dates:** July 21, 1992 through July 20, 1993.

**Preamble:**

*Emergency regulations are needed to respond to HB 1862, passed by the 1991 General Assembly. The legislature mandated the creation of a new voluntary registration program for small family day care providers. The proposed regulation establishes the requirements for administration of the program by contracting organizations. Implementation of the program is required by July 1, 1992.*

**Summary:**

*The proposed emergency regulation, Voluntary Registration of Small Family Day Care Homes - Requirements for Contracting Organizations, establishes administration, staff and service requirements for qualified contracting organizations which are issued a contract by the Commissioner of Social Services to administer the voluntary registration program. The 1991 General Assembly amended the Code of Virginia and added Section 63.1-196.04 which sets for the broad parameters for the development of a voluntary registration program for unlicensed family day care homes. Program implementation is scheduled for July 1, 1992.*

VR 615-34-01. Voluntary Registration of Small Family Day Care Homes-Requirements for Contracting Organizations.

**PART I.  
INTRODUCTION.**

**Article 1.  
Definitions.**

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

*"Agreement" means the document signed by the Department of Social Services and the contracting agency.*

*"Certificate of Registration" means a document issued by the Commissioner to a family day care provider, acknowledging that the provider has been certified by the contracting organization and has met the Requirements for Voluntary Registration of Small Family Day Care Homes.*

*"Child" means any individual under 18 years of age.*

*"Commissioner" means the Commissioner of Social Services.*

*"Contracting organization" means the agency which has been designated by the Department of Social Services to administer the voluntary registration program for small family day care providers.*

*"Cooperative agreement" means an agreement between a provider and a parent to exchange child care services in lieu of a fee.*

*"Denial of Certificate of Registration" means a refusal by the Commissioner to issue an initial Certificate of Registration.*

*"Department" means the Virginia Department of Social Services.*

*"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the Commissioner in carrying out the responsibilities and duties specified in Chapter 10 (§ 63.1-195) of the Code of Virginia.*

*"Evaluate" or "evaluation" means the review of a family day care provider by a contracting organization upon receipt of an application for a Certificate of Registration to verify that the applicant meets the requirements for providers.*

*"Family day care provider applicant" or "provider applicant" means a person at least 18 years of age who has applied for a Certificate of Registration.*

*"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual (i) maintains business/professional, family, and community relationships which are characterized by honesty, fairness, truthfulness, and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance and protection of children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, may not be considered objective references.*

*"Monitor" or "monitoring visit" means to visit c*

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registered family day care provider to review the provider's compliance with the applicable requirements.

"Parent" means a biological, foster or adoptive parent, legal guardian, or any person with responsibility for, or custody of a child enrolled or in the process of being enrolled in a family day care home.

"Provider" or "registered family day care provider" means a person who has received an initial or renewed Certificate of Registration issued by the Commissioner. This provider has primary responsibility in providing care, protection, supervision, and guidance for children in their private home.

"Provider assistant" means a person at least 14 years of age who has been designated by the provider to assist the provider in caring for children in the home. The assistant helps the family day care provider in the care, protection, supervision, and guidance of children in a private home.

"Refusal to renew a Certificate of Registration" means the non-issuance of a Certificate of Registration by the Commissioner after the expiration of the existing Certificate of Registration.

"Registration fee" means the payment to a contracting organization by a provider or applicant upon filing application for a Certificate of Registration.

"Registered small family day care home" means any small family day care home which has met the standards for voluntary registration for such homes pursuant to regulations prescribed by the Board of Social Services and which has obtained a Certificate of Registration from the Commissioner of Social Services through a contracting organization.

"Renewal of a Certificate of Registration" means the issuance of a Certificate of Registration by the Commissioner after the expiration of the existing Certificate of Registration.

"Requirements for Contracting Organizations" refers to Parts II through IV of the Requirements for Voluntary Registration of Small Family Day Care Homes. This section sets forth definitions for key terms and the staff and service requirements for contracting organizations.

"Revocation of a Certificate of Registration" means the removal of a provider's current Certificate of Registration for failure to comply with the applicable requirements for providers.

"Small family day care home" means any private family home in which no more than five children, except children related by blood or marriage to the person who maintains the home, are received for care, protection, and guidance during only a part of the day. Further, a family day care home which accepts no more than ten children,

at least five of whom are of school age and are not in the home for longer than three hours immediately before and three hours immediately after school hours each day, may also voluntarily register as a small family day care home.

"Sponsoring organization" refers to an agency administering the USDA's adult and child food nutrition program.

"Staff member" means a person employed by or working for a contracting organization on a regularly scheduled basis. This includes full-time, part-time, and voluntary staff, whether paid or unpaid.

"Substitute provider" means a person at least 18 years of age designated by the provider and approved by the contracting organization who is readily available to provide child care in the provider's home in the event the provider becomes ill or encounters an emergency.

"USDA" means United States Department of Agriculture.

## Article 2. Legal Authority.

The Code of Virginia was amended and § 63.1-196.04 was added in the 1991 General Assembly session to include provisions for the voluntary registration of small family day care homes.

## PART II. ADMINISTRATION OF CONTRACTING ORGANIZATIONS.

### Article 1. Approval Requirements for Contracting Organizations.

§ 2.1. A contracting organization shall obtain approval from the Department of Social Services pursuant to the legal authority specified in § 63.1-196.04 upon execution of a contract with the department.

§ 2.2. The department will conduct a comprehensive programmatic inspection of the contracting organization to determine compliance on a biennial basis.

§ 2.3. If the contracting organization meets all applicable requirements, the department will issue a letter of approval.

§ 2.4. If the department finds that the contracting organization is not in compliance, the contracting organization will prepare a corrective action plan, including the timeframe for completion.

§ 2.5. Each approval period shall be two years.

A. In determining the expiration date of the first letter of approval, the department shall compute the two-year

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approval period from the date of issuance of the first letter of approval.

B. In determining the expiration date of a renewed approval, the department shall compute the two-year approval period from the date on which the contracting organization's previous letter of approval expires.

§ 2.6. The letter of approval shall be maintained on file at the contracting organization's offices for two years.

§ 2.7. An authorized representative of the department may make an announced or unannounced visit at any time during the contracting organization's normal operating hours to inspect the contracting organization and review files, reports or records to determine its compliance with the requirements, and to investigate a complaint.

§ 2.8. The department shall notify the contracting organization in writing whenever the department determines that the contracting organization is operating in violation of any of the Requirements for Contracting Organizations. Notifications will specify the corrective action plan, including completion date, that must be taken by the contracting organization in order to abate the violation(s).

§ 2.9. A contracting organization's approval may be denied or revoked for any activity, policy or conduct that presents a serious or imminent hazard to the health, safety and well-being of a child. Approval may also be denied or revoked if the contracting organization demonstrates unfitness or inability to operate or to administer the voluntary family day care registration program in accordance with the guidelines set forth by the Board of Social Services and with sound and effective administration and financial policies, procedures and practices.

§ 2.10. If a contracting organization's approval is denied or revoked, the records on certified homes will be sent to the department within five working days. The department may, in turn, assign the homes to another contracting organization.

## Article 2. Eligibility and Qualifications.

§ 2.11. Any public or private for-profit or non-profit organization may apply to become a family day care contracting organization, provided the organization meets the eligibility requirements specified below.

§ 2.12. In order to secure, maintain or renew a contract to provide registration services for small family day care homes, a contracting organization shall demonstrate its ability to provide for the following:

### 1. Facility and finances

a. adequate facilities;

b. maintenance of sound financial practices and permanent records;

c. collection of fees;

d. maintenance and provision of reports; and

e. officers and agents who have good character and reputation.

f. worker's compensation insurance required by Virginia law and a minimum of \$500,000 liability insurance.

### 2. Contracting Requirements

The contracting organization must meet the applicable contracting requirements of the Commissioner and the State Board of Social Services and the Requirements for Contracting Organizations. The Commissioner may give preference to contracting organizations which serve large geographic areas. The Commissioner reserves the right to limit the number of applicants based on available resources.

### 3. Training and Technical Assistance

a. process applications for voluntary registration;

b. provide training or educational information, technical assistance (See Part IV, Article 7), and consultation to providers;

c. certify family day care homes as eligible for registration (as noted in Part IV, Article 3);

d. provide educational information to parents;

e. maintain a list of substitute providers who are voluntary registrants which may be given to providers upon request; and

f. provide information as required under the Freedom of Information Act.

### 4. Monitoring and Complaints

a. conduct random unannounced inspections and monitor small family day care providers for compliance with health and safety checklist (as described in Part IV, Article 6);

b. respond to routine complaints under the direction of the department; and

c. make appropriate referrals to state and local agencies.

### 5. Food Program

a. Encourage provider participation in the USDA food program.

b. Refer interested persons to sponsoring organizations.

## 6. Other Requirements

Comply with all performance provisions and level of service provisions, as specified in the executed contract.

§ 2.13. The contracting organization may subcontract for the provision of training to providers. The contracting organization shall ensure that:

1. An agency under subcontract complies with all applicable Requirements for Contracting Organizations in the delivery of training to the providers;

2. A copy of the subcontract between the contracting organization and the agency subcontracted to perform training shall be maintained on file with the contracting organization.

## Article 3.

### Administrative Responsibility.

§ 2.14. A privately operated contracting organization shall have a governing board that has the authority to:

1. Set overall administrative and operational policies for the contracting organization;

2. Ensure the financial viability of the contracting organization;

3. Ensure policies pertaining to, but not limited to:

a. Program services;

b. Personnel recruitment, selection, training and performance evaluation; and

c. Data collection and reporting.

4. Oversee fiscal operations, including budget and resource development.

§ 2.15. A publicly operated contracting organization shall have an advisory board or committee that offers advice and counsel to the contracting organization on the fiscal and administrative operations of the family day care registration program.

§ 2.16. The board shall delegate responsibility for day-to-day operations to an executive director or administrator.

§ 2.17. The contracting organization shall appoint an appeals committee which shall:

1. Review recommendations to the Commissioner to deny, revoke or refuse to renew a Certificate of Registration if requested by the provider;

2. Exclude from its membership staff members responsible for recommending decisions regarding the denial, revocation or refusal to renew a Certificate of Registration; and

3. Maintain on file documentation of its findings.

§ 2.18. The contracting organization shall make available family day care registration services to those who request it.

## Article 4.

### Reporting Requirements.

§ 2.19. The contracting organization or any staff member shall orally notify the local department of social services or the state department's Child Protective Services office as specified in Chapter 12, § 63.1-248.1 to 248.17 immediately, whenever there is reason to suspect that a child has been subjected to abuse or neglect by a provider or any other person.

§ 2.20. The contracting organization or any staff member shall notify the department immediately of any imminent danger(s) or hazard(s) that threaten the health and safety of children in the provider's home.

§ 2.21. The contracting organization shall notify the local health department in the provider's municipality of the occurrence of a communicable disease. Such notification shall be made by the next working day after the contracting organization learns of the occurrence.

§ 2.22. The contracting organization shall notify the central office of the department, orally, of any of the following changes or events by the next working day after the contracting organization learns of their occurrence:

1. Injury that results in the admission of a child to a hospital while in the care of a provider;

2. The death of a child while in the care of a provider;

3. Damage to the contracting organization's offices that affects the operation of family day care registration;

4. Any criminal conviction(s) as specified in 63.1-198.1 of the Code of Virginia, of the staff of the contracting organization or of a provider, substitute provider, provider assistant, or member of a provider's household;

5. Cancellation of the contracting organization's general/comprehensive liability insurance coverage;

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and

6. Unanticipated permanent or temporary closing of the contracting organization.

§ 2.23. The contracting organization shall notify the department orally within three working days, of any change in the name, location, executive director or administrator of the contracting organization.

§ 2.24. The contracting organization shall report statistical data, as noted in Article 5 and specified by the contract.

## Article 5. Contracting Organization Records.

§ 2.25. The contracting organization shall maintain the following records:

### 1. Administrative records:

a. The Requirements for Voluntary Registration of Small Family Day Care Homes;

b. The document providing Information to Parents as specified in Part IV, Article 8;

c. Staff records, as specified in Part III, Article 1;

d. A copy of the contracting organization's insurance policy or policies and financial records, as specified herein and by the contract;

e. Documentation of training sessions conducted by the contracting organization;

f. Files documenting recommended denials, and non-renewals of Certificates of Registration and appeals as specified in Part IV, Article 11;

g. Documentation of registration fees collected from providers, as specified in Part IV, Article 4 and in the contract;

h. A copy of the contract between the contracting organization and the Department of Social Services.

2. A copy of contracts between the contracting organization and any subcontracted agency to perform training related to family day care registration.

3. Records on providers as specified in Part II, Article 6, Part IV, Articles 2 and 6, and all documents pertinent to the registration application. Records shall also be kept on providers who have discontinued family day care services; and additional information as may be received regarding the provider's compliance with the requirements for providers.

4. Statistical records including, but not limited to,

quarterly reports on:

a. The names, addresses, phone numbers and social security numbers of registered providers;

b. The total number of providers registered and their city or county;

c. Data on the number and ages of related and unrelated children served at the time of registration and renewal.

d. The number of registered providers participating in the USDA food program and interested in being listed to receive referrals or act as a substitute provider;

e. Evaluation and monitoring reports, including the results of any complaint investigations referred by the department;

f. Listings of providers found to have serious criminal convictions.

§ 2.26. The administrative records specified in this section shall be maintained by the contracting organization for three calendar years.

## Article 6. Complaints Against a Contracting Organization.

§ 2.27. Complaints against a contracting organization shall be investigated by the department. An investigation shall be conducted to determine compliance with the contract and the Requirements for Contracting Organizations. The contracting organization shall be notified of the findings by the department.

§ 2.28. If the contracting organization wishes to appeal an administrative decision that does not result in revocation of the contract by the department, the contractor may follow an informal appeal process as outlined in the Department of Social Services, Division of Licensing Programs, General Procedures and Information for Licensure, Part V.

§ 2.29. The contracting organization may appeal a decision by the department resulting in a revocation decision in accordance with the Administrative Process Act, Section 9-6.14:1 of the Code of Virginia

## Article 7. Public Access to Records.

§ 2.30. The contracting organization shall make the following files available for public review:

1. Active applications for Certificate of Registration and related materials or documentation;

2. List of registered providers and contact information

updated quarterly;

3. Correspondence between the contracting organization and the provider or other parties in matters pertaining to the contracting organization's monitoring or registration of the provider;

4. Evaluation and monitoring reports, where applicable, reflecting the results of the contracting organization's evaluation and monitoring of the provider;

5. Forms and other standard documents used to collect routine data on the provider as part of the provider's record of compliance with the requirements for providers.

6. Enforcement letters from the contracting organization requiring abatement of violations of the requirements for providers;

7. Correspondence to the contracting organization from the department regarding enforcement actions against the provider;

8. Chronological lists of events about the provider on compliance and enforcement matters;

9. Completed complaint investigations reports, except child abuse or neglect investigations or other information restricted by the requirements of the Chapter 12, § 63.1-248.1-248.17 of the Code of Virginia or other state law; and

10. Any other documents, materials, reports, or correspondence that would normally be included as part of the public record shall remain on file for three years.

§ 2.31. The contracting organization shall keep confidential and not part of the public record the following:

1. Records, reports or correspondence that pertain to child abuse or neglect investigations involving enrolled children that are restricted from public access under Chapter 12, § 63.1-248.1-248.17 of the Code of Virginia or other state law;

2. Records, reports, correspondence or forms containing names and any other information pertaining to children, parents or providers that are restricted from public access under Chapter 12, § 63.1-248.1-248.17 of the Code of Virginia;

3. Records, reports, correspondence or forms containing names of enrolled children and/or their parents;

4. Confidential information with regard to specific contracting organization personnel;

5. Any items that deal with reports of inspection or complaint investigations that are still in progress; and

6. Other material required by state law to be maintained as confidential.

§ 2.32. If a contracting organization has a question about whether information may be released to the public, the executive director should consult their attorney and a representative of the department.

## PART III. STAFF REQUIREMENTS FOR CONTRACTING ORGANIZATIONS.

### Article 1. General Staff Requirements.

§ 3.1. The executive director or administrator, board members, corporate officers, or partners and every staff member of a contracting organization shall:

1. Be of good character and reputation; and
2. Possess ability to direct a contracting organization and provide services to parents and providers, as specified in these requirements.

§ 3.2. Prior to the employment or utilization of the executive director or administrator or a staff member, the contracting organization shall require the applicant for executive director or administrator and each staff applicant to complete and sign an application for employment, indicating the applicant's:

1. Name, address and telephone number;
2. Education and work experience; and
3. Criminal records check and child protective services central registry clearance.

§ 3.3. Prior to the executive director or administrator's or any staff member's employment, the contracting organization shall obtain two references, either in writing or orally from former employers or other persons who have knowledge of the applicant's work experience, education and character. If the reference is given orally, documentation shall be on file with his or her comments. If staff is already employed, references shall be provided within 20 days of signing the contract with the department.

§ 3.4. The executive director or administrator and every staff member shall notify the contracting organization by the end of the contracting organization's next working day, of any criminal convictions during their employment or utilization by the contracting organization.

§ 3.5. Evidence of conviction for crimes of violence, child abuse or neglect or other crimes which may relate

# Emergency Regulations

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*adversely to the operation of the contracting organization shall be among those actions that are considered in determining an individual's fitness and suitability to serve as executive director or administrator or as a staff member.*

§ 3.6. *Except for crimes specified in Chapter 10, 63.1-198.1, evidence of conviction of a crime by an individual serving as executive director or administrator, board member, corporate officer, or partner or as a staff member shall not automatically result in the cancellation of the contract. Such determination shall be made on a case by case basis by the Commissioner.*

§ 3.7. *The contracting organization shall maintain on file for the executive director or administrator and for each staff member information described in 3.2.*

## Article 2. Types and Responsibilities of Staff.

§ 3.8. *Each contracting organization shall have an executive director or administrator who is responsible for the overall management and administration of the contracting organization's family day care registration program.*

§ 3.9. *The contracting organization shall have sufficient staff to carry out the family day care registration program.*

§ 3.10. *The executive director or administrator may also serve as a staff member.*

§ 3.11. *The executive director or administrator shall ensure:*

- 1. That the contracting organization operates in compliance with all applicable Requirements for Contracting Organizations;*
- 2. That each provider operates in compliance with all applicable requirements for providers;*
- 3. The supervision of all staff members assigned to the contracting organization's family day care registration program;*
- 4. The development and implementation of policies and procedures for the day-to-day operation of the contracting organization's family day care registration program;*
- 5. The orientation of staff members to the policies and procedures of the contracting organizations;*
- 6. The development and maintenance of administrative, fiscal and program records;*
- 7. The development and implementation of a program of outreach and public relations and technical*

*assistance, as specified in Part IV, Article 9.*

## Article 3. Staff Qualifications.

§ 3.12. *The executive director or administrator shall possess the following:*

- 1. A bachelor's degree; or*
- 2. A minimum of a high school diploma or General Education Development (GED) diploma, and five years of managerial or supervisory experience in the field of human services, child care services, child development, education, nursing, social work, or business.*

§ 3.13. *Staff members responsible for provider evaluation, monitoring, support, technical assistance and training shall possess the following:*

- 1. An associate's degree in human services, child care services, child development, education, nursing or social work and one year experience working with children; or*
- 2. A high school diploma or General Education Development (GED) diploma and three years of experience in the field of human services, child care services, child development, education, nursing, or social work.*

## Article 4. Staff Training.

§ 3.14. *The executive director or administrator shall:*

- 1. Provide staff members with access to a copy of the Requirements for Voluntary Registration of Small Family Day Care Homes; and*
- 2. Ensure that staff, as appropriate, are trained in:*
  - a. Recognizing and reporting child abuse or neglect;*
  - b. Evaluating provider applicants, as specified in Part IV, Article 1;*
  - c. Conducting and securing training sessions for providers when requested;*
  - d. Monitoring providers, as specified in Part IV, Article 6;*
  - e. Providing technical assistance to providers, as specified in Part IV, Article 7;*
  - f. Procedures for identification and referral of special needs children;*
  - g. Implementing outreach and public relations for*

family day care;

*PART IV.*  
*SERVICE REQUIREMENTS FOR CONTRACTING ORGANIZATIONS.*

*Article 1.*  
*Evaluation of Family Day Care Provider Applicants.*

§ 4.1. *The contracting organization shall provide to each applicant for Certificate of Registration the following information:*

- 1. A copy of the requirements for providers;*
- 2. The health and safety checklist including Statements of Assurance;*
- 3. A request form for a Criminal Records Check and a Child Protective Services (CPS) Central Registry Clearance;*
- 4. An application for the USDA food program, if the registrant is not a participant and expresses interest, and a list of sponsoring organizations;*
- 5. Other forms and information as needed.*

§ 4.2. *The contracting organization shall evaluate each applicant prior to certifying eligibility for the issuance of a Certificate of Registration.*

§ 4.3. *The contracting organization's evaluation of each applicant shall include a review of the information listed pertinent to the application for registration.*

§ 4.4. *The contracting organization shall visit each applicant's home prior to recommending the issuance of the Certificate of Registration and at renewal to evaluate the applicant's compliance with the requirements for providers. A renewal application packet will be sent to the provider no later than 90 days prior to the expiration of the current Certificate of Registration.*

§ 4.5. *If needed, the provider and contracting organization shall complete a corrective action plan during the initial home visit. This will briefly describe the standard not met, the action to be taken to meet it, the date by which it will be completed, and the signature of the provider.*

*Article 2.*  
*Training of Family Day Care Providers.*

§ 4.6. *The contracting organization shall provide to each provider:*

- 1. Prior to recommending the issuance of a Certificate of Registration, a copy of appropriate informational materials supplied by the department; and*
- 2. From time to time, any other available materials*

*that may assist the provider in operating a small family day care home.*

§ 4.7. *The contracting organization shall ensure training or educational materials are available and easily accessible to providers prior to recommending the issuance of a Certificate of Registration and after being awarded the Certificate by the Commissioner.*

§ 4.8. *Training or educational materials shall include information regarding, but not limited to, the following subjects:*

- 1. Child development;*
- 2. Discipline;*
- 3. Safety, first aid and emergency evacuation procedures;*
- 4. Health and sanitation;*
- 5. Nutrition;*
- 6. Program activities;*
- 7. Child abuse detection and prevention;*
- 8. Parent-provider communication;*
- 9. Injury prevention; and*
- 10. Special needs training.*

§ 4.9. *Where training is provided, sessions for provider applicants shall include group or individual instruction by persons with expertise in the areas of instruction, and may be supplemented by:*

- 1. Printed materials;*
- 2. Television broadcasts; or*
- 3. Audio visual materials.*

§ 4.10. *The contracting organization shall maintain on file documentation of training it provides, including for each training session the names of the participants, the goals, a description of the information presented, and the date the training occurred.*

*Article 3.*  
*Issuance of Certificate of Registration.*

§ 4.11. *If the contracting organization determines that the provider applicant is in compliance with all applicable requirements for providers, the contracting organization shall certify the home as eligible for registration and submit on forms prescribed by the Commissioner. Upon receipt, the Commissioner shall evaluate the recommendation for certification and may register the*



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small family day care home.

## Article 4. Collection of Registration Fees.

§ 4.12. The contracting organization shall process all applications for a Certificate of Registration without regard to the applicant's race, national origin, religion, sex, or age (provider must be at least 18 to register).

§ 4.13. The Certificate of Registration shall be issued to a specific provider at a specific location and shall not be transferable.

§ 4.14. The contracting organization shall collect a biennial registration fee not to exceed \$50.00 from the provider upon the receipt of the application and upon the renewal of the Certificate of Registration.

§ 4.15. The contracting organization may assess a fee not to exceed \$10 for an additional home visit if corrective action is needed after the initial home visit.

§ 4.16. The contracting organization shall retain the funds generated by registration fees and shall maintain a record of the registration fees collected from the providers, in accordance with department's contract requirements.

§ 4.17. The contracting organization shall ensure and document that the registration fees collected are directed to the maintenance or improvement of the contracting organization's voluntary registration program.

## Article 5. Complaints and Violations.

§ 4.18. Complaints and alleged violations by a provider shall be directed to a toll-free hotline in the department where they shall be referred to the appropriate agency. This may include referrals to Child Protective Services, health and safety officials, or the appropriate sponsoring organization or USDA office, or the department's regional licensing office if the complaint alleges that the home is subject to licensure.

§ 4.19. Complaints shall also be received by or referred to the contracting organization with procedures developed under the direction of the department.

§ 4.20. If, during the course of investigating a complaint, the Commissioner determines that it is necessary to revoke a Certificate of Registration, the contracting organization and the Commissioner shall take action in accordance with Article 10 of this section.

## Article 6. Monitoring of Family Day Care Providers.

§ 4.21. The contracting organization shall monitor, unannounced, no less than ten percent of the providers registered on a random basis every two years to evaluate

the providers' compliance with the requirements for providers.

§ 4.22. The contracting organization shall evaluate each provider prior to recommending certification or renewal of the provider's Certificate of Registration to the Commissioner.

§ 4.23. The contracting organization shall maintain on file a written report of each monitoring visit to the provider's home.

## Article 7. Technical Assistance.

§ 4.24. The contracting organization shall provide technical assistance to registered providers and parents of enrolled children upon request. This assistance shall include responding to providers' and parents' questions and concerns regarding family day care and referrals to appropriate agencies.

§ 4.25. The contracting organization shall maintain a listing of support services available in the community and shall refer providers and parents of enrolled children upon request.

§ 4.26. The contracting organization shall make the following information available to providers:

1. A list of reportable communicable diseases;
2. A list of physical symptoms or conditions that indicate a child may have a communicable disease;
3. Guidelines for administration of medication;
4. Guidelines for the care of sick children;
5. Guidelines for positive discipline;
6. A list of services to which a provider is entitled, including:
  - a. Participating in training sessions offered by the contracting organization; and
  - b. Receiving technical assistance from the contracting organization;
7. Resources for children with a potential or actual handicapping condition. This may include providing a toll free number for early intervention (1-800-234-1448) or
  - a. Informing the parent of the child's rights to a special education program and related services;
  - b. Referring the parent to the Virginia Department of Education for a possible comprehensive evaluation and individual service plan development

# Emergency Regulations

for the child; and

c. Referring the parent to the health clinic in the local health department for a possible comprehensive medical evaluation for the child;

8. Information on how to identify children who are victims of abuse and neglect and whom to contact if it is suspected.

## Article 8. Information to Parents.

§ 4.27. The contracting organization shall supply to providers sufficient copies of a written Information to Parents Statement for the parents of all enrolled children. The Information to Parents Statement shall indicate that:

1. The provider has received a Certificate of Registration;
2. The provider is required to comply with the requirements of providers;
3. The scope and limitations of voluntary registration;
4. Parents may receive a copy of the requirements for providers by contacting the contracting organizations;
5. Parents may report alleged violations of the requirements for providers to the department (or to the local contracting organizations);
6. Any person who has reasonable cause to believe that a child enrolled in the family day care home has been or is being subjected to any kind of abuse or neglect by any person, whether in the family day care home or not, is required by State law to report such allegations to child protective services, to the local social services department, or to the statewide toll free hotline. The department shall supply local and statewide contact information for child protective services. Such reports may be made anonymously;
7. Parents of enrolled children shall be permitted to visit the family day care home at any time when enrolled children are present without having to secure the prior approval of the provider. Parents may be restricted to visit only those areas of the home designated for family day care;
8. The operation of the family day care home is subjected to random sample monitoring by the contracting organization at least once every two years and by the department; and
9. Parents may request that the contracting organization provide technical assistance to the parent or the provider, and referrals to appropriate community resources.

## Article 9. Outreach and Public Relations.

§ 4.28. The contracting organization will, in partnership with the department, disseminate registration information provided by the state to agencies, organizations and the general public.

## Article 10. Denials, Revocations, Refusals To Renew, Provider Appeal Procedures.

§ 4.29. A provider's Certificate of Registration may be denied, revoked, or refused for renewal for good cause by the Commissioner.

§ 4.30. When the contracting organization recommends to the Commissioner that a Certificate of Registration be denied, revoked or not renewed, the contracting organization shall give written notice to the provider within five calendar days, specifying the reason for such action, either by hand-delivery or by certified mail with return receipt requested. The notice shall afford the provider an opportunity for a review before the contracting organization's appeals committee.

§ 4.31. The contracting organization's appeals committee shall review each appeal presented to it within 15 days of issuing the notice and shall afford the provider an opportunity to be heard. The appeals committee shall issue a written report of its findings to the provider and Commissioner within five working days after completing its review.

§ 4.32. If the provider's Certificate of Registration is denied, revoked or not renewed by the Commissioner, the contracting organization shall request that the provider notifies the parent of each child enrolled in the family day care home within 10 days of the action.

§ 4.33. The contracting organization shall inform the provider that the findings may be appealed to the Commissioner and an administrative hearing may be requested in writing within 15 days of the decision by the appeals committee.

§ 4.34. The Commissioner shall notify the provider that the decision by the Commissioner may be appealed in accordance with the Administrative Process Act, § 9-6.14:1 of the Code of Virginia.

/s/ Larry D. Jackson  
Commissioner  
Date: June 23, 1992

/s/ L. Douglas Wilder  
Governor  
Date: July 17, 1992

/s/ Ann M. Brown  
Deputy Registrar of Regulations  
Date: July 21, 1992

# STATE CORPORATION COMMISSION

## ORDERS

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 20, 1992

COMMONWEALTH OF VIRGINIA

At the relation of the

CASE NO. INS920241

STATE CORPORATION COMMISSION

Ex Parte, In re: Determination of competition as an effective regulator of rates pursuant to Virginia Code § 38.2-1905.1.E.

### ORDER SCHEDULING HEARING

WHEREAS, pursuant to Virginia Code §§ 38.2-1905.1 and 38.2-1905.2, the Commission, in August, 1991, submitted its report to the General Assembly and therein (i) established May 1, 1992 as the filing deadline for the 1992 supplemental reports and (ii) designated certain lines and subclassifications of insurance for which the Commission has reasonable cause to believe that competition may not be an effective regulator of the rates charged. The designated lines and subclassifications of insurance are set forth in Schedule A hereto, which is attached hereto and hereby made a part of this order;

WHEREAS, pursuant to an order entered in Case No. INS920003 on January 13, 1992, the Commission adopted an amended reporting form for the 1992 supplemental reports to be filed with the Commission's Bureau of Insurance by licensed insurers not later than the date established by the Commission in its aforesaid report to the General Assembly; and

WHEREAS, Virginia Code § 38.2-1905.1.E. provides, inter alia, that the lines and subclassifications designated by the Commission in its report to the General Assembly shall be reviewed by the Commission for the purpose of determining whether competition is an effective regulator of rates for each line or subclassification so designated and that the Commission shall hold a hearing or hearings for such purpose not later than September 30th of the year immediately following the year the report or reports are submitted to the General Assembly pursuant to Virginia Code § 38.2-1905.1.E.,

IT IS ORDERED, that a hearing shall be conducted by the Commission at 10:00 a.m. on September 15, 1992 in its Courtroom, Jefferson Building, 13th Floor, Bank and Governor Streets, Richmond, Virginia, at which time and place all interested parties may appear and be heard in this matter.

IT IS FURTHER ORDERED that the Commission's staff and all other persons who expect to participate in this matter by presenting witnesses at the hearing scheduled

herein, shall cause to be filed with the Clerk of the Commission, for the use of the Commission, no later than September 3, 1992, fifteen (15) copies of the testimony and exhibits of each of their witnesses. Copies of such testimony and exhibits shall be available to interested parties through the Clerk of the Commission, Document Control Center upon payment of the appropriate copying charges.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Honorable Mary Sue Terry, Attorney General of Virginia, in care of Gail D. Jaspen, Senior Assistant Attorney General, Office of the Attorney General, 101 North Eighth Street, Richmond, Virginia 23219; Peter B. Smith, Senior Counsel, Office of General Counsel, State Corporation Commission; and the Bureau of Insurance in care of Mary M. Bannister, Deputy Commissioner, who shall forthwith cause a copy of this order and the attachment hereto to be sent to all insurers licensed to transact the lines and subclassifications of insurance set forth in said Attachment A and all rate service organizations licensed pursuant to Chapter 19 of Title 38.2 of the Code of Virginia.

#### Schedule A

#### LINES AND SUBCLASSIFICATIONS OF INSURANCE DESIGNATED IN THE STATE CORPORATION COMMISSION 1991 REPORT TO THE VIRGINIA GENERAL ASSEMBLY PURSUANT TO VIRGINIA CODE § 38.2-1905.1.B.

Architects and Engineers Professional Liability

Commercial Contractors Liability  
(including Asbestos Abatement)

Detective Agencies and Security Guards Liability

Directors and Officers Liability

Environmental impairment Liability  
(including Underground Tanks)

Insurance Agents Professional Liability

Landfill Liability

Lawyers Professional Liability

Medical Professional Liability

Municipal Liability, including:  
Law Enforcement Agencies  
Public Housing  
Public Officials Errors & Omissions  
School Board Errors & Omissions  
Sewage Treatment Plants

Products and Completed Operations Liability

Real Estate Agents Professional Liability

Volunteer Fire Departments and Rescue Squads  
Liability

Water Treatment Plants Liability

## PROPOSED

### DIVISION OF SECURITIES AND RETAIL FRANCHISING

**Title of Regulation:** Securities Act Rules - Rule 505, Rule 506, Rule 800, Rule 1106, Rule 1301, Rule 1400, Rule 1401.

**Statutory Authority:** § 12.1-13 of the Code of Virginia.

#### Summary:

The VIRGINIA STATE CORPORATION COMMISSION will consider adopting proposed changes to its SECURITIES ACT RULES. The proposed changes are summarized as follows:

**Rule 505 (Foreign Issuer Exemption):** Simplify this Rule by deleting the specific criteria of the exemption, thus making the exemption available solely on the basis of an equity security being on the Federal Reserve Board's "List of Foreign Margin Stocks" or a debt security meeting the marginability requirements of the Board's Reg T.

**Rule 506 (CBOE Exemption):** New rule (modeled on Virginia Securities Act Rule 504-NASDAQ/NMS Exemption) to create a securities registration exemption for securities listed on the Chicago Board Options Exchange.

**Rule 800 (Forms):** Add new Form S.A.3 to the list of forms.

**Rule 1106 (Examination/Qualification):** Add language, including reference to new Form S.A.3, providing for waiver of the Uniform Investment Adviser Law Examination under certain circumstances.

**Rule 1301 (Performance Based Fees):** Reformat paragraph B.2 to clarify its provisions.

**Rule 1400 (Clarification of Investment Advisor Representative):** Rewrite this Rule to clarify its provisions and bring them into conformity with current provisions of the Securities Act.

**Rule 1401 (Investment Advisor Representative Registration):** New rule to address registration of investment advisor representatives who provide information about "wrap fee" or similar investment advisory programs.

#### Rule 505 Foreign Issuer

In accordance with Section 13.1-514 A.13. of the Act, any equity or debt security issued by an issuer organized under the laws of any foreign country is exempted from the securities registration requirements of the Act provided the following criteria are met:

A. With respect to an equity security : , *the security is included on the List of Foreign Margin Stocks periodically published by the Board of Governors of the Federal Reserve System ("the Board").*

1. The security is listed for trading on or through the facilities of a foreign securities exchange or a recognized foreign securities market and has been trading on such exchange or market for at least six months;

2. Daily quotations for both bid and asked or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to U. S. broker-dealers in the United States pursuant to an electronic quotation system;

3. The aggregate market value of shares, the ownership of which is unrestricted, is not less than \$1 billion;

4. The average weekly trading volume of such security during the preceding six months is either at least 200,000 shares or \$1 million;

5. The issuer or a predecessor in interest has been in existence for at least five years;

6. The security must be included on the List of Foreign Margin Stocks periodically published by the Board Governors of the Federal Reserve System ("Board"); and

B. With respect to a debt security : , *the security meets the marginability requirements of Regulation T adopted by the Board.*

1. It is part of an original issue having a principal amount of at least \$100 million outstanding;

2. The issuer is not in default on the principal or interest payments of the issue;

3. The issue is rated in one of the two highest rating categories by a nationally recognized statistical rating service; and

4. The issuer or any predecessor in interest has been in existence for at least five years; and

5. The security must meet the marginability requirements of Regulation T under the authority of the Board.

# State Corporation Commission

## Rule 506 Chicago Board Options Exchange Exemption

In accordance with Section 13.1-514 A.12. of the Act, any security listed on the Chicago Board Options Exchange, Inc. ("CBOE") is exempt from the securities registration requirements of the Act if (i) the issuer of the security meets any of the criteria set forth in section A, below and (ii) the exchange has at least the criteria set forth in sections B through F, below:

A. 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; or,

in the case of an insurance company meeting the conditions of Section 12(g)(2)(G) of the Securities Exchange Act of 1934, such company has been subject to the reporting requirements imposed by the applicable insurance regulatory authority in its domiciliary State for the preceding 180 days and is current in its filings; or,

in the case of a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940, such company has been subject to the applicable reporting requirements of Section 30 of the Investment Company Act of 1940 for the preceding 180 days and is current in its filings.

B. CBOE shall require that the issuer have 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 Securities Exchange Act of 1934; or the issuer is an insurance company meeting the conditions of Section 12(g)(2)(G) of the Securities Exchange Act of 1934 or is a closed-end investment management company registered under Section 8 of the Investment Company Act of 1940 with securities registered under the Securities Act of 1933.

C. CBOE shall require at least the following standards to be met for listing of common stock and other securities convertible into or carrying a right to purchase or subscribe to common stock of the issuer (hereafter referred to as "equity issues") on CBOE:

	Alt. No. 1	Alt. No. 2
Net Tangible Assets <sup>1</sup>	\$4,000,000	\$12,000,000
Public Float	500,000	1,000,000
Pre-Tax Income	750,000	
Net Income	400,000	
Shareholders <sup>2</sup>	800/400	800/400
Market Value of Float	3,000,000	15,000,000
Minimum Bid	\$5/Share	
Operating History		3 Years

<sup>1</sup> "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.

<sup>2</sup> The minimum number of shareholders under each alternative is 800 for issuers with at least 500,000 but less than 1,000,000 shares publicly held or a minimum of 400 if the issuer has either (i) at least 1,000,000 shares publicly held or (ii) at least 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares per day for the six months preceding the listing.

D. CBOE shall require at least the following minimum corporate governance standards for its domestic issuers of equity issues:

### 1. Distribution of Annual and Interim Reports.

a. 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 CBOE at the time it is distributed to shareholders.

b. Each issuer which is subject to SEC Rule 13a-15 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 CBOE. 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.

c. 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 make available to shareholders reports which reflect the information contained in those interim reports. Such reports shall be 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 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 CBOE.

### 2. Independent Directors. Each issuer shall maintain a

minimum of two independent directors on its board of directors. For purposes of this section D, "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.

3. *Audit Committee.* Each issuer shall establish and maintain an audit committee, a majority of the members of which shall be independent directors.

4. *Shareholder Meetings.* Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to CBOE.

5. *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 percent of the outstanding shares of the issuer's common voting stock.

6. *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 CBOE.

7. *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.

8. *Shareholder Approval Policy.* Each issuer shall require shareholder approval of the issuance of securities in connection with the following:

a. Options plans or other special remuneration plans for directors, officers, or key employees.

b. Actions resulting in a change in control of the issuer.

c. 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.

## E. Voting Rights.

1. The rules of CBOE shall provide as follows: No rule, stated policy, practice, or interpretation of CBOE shall permit the listing, or the continuance of the listing, of any common stock or other equity security of a domestic issuer, if, on or after [ the effective date of this Rule is to be inserted here ], 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.

2. For the purpose of paragraph 1. of this Section E, 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:

a. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the number of shares held by such beneficial owner or record holder.

b. Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the length of time such shares have been held by such beneficial owner or record holder.

c. 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.

d. 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.

3. For the purpose of paragraph 1. of this Section E, 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:

a. The issuance of securities pursuant to an initial registered public offering.

b. The issuance of any class of securities, through a registered public offering, with voting rights not

# State Corporation Commission

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greater than the per share voting rights of any outstanding class of the common stock of the issuer.

c. 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.

d. Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial owner or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

4. *Definitions.* The following terms shall have the following meanings for purposes of this Section E, and the rules of CBOE shall include such definitions for the purposes of the prohibition in paragraph 1. of this Section:

a. 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).

b. The term "equity security" shall include any equity security defined as such pursuant to Rule 3a11-1 under the Securities Exchange Act of 1934.

c. 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.

d. 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.

F. *Maintenance Criteria.* After listing on CBOE, equity issues must meet the following criteria to continue to be listed on CBOE:

1. The issuer of the security has net tangible assets of at least:

a. \$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

b. \$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;

2. There are at least 200,000 publicly held shares;

3. There are at least 400 shareholders or at least 300 shareholders of round lots;

4. The aggregate market value of publicly held shares is at least \$1,000,000.

G. The Commission may rescind this order pursuant to its authority under Section 13.1-523 of the Act, thereby revoking this rule, if the Commission determines that the listing requirements of CBOE have been so changed or insufficiently applied so that the protection of investors is no longer afforded.

H. 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.

I. CBOE shall promptly notify the Commission of the delisting of an issue of securities by CBOE.

## ARTICLE VIII

### Forms

#### Rule 800 Forms

The Commission adopts for use under the Act the forms contained in the Appendix and listed below for use under the requirements of the Act .

#### A. Broker-Dealer and Agent Forms

1. Form BD - Uniform Application for Registration of a Broker-Dealer
2. Supplemental Information for Commonwealth of Virginia to Be Furnished with Revised Form BD
3. Agreement for Inspection of Records
4. Broker-Dealer's Surety Bond
5. Form S.A.2. - Non-NASD Broker-Dealer Renewal Application
6. Form S.D.4. - Non-NASD Broker-Dealer or Issuer Agent Renewal Application
7. Form S.D.4.A. - Non-NASD Broker-Dealer or Issuer Agents to be Renewed Exhibit

8. Form S.D.4.B. - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with no disciplinary history

9. Form S.D.4.C. - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with disciplinary history

10. Form BDW - Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer

11. Form U-4 - Uniform Application for Securities Industry Registration

12. Form U-5 - Uniform Termination Notice for Securities Industry

## B. Investment Advisor and Investment Advisor Representative Forms

1. Form ADV - Uniform Application for Registration of Investment Advisors

2. Agreement for Inspection of Records

3. Surety Bond Form

4. Form U-4 - Application for Investment Advisor Representative Registration. See A.11 above.

5. Form U-5 - Application for Withdrawal of an Investment Advisor Representative. See A.12 above.

6. Form S.A.3. - Affidavit for Waiver of Series 65 Examination

## C. Securities Registration Forms

1. Form U-1 - Uniform Application to Register Securities

2. Form U-2 - Uniform Consent to Service of Process

3. Form U-2a - Uniform Form of Corporate Resolution

4. Form S.A.4. - Registration by Notification - Original Issue

5. Form S.A.5. - Registration by Notification - Non-Issuer Distribution

6. Form S.A.6. - Registration by Notification - Pursuant to Rule 403 Non-Issuer Distribution "Secondary Trading"

7. Form S.A.8. - Registration by Qualification

8. Form S.A.10 - Request for Refund Affidavit (Unit Investment Trust)

9. Form S.A.12 - Escrow Agreement

10. Form S.A.13 - Impounding Agreement



# State Corporation Commission

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S.A.3 ( /92)

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
DIVISION OF SECURITIES AND RETAIL FRANCHISING

AFFIDAVIT FOR WAIVER OF SERIES 65 EXAMINATION  
Pursuant to Rule 1106

State of \_\_\_\_\_

County/City of \_\_\_\_\_, to wit:

The undersigned, having been duly sworn, deposes and says:

1. My name is \_\_\_\_\_.
2. My CRD number is \_\_\_\_\_.
3. The name of the investment advisor with which I am, or will be, connected is \_\_\_\_\_.
4. The CRD number of this investment advisor is \_\_\_\_\_.
5. I am, and have been for at least the five years immediately preceding the date on which my application for registration was filed, actively engaged in the investment advisory business.
6. I have been for at least the two years immediately preceding the date on which my application for registration was filed the president, chief executive officer or chairman of the board of directors of an investment advisor actively engaged in the investment advisory business.
7. The investment advisor(s) referred to in paragraph 6, above, have, or had during my tenure as president, chief executive officer or chairman of the board of directors, at least forty million dollars under management.
8. I have read and am familiar with the investment advisor and investment advisor representative provisions of the Virginia Securities Act and the provisions of Articles X - XIV of this Commission's Securities Act Rules.
9. None of the questions in Item 22 (disciplinary history) on my Form U-4 have been, or need be, answered in the affirmative.

\_\_\_\_\_  
Signature of the Affiant

Subscribed and sworn to before me, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(SEAL)  
Signature of the Notary Public

My commission expires: \_\_\_\_\_

#### INSTRUCTIONS

This form must be filed with the Division of Securities and Retail Franchising. Form U-4 (or any amendment) and any required fee must be filed with the NASAA/NASD Central Registration Depository system.

# State Corporation Commission

## Rule 1106 Examination/Qualification

A. 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 percent.

B. In lieu of meeting the examination requirement described in paragraph A. of this Rule, an applicant may file with the Commission at its Division of Securities and Retail Franchising an executed Affidavit for Waiver of Series 65 Examination (Form S.A.3).

## Rule 1301 Performance Based Fees

A. In accordance with Section 13.1-503 C of the Act, an investment advisor may enter into, extend, or renew any investment advisory contract to provide for compensation to the investment advisor on the basis of a share of the capital gains upon, or the capital appreciation of, the funds or any portion of the funds of a client, provided that the following conditions of this Rule are satisfied.

### B. Nature of the client.

1. a. The client entering into the contract subject to this Rule must be a natural person or a company, as defined in paragraphs B.2. and F.1. of this Rule, who immediately after entering into the contract has at least \$500,000 under the management of the investment advisor; or

b. A person who the registered investment advisor (and any person acting on his behalf) entering into the contract reasonably believes, immediately prior to entering into the contract, is a natural person or a company, as defined in paragraphs B.2. and F.1. of this Rule, whose net worth at the time the contract is entered into exceeds \$1,000,000. (The net worth of a natural person may include assets held jointly with such person's spouse.)

2. The term "company" as used in paragraph B.1. of this Rule does not include

a. A private investment company, as defined in paragraph F.2. of this Rule;

b. An investment company registered under the Investment Company Act of 1940; or

c. A business development company, as defined in section 202 (a) (22) of the Investment Advisers Act of 1940, ~~(unless each of the equity owners (other than the investment advisor entering into a contract under the Rule) of any such company is a natural person or company described in this paragraph B.);~~

*unless each of the equity owners (other than the investment advisor entering into a contract under the*

*Rule) of any such company identified in this paragraph 2, is a natural person or company described in this paragraph B.*

C. Compensation formula. The compensation paid to the advisor under this Rule with respect to the performance of any securities over a given period shall be based on a formula which:

1. Includes, in the case of securities for which market quotations are readily available, the realized capital losses and unrealized capital depreciation of the securities over the period;

2. Includes, in the case of securities for which market quotations are not readily available,

a. The realized capital losses of the securities over the period and

b. If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

3. Provides that any compensation paid to the advisor under this Rule is based on the gains less the losses (computed in accordance with paragraphs C.1. and 2. of this Rule) in the client's account for a period of not less than one year.

D. Disclosure. In addition to the disclosure requirements of Form ADV, the advisor shall disclose to the client, or the client's independent agent, prior to entering into an advisory contract permitted by this Rule, all material information concerning the proposed advisory arrangement including the following:

1. That the fee arrangement may create an incentive for the advisor to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

2. Where relevant, that the advisor may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

3. The time period which will be used to measure investment performance throughout the term of the contract and its significance in the computation of the fee;

4. The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the advisor believes the index is appropriate; and

5. Where an advisor's compensation is based on the unrealized appreciation of securities for which market quotations are not readily available, how such

# State Corporation Commission

securities will be valued and the extent to which the valuation will be independently determined.

**E. Arms-Length Contract.** The investment advisor (and any person acting on its behalf) who enters into the contract must reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties and that the client (or in the case of a client which is a company as defined in paragraph F.1. of this Rule, the person, representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in paragraph F.4. of this Rule.

**F. Definitions.** For the purpose of this Rule:

1. The term "company" has the same meaning as in section 202 (a) (5) of the Investment Advisers Act of 1940.

2. The term "private investment company" means a company which would be defined as an investment company under section 3 (a) of the Investment Company Act of 1940 but for the exception provided from that definition by section 3 (c) (1) of such Act.

3. The term "affiliate" has the same meaning as in section 2 (a) (3) of the Investment Company Act of 1940.

4. The term "client's independent agent" means any person agreeing to act as the client's agent in connection with the contract other than:

a. The investment advisor acting in reliance upon this Rule, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor, or an interested person of the investment advisor as defined in paragraph F.5. of this Rule;

b. A person who receives, directly or indirectly, any compensation in connection with the contract from the investment advisor, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor or an interested person of the investment advisor as defined in paragraph F.5. of this Rule; or

c. A person with any material relationship between himself (or an affiliated person of such person) and the investment advisor (or an affiliated person of the investment advisor) that exists, or has existed at any time during the previous two years.

5. The term "interested person" as used in paragraph F.4. of this Rule means:

a. Any member of the immediate family of any natural person who is an affiliated person of the investment advisor;

b. Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment advisor or by a controlling person of the investment advisor if the beneficial or legal interest of the person in any security issued by the investment advisor or by a controlling person of the investment advisor

i. exceeds one tenth of one percent of any class of outstanding securities of the investment advisor or a controlling person of the investment advisor; or

ii. exceeds 5% of the total assets of the person (seeking to act as the client's independent agent); or

c. Any person or partner or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment advisor.

6. a. The term "securities for which market quotations are readily available" in paragraph C. of this Rule has the same meaning as in Rule 2a-4 (a) (1) under the Investment Company Act of 1940 (17 CFR 270.2a-4 (a) (1)).

b. The term "securities for which market quotations are not readily available" in paragraph C. of this Rule means securities not described in paragraph F.6.a. of this Rule.

## ARTICLE XIV

### MISCELLANEOUS

#### Rule 1400 Clarification of Investment Advisor Representative

Pursuant to Section ~~13.1-523~~ of the Act for purposes of clause (iv) of the definition of "investment advisor representative" in Section 13.1-501 ~~(a)(iv)~~ of the Act, a ~~person~~ *an individual* is ~~defined~~ *deemed* to have prepared reports or analyses concerning securities if ~~she or he~~ *that individual* is identified to a client as having prepared such reports or analyses.

#### Rule 1401 Investment Advisor Representative Registration on Behalf of Other Investment Advisors

##### *A. Purpose of Rule; Definitions.*

1. *The purpose of this Rule is to permit an individual*

# State Corporation Commission

who is registered under the Act as an investment advisor representative to assist clients in the selection of other investment advisors without being subject to investment advisor representative registration requirements with respect to the other investment advisors.

2. As used in this Rule, the term "other investment advisor" means an investment advisor other than the one on whose behalf the individual is registered as an investment advisor representative.

## B. Registration Required.

An individual is subject to investment advisor representative registration requirements of the Act with respect to any other investment advisor unless the following conditions exist when the individual initially engages, with respect to such advisor, in activity which would require registration as an investment advisor representative under the Act.

1. The individual is registered under the Act as an investment advisor representative of an investment advisor so registered under the Act.

2. The other investment advisor is registered under the Act as an investment advisor.

## C. Other Provisions Apply.

Except as expressly provided in this Rule, nothing contained in this Rule is intended, or should be construed, to relieve any person utilizing this Rule from complying with the applicable provisions of the Act or of any other of these Rules.

## FINAL

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 21, 1992

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI920237

Ex Parte, in re: Adoption of  
a revised regulation governing  
nonprofit debt counseling agencies,  
pursuant to Va. Code § 6.1-363.1

## ORDER ADOPTING THE REGULATION

By order dated June 4, 1992, the Commission directed that notice of the proposed regulation and of a July 21, 1992, hearing be given by publication in the Richmond Times-Dispatch and in the Virginia Register of Regulations. A copy of the order setting the hearing, with the proposed regulation attached, was sent to each licensed debt

counseling agency and to certain other interested parties. Comments on the proposed regulation were invited.

No comment was submitted. The Bureau Staff and counsel appeared at the hearing.

Upon consideration of the proposed regulation and of the evidence and testimony of the Staff and counsel, the Commission finds that notice of the hearing was duly given. And the Commission is of the opinion and finds that the subject regulation should be adopted with the following two changes from the proposal:

- The hyphen in the work "nonprofit" should be deleted throughout;
- The final sentence in Section III, D. of the Regulation should be amended to provide for inspection of each agency at least twice (not once) every three years;

Accordingly, IT IS ORDERED:

(1) That the regulation, "Non-Profit Debt Counseling Agencies", VR 225-01-1001, be adopted with the foregoing amendments, and it hereby is adopted, effective this date;

(2) That notice of the adoption of this regulation shall be published in the Virginia Register;

(3) That the Bureau shall send a copy of the final Regulation to each nonprofit debt counseling agency licensed in Virginia; and

(4) That, there being nothing further to be done in this matter, this case be dismissed. The record herein shall be filed with the ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commissioner of Financial Institutions.

VIRGINIA REGULATION 225-01-1001

NONPROFIT DEBT COUNSELING AGENCIES

I. ACTIVITY REQUIRING A LICENSE; POWERS AND LIMITATIONS OF LICENSED AGENCIES

Debt counseling agencies engage, generally, in educating the public regarding the use of credit and in giving advice to individuals and families about the management of personal finances; these activities alone do not require a license. However, Virginia Code § 54.1-3905 provides:

The furnishing of advice or services for compensation to a debtor in connection with a debt-pooling plan pursuant to which the debtor deposits funds for the purpose of distributing them among his creditors, except as authorized for nonprofit agencies pursuant to § 6.1-363.1, shall be

# State Corporation Commission

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deemed to be practicing law. Any person or agency not so authorized or who is not a member of the Virginia State Bar who furnishes or offers to furnish such advice or services for compensation shall be guilty of a Class 1 misdemeanor.

A nonprofit debt counseling agency that has been issued a license pursuant to Va. Code § 6.1-363.1 and this regulation is thus permitted to devise, negotiate, and administer debt-pooling plans without being deemed to engage in the unauthorized practice of law. Beyond what § 54.1-3905 expressly allows, a licensed debt counseling agency may not perform legal services or give legal advice. An agency may not charge a fee to a debtor or receive any compensation from a debtor whom it renders services. See Va. Code § 6.1-363.1.

## II. LICENSING

### A. Qualifications for a license; procedure

An application for a license to operate a debt counseling agency shall be submitted on a form prescribed by the Bureau of Financial Institutions. The form is to be completed in accordance with instructions and filed with the applicable fee.

Upon receiving a completed application, the Bureau will conduct an investigation. A license will be issued if, from the application and the report of investigation, the Commissioner of Financial Institutions finds:

- (1) that the applicant is (or will be) a nonprofit organization,
- (2) that the applicant will be under the direction of individuals who are qualified by experience, reputation, ability and general fitness to direct the affairs of a debt counseling agency,
- (3) that the day-to-day operation of the applicant will be managed by one or more individuals who are qualified by experience, business ability, financial responsibility, and character to perform such duties,
- (4) that the applicant has arranged for adequate financial support and for sufficient bond coverage, and
- (5) that the applicant has made acceptable provision for the avoidance of conflicts of interest.

A license will not be issued to a collection agency, or to any creditor or association of creditors, or to any credit-granting organization or association of such organizations. No more than one-third of the members of an agency's board of directors may be associated with creditors or credit-granting organizations as officers, directors, or employees. For purposes of this regulation the term "creditor or credit-granting organization" does not

include doctors, lawyers, or other professionals who receive payment for their services in installments, nor does the term include persons whose only participation in a credit transaction is to honor a credit card.

If a license is not issued, the fee will be refunded.

### B. Additional licenses; relocation of an office.

Licenses for additional offices may be obtained upon application to, and approval by, the Commissioner. An application for an additional office shall be submitted on a prescribed form and filed with the applicable license fee.

Upon receiving a completed application, the Bureau will make an investigation. If it appears that the record of the licensee warrants belief that it will operate the additional office fairly, honestly, and in accordance with law, and that the licensee is capable of managing the expanded operation, an additional license will be issued.

The relocation of an office of an agency will be treated as an application for an additional office.

### C. Annual renewal.

A licensee shall request renewal in writing by March 25 of each year for each of its licenses; however, the requirement that a license be renewed annually shall not begin until the license has been issued for at least one year. Such a request must be accompanied by (a) a financial statement of the licensee as of December 31 of the preceding calendar year, (b) a list of licensed locations for renewal, (c) a list of the directors and officers of the licensee showing their position and business address, and (d) the required license fee for each location. The payment accompanying a request for annual renewal will constitute the license fees for the fiscal year ending the next June 30.

The Commissioner will renew the licenses, as requested, unless he finds that the licensee lacks the general fitness calculated to command the confidence of the public and warrant belief that it will operate fairly, honestly, and in accordance with law. If a license is not renewed, the fee for renewal will be refunded.

### D. Licensing authority delegated.

The authority to grant or deny licenses to operate nonprofit debt counseling agencies has been delegated to the Commissioner of Financial Institutions, subject to review by the Commission. (See VR 225-01-0001.)

E. Posting of licenses; closing an office; change in officers or directors.

A license shall be posted prominently in each place of business of the licensee.

A licensee shall notify the Commissioner in writing

within 10 days of the closing of any office. A licensee shall notify the Commissioner in writing of the name, address and position (or, occupation or profession) of each new office manager or director within 10 days after his appointment or election. It shall provide such other information with respect to any such change as the Commissioner may reasonably require.

#### F. Use of Assumed Name

A licensee may transact business using an assumed name, if the licensee first notifies the Bureau of the assumed name under which it will transact business, and if it also has complied with the requirements of Va. Code § 59.1-69.

G. Transfer of a license prohibited; suspension or revocation.

A license may not be transferred or assigned. The Commission may revoke or suspend a license, if it finds that a licensee has violated an applicable law or regulation.

### III. OPERATION

#### A. Personnel.

A licensee must be a nonprofit organization, and it must maintain appropriate safeguards against conflicts of interest in the conduct of its counseling activities. A debt counseling agency shall not employ any person who is employed at the same time by a creditor or collection agency.

If any officer, director or employee of a licensed agency is convicted of any crime other than a misdemeanor under the Motor Vehicle Code, or if any such person makes an assignment for the benefit of creditors or seeks the protection of the bankruptcy laws, the agency shall advise the Commissioner of the facts in the matter, in writing, within ten (10) days of the occurrence.

#### B. Trust Account.

The operating monies of a debt counseling agency shall be kept separate from the funds entrusted by debtors to such agencies for disbursement to creditors. Debtors' funds shall be kept in a trust account, held in the name of the licensee by an insured depository institution.

#### C. Handling of Funds and Information.

Employees of a debt counseling agency shall be bonded in an amount commensurate with the sums with which they are entrusted in the ordinary course of business. As far as is practicable, checks and money orders - not cash - should be used. Receipts must be given in the case of cash transactions. Good business practices should be observed as to (1) internal controls, and (2) the security of funds.

Licensees shall, insofar as may be in accordance with law, preserve the confidentiality of information pertaining to a debtor, and release such information to creditors (or others) with authorization from the debtor and in furtherance of the debtor's interests. Information concerning a debtor or his affairs shall be protected even after his relationship with an agency has ended.

#### D. Records, reports, examinations.

An agency shall keep for five years its accounts, correspondence, papers, and other records. In addition to the information provided on annual renewal of licenses (Section II C, above), an agency shall make such other reports as may be required by the Bureau.

The Bureau may inspect at any time all accounts, correspondence, papers, and other records of an agency for the purpose of determining whether it is in compliance with applicable laws and regulations. The Bureau shall inspect each agency at least twice every three years.

By order of the State Corporation Commission dated July 21, 1992, effective that date.

Reference: § 6.1-363.1 of the Code of Virginia.

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# GOVERNOR

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## GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

### DEPARTMENT OF LABOR AND INDUSTRY

#### Apprenticeship Council

Title of Regulation: VR 425-01-26. Regulations Governing the Administration of Apprenticeship Programs in the Commonwealth of Virginia.

#### Governor's Comment:

This proposal assures that a fair and effective procedure exists for the deregistration of apprenticeship programs which are not in compliance with existing regulations governing apprenticeship. The establishment of this process assures that apprentices will continue to receive safe and thorough instruction in a trade. Pending public comment, I recommend approval of these regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: July 20, 1992

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-02-4.1920. State Plan for Medical Assistance Relating to Fee-for-Service Reimbursement for Home Health Services: Methods and Standards for Establishing Payment Rates - Other Types of Care.

#### Governor's Comment:

I have no objection to these amendments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: July 17, 1992

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Title of Regulation: State Plan for Medical Assistance Relating to Community Mental Health/Mental Retardation Services.

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

VR 460-03-3.1102. Case Management Services.

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

VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates—Other Types of Care.

VR 460-04-8.1500. Community Mental Health and Mental Retardation Services: Amount, Duration and Scope of Services.

#### Governor's Comment:

I have no objection to these amendments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: July 17, 1992.

### DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

Title of Regulation: VR 385-01-5. Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities.

#### Governor's Comment:

This regulation will amend the Department of Transportation's Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities to allow natural gas powered vehicles to use the tunnel facilities of Virginia, and the conditions under which low pressure liquid oxygen may be transported through these facilities. I recommend approval.

/s/ Lawrence Douglas Wilder  
Governor  
Date: July 9, 1992

# GENERAL NOTICES/ERRATA

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

## GENERAL NOTICES

### NOTICE

Notices of Intended Regulatory Action are published as a separate section at the beginning of each issue of the Virginia Register.

### DEPARTMENT OF GENERAL SERVICES

#### Division of Forensic Science

#### † Notice to the Public

Title of Regulation: VR 330-05-01. Regulations for the Approval of Field Tests for Detection of Drugs.

Statutory Authority: §§ 2.1-424 and 19.2-188.1 of the Code of Virginia.

This republication is requested because one of the vendors has requested that an additional field test be added to their approved list and because we have noted one error in the previously published list.

The test to be added is under "ODV Incorporated (NarcoTest)" and is given as follows:

<u>Drug of Drug Type</u>	<u>Manufacturer's Field Test</u>
Cocaine Hydrochloride	7613 - Test #13 (Cocaine Free-Base Reagent)

The test to be corrected is under "Sirchie Fingerprint Laboratories" and involves changing #1 to #2. The corrected version should read as follows:

<u>Drug or Drug Type</u>	<u>Manufacturer's Field Test</u>
Methamphetamine	#2 - Marquis Reagent
* * * * *	

In accordance with § 2 of the Regulations for the Approval of Field Tests for Detection of Drugs and under the authority of § 19.2-188.1 of the Code of Virginia, the following field Tests for Detection of Drugs are Approved Field Tests:

Becton Dickinson Public Safety  
 147 Clinton Road  
 West Caldwell, N.J. 07006

<u>Drug or Drug Type</u>	<u>Manufacturer's Field Test</u>
Marijuana	Test E (Duquenois-Levine Test)
Hashish	Test E (Duquenois-Levine Test)
Hashish Oil	Test E (Duquenois-Levine Test)
Cocaine Hydrochloride	Test G (Modified Scott Reagent)
Cocaine Base	Test G (Modified Scott Reagent)
Heroin	Test K (Opiates Reagent)
Codeine	Test K (Opiates Reagent)
Morphine	Test K (Opiates Reagent)
Heroin	Test L (Brown Heroin Reagent)
Barbiturates	Test C (Dille-Koppanyi, Modified)
Amphetamine	Test A (Marquis Reagent)
Methamphetamine	Test A (Marquis Reagent)
Lysergic Acid Diethylamide	Test D (LSD Reagent System)

.....  
 O D V Incorporated (NarcoPouch)  
 P.O. Box 305  
 South Paris, Maine 04281

<u>Drug or Drug Type</u>	<u>Manufacturer's Field Test</u>
Narcotic Alkaloids	901 - Mayer's Reagent
Heroin	901 - Mayer's Reagent
Morphine	901 - Mayer's Reagent
Cocaine Hydrochloride	901 - Mayer's Reagent
Opiates	902 - Marquis Reagent
Heroin	902 - Marquis Reagent
Morphine	902 - Marquis Reagent
Methamphetamine	902 - Marquis Reagent
Amphetamine	902 - Marquis Reagent
Heroin	903 - Nitric Acid
Morphine	903 - Nitric Acid
Cocaine Hydrochloride	904 - Scott (Modified) Reagent
Cocaine Base	904 - Scott (Modified) Reagent
Barbiturates	905 - Dille-Koppanyi Reagent
Amphetamine	906 - Mandelin Reagent
Methamphetamine	906 - Mandelin Reagent
Methadone	906 - Mandelin Reagent
Lysergic Acid Diethylamide (LSD)	907 - Ehrlich's (Modified) Reagent
Marijuana	908 - Duquenois-Levine Reagent
Hashish	908 - Duquenois-Levine Reagent
Hashish Oil	908 - Duquenois-Levine Reagent
Tetrahydrocannabinol (THC)	908 - Duquenois-Levine Reagent
Marijuana	909 - K N Reagent
Hashish	909 - K N Reagent
Hashish Oil	909 - K N Reagent
Tetrahydrocannabinol (THC)	909 - K N Reagent
Phencyclidine (PCP)	914 - PCP Methaqualone Reagent
Methaqualone	914 - PCP Methaqualone Reagent
Heroin	924 - Mecke's Modified
Diazepam	925 - Valium/Diazepam Reagent
Pentazocine	926 - Talwin/Pentazocine Reagent
Ephedrine	927 - Ephedrine Reagent

.....  
 O D V Incorporated (Narcotest)  
 P.O. Box 305  
 South Paris, Maine 04281



# General Notices/Errata

<u>Drug or Drug Type</u>	<u>Manufacturer's Field Test</u>
Narcotic Alkaloids	7601 - Mayer's Reagent
Heroin	7601 - Mayer's Reagent
Morphine	7601 - Mayer's Reagent
Cocaine Hydrochloride	7601 - Mayer's Reagent
Opiates	7602 - Marquis Reagent
Heroin	7602 - Marquis Reagent
Morphine	7602 - Marquis Reagent
Methamphetamine	7602 - Marquis Reagent
Heroin	7603 - Nitric Acid
Morphine	7603 - Nitric Acid
Cocaine Hydrochloride	7604 - Cobalt Thiocyanate Reagent
Dibucaine	7604 - Cobalt Thiocyanate Reagent
Tetracaine	7604 - Cobalt Thiocyanate Reagent
Procaine	7604 - Cobalt Thiocyanate Reagent
Barbiturates	7605 - Dille-Koppanyi Reagent
Amphetamine	7606 - Mandelin Reagent
Methadone	7606 - Mandelin Reagent
Lysergic Acid Diethylamide (LSD)	7607 - Modified Ehrlich's Reagent
Marijuana	7608 - Duquenois Reagent
Hashish Oil	7608 - Duquenois Reagent
Hashish	7608 - Duquenois Reagent
Tetrahydrocannabinol (THC)	7608 - Duquenois Reagent
Marijuana	7609 - K N Reagent
Hashish	7609 - K N Reagent
Hashish Oil	7609 - K N Reagent
Tetrahydrocannabinol (THC)	7609 - K N Reagent
Cocaine Base	7613 - Test #13 (Cocaine Free-Base Reagent)
Cocaine Hydrochloride	7613 - Test #13 (Cocaine Free-Base Reagent)
Phencyclidine (PCP)	7614 - Test #14 (Methaqualone Reagent)
Methaqualone	7614 - Test #14 (Methaqualone Reagent)
Diazepam	7625 - Test #25 (Diazepam Reagent)
Pentazocine	7626 - Test #26 (Talwin Reagent)
Ephedrine	7627 - Test #27 (Ephedrine Reagent)

Sirchie Fingerprint Laboratories  
5825 Triangle Drive  
Umstead Industrial Park  
P.O. Box 30576  
Raleigh, N.C. 27622-0576

<u>Drug or Drug Type</u>	<u>Manufacturer's Field Test</u>
Narcotic Alkaloids	#1 - Mayers Reagent
Heroin	#1 - Mayers Reagent
Morphine	#1 - Mayers Reagent
Cocaine Hydrochloride	#1 - Mayers Reagent
Morphine	#1 - Mayers Reagent
Amphetamine	#1 - Mayers Reagent
Opium Alkaloids	#2 - Marquis Reagent
Heroin	#2 - Marquis Reagent
Amphetamine	#2 - Marquis Reagent
Meperidine (Demerol) (Pethidine)	#2 - Marquis Reagent
Heroin	#3 - Nitric Acid Reagent
Morphine	#3 - Nitric Acid Reagent
Cocaine Hydrochloride	#4 - Cobalt Thiocyanate Reagent
Procaine	#4 - Cobalt Thiocyanate Reagent
Tetracaine	#4 - Cobalt Thiocyanate Reagent
Methadone	#4 - Cobalt Thiocyanate Reagent
Barbiturates	#5 - Dille-Koppanyi Reagent
Amphetamine	#6 - Mandelin Reagent
Lysergic Acid Diethylamide (LSD)	#7 - Ehrlich's Reagent
Marijuana	#8 - Duquenois Reagent
Hashish	#8 - Duquenois Reagent

Tetrahydrocannabinol (THC)	#8 - Duquenois Reagent
Marijuana	#9 - NDB (Fast Blue B Salt) Reagent
Hashish	#9 - NDB (Fast Blue B Salt) Reagent
Tetrahydrocannabinol (THC)	#9 - NDB (Fast Blue B Salt) Reagent
Cocaine Base (Crack)	#13 - Cobalt Thiocyanate/Crack Test
Methamphetamine	#1 - Mayers Reagent
Methamphetamine	#2 - Marquis Reagent
Hashish Oil	#8 - Duquenois Reagent
Hashish Oil	#9 - NDB (Fast Blue B Salt) Reagent

## DEPARTMENT OF HEALTH (STATE BOARD OF)

### † Notice to the Public

#### Legal Notice of Opportunity to Comment on Proposed State Plan of Operations and Administration of Special Supplemental Food Program for Women, Infants, and Children (WIC) for Federal Fiscal Year 1993

Pursuant to the authority vested in the State Board of Health by § 32.1-12 and in accordance with the provisions of Title 9, Chapter 1.1:1 of Public Law 95-627, notice is hereby given of a public comment period to enable the general public to participate in the development of the Special Supplemental Food Program for Women, Infants, and Children (WIC) for Federal Fiscal Year 1993.

Written comments on the proposed plan, which are received no later than August 14, 1992, will be accepted in the office of the Director, WIC Program, State Department of Health, P.O. Box 2448, Richmond, VA 23218.

The proposed State Plan of WIC Program Operations and Administration may be reviewed at the office of your health district headquarters during public business hours beginning August 3, 1992. Please contact your local health department for the location of this office in your area.

## DEPARTMENT OF HEALTH PROFESSIONS (BOARD OF)

### Notice to the Public

#### Invitation to Comment on the Efficacy of Continuing Education in the Prevention or Reduction of Transmission of Infectious Diseases

Senate Joint Resolution No. 111 of the 1992 Session of the Virginia General Assembly requests regulatory boards within the Department of Health Professions to "study and report on the efficacy of continuing education in the prevention of transmission of contagious diseases, including but not limited to, adherence to universal precautions and sterilization-disinfection procedures." The resolution directs the department to report its findings and recommendations to the Governor and the General Assembly by January 1, 1993.

The Department and Board of Health Professions invite comments on the resolution from interested individuals, agencies or organizations. Written comments should be addressed to the individual identified below, and must be received by 5 p.m., August 31, 1992.

Russell Porter, Research Associate  
Virginia Department of Health Professions  
1601 Rolling Hills Drive, Suite 200  
Richmond, Virginia 23229-5005  
Telephone (804) 662-9904, FAX (804) 662-9943

## DEPARTMENT OF LABOR AND INDUSTRY

### Notice to the Public

The Virginia State Plan for the enforcement of occupational safety and health laws (VOSH) commits the Commonwealth to adopt regulations identical to, or as effective as, those promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the federal level. Therefore, the Virginia Department of Labor and Industry is reissuing the following Federal OSHA notice:

U.S. Department of Labor  
Occupational Safety and Health Administration  
29 CFR Parts 1910, 1915, 1917, 1918  
(Docket H-020 A)  
Air Contaminants

AGENCY: Occupational Safety and Health Administration (OSHA)

ACTION: Notice of proposed rule.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) proposes to amend its existing air contaminant standards that set permissible exposure limits (PELs) for the maritime, construction and agriculture industry sectors. In this notice, OSHA is proposing to issue more protective exposure limits for approximately 210 substances currently regulated in the construction and maritime industries and add new exposure limits for approximately 160 chemicals to protect these workers.

OSHA is also proposing that employees in agriculture be covered by these PELs as well as by approximately 220 additional limits which currently exist in general industry, maritime and construction, but do not exist for the agricultural industry. By appropriations act rider, only employees of farms with more than 10 employees are covered by OSHA standards. New or more protective limits

will substantially reduce significant risk of material impairment of health for construction, maritime and agriculture workers and are technologically and economically feasible for those industries.

The proposed changes will add a new § 1915.1000 for shipyards, a new § 1917.1000 for marine terminals and a new § 1918.1000 for longshoring, along with necessary conforming amendments. Section 1926.55 will be revised for construction and new § 1928.1000 will be added for agriculture.

**TEXT:** Full text of the proposed rulemaking can be found in Volume 57, No. 114, pg. 26002 (June 12, 1992) of the Federal Register.

**DATES:** Comments on proposed changes: Postmarked on or before September 25, 1992. Notices of Intention to Appear at informal rulemaking hearings: Postmarked on or before September 11, 1992. Individuals wishing to comment or appear: See Section VIII of Federal Register for specific requirements.

Parties requesting more than 10 minutes for their presentation at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence, postmarked on or before September 25, 1992. The informal rulemaking hearing is scheduled for October 20-30, 1992, in Washington, DC, for November 17-20, 1992, in San Diego, California, and on December 8-11, 1992, in Des Moines, Iowa.

**ADDRESSES:** Written comments on the proposal should be submitted to the Docket Officer, Docket No. H-020A, Room N-2634, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, D.C. 20210, telephone (202) 523-7894.

An additional copy should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia 23219.

Notice of intention to appear, testimony and documentary evidence to be submitted at the hearing are to be sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H-020A, Room N-3647, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 523-8615.

The hearing will be held in Washington, DC, in the Auditorium, Frances Perkins Department of Labor Building, Third and Constitution Avenue, NW. The informal public hearing will begin at 9:30 a.m. The hearing in San Diego will be held at the Holiday Inn on the Bay, 1355 North Harbor Drive, San Diego, CA 92101, telephone (619) 232-3861. The hearing in Des Moines will be held at the Holiday Inn Des Moines, 1050 Sixth Avenue, Des Moines, Iowa 50314, telephone (515) 283-0151.

**FOR FURTHER INFORMATION CONTACT:** James F.

## General Notices/Errata

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Foster, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N-3649, 200 Constitution Ave., Washington, DC 20210, telephone (202) 523-8151.

### Notice to the Public

The Virginia State Plan for the enforcement of occupational safety and health laws (VOSH) commits the Commonwealth to adopt regulations identical to, or as effective as, those promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the federal level. Therefore, the Virginia Department of Labor and Industry is reissuing the following Federal OSHA notice:

U.S. Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910, 1915, and 1926

(Docket H-71)

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA)

ACTION: Notice of informal public hearing of federal proposed rulemaking; reopening of written comment period.

SUMMARY: This notice schedules informal public hearings concerning OSHA's proposal (56 FR 57036, November 7, 1991) to modify the existing provisions for controlling employee exposure to methylene chloride. The agency requests that interested parties present testimony and evidence regarding the issues raised by the proposed standard and by this hearing notice. In addition, this notice reopens the rulemaking record so federal OSHA can receive additional comments regarding the proposed rule.

TEXT: Full text of the proposed rulemaking can be found in Volume 57, No. 111, pg. 24438 (June 9, 1992) of the Federal Register.

DATES: All informal public hearings will begin at 9:30 a.m. on the first day of the hearing and at 9 a.m. on each succeeding day. The two informal public hearings are scheduled to begin on the following dates:

Washington, DC: September 16, 1992

San Francisco, CA: October 14, 1992

Notices of intention to appear at the informal public hearings must be postmarked by August 24, 1992.

Testimony and all evidence which will be introduced into

the hearing record must be postmarked by August 24, 1992, for the Washington, DC, hearing and by September 22, 1992, for the San Francisco, CA, hearing.

Comments must be postmarked by August 24, 1992.

ADDRESSES: Notices of intention to appear at the hearing and testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N-3647, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 523-8615.

Comments should be submitted in quadruplicate to: The Docket Office, Docket No. H-71, Room N-2634, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 523-7894.

An additional copy should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, 13 South Thirteenth Street, Richmond, VA 23219.

Comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 523-5046, provided that the original and three copies of the comment are sent to the Docket Officer thereafter.

The locations of the informal public hearings are as follows:

WASHINGTON, DC: The Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210;

SAN FRANCISCO, CA: The Coil Room, Holiday Inn, Financial District, 750 Kearny St., San Francisco, CA 94108, telephone (415) 433-6600.

FOR FURTHER INFORMATION CONTACT: Hearings: Mr. Tom Hall, OSHA, Division of Consumer Affairs, U.S. Department of Labor, Room N-3647, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 523-8615.

Proposal: Mr. James F. Foster, Office of Public Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 523-8151.

### Notice to the Public

The Virginia State Plan for the enforcement of occupational safety and health laws (VOSH) commits the Commonwealth to adopt regulations identical to, or as effective as, those promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the federal level. Therefore, the Virginia Department of Labor and Industry is reissuing the following Federal OSHA notice:

U.S. Department of Labor

Notice to the Public

Occupational Safety and Health Administration

29 CFR Part 1904

(Docket R-01)

Reporting of Fatality or Multiple Hospitalization Accidents

AGENCY: Occupational Safety and Health Administration (OSHA)

ACTION: Notice of proposed federal rulemaking.

**SUMMARY:** The Occupational Safety and Health Administration proposes to revise 29 CFR 1904.8, Reporting of Fatality or Multiple Hospitalization Accidents. The proposal would make four changes to the current reporting requirements: First, whereas, the present rule only applies to employment accidents which result in one or more fatalities or hospitalizations of five or more employees, the proposed rule would expand this reporting requirement to cover accidents resulting in hospitalizations of three or more employees. Second, the proposal would require the employer to report accidents within eight hours of their occurrence, instead of the current 48-hour time frame. Third, if the employer does not learn of the reportable accident at the time the accident occurs, the employer would then be required to report it within eight hours after learning of the fatality or hospitalizations. Fourth, whether or not an accident is immediately reportable, if it results in the death of an employee within six months after the accident, OSHA proposes that the employer report that death within eight hours after learning of it.

**TEXT:** Full text of the proposed rulemaking can be found in Volume 57, No. 97, pg. 21222 (May 19, 1992) of the Federal Register.

**DATES:** Comments on proposed changes: Postmarked by August 17, 1992.

**ADDRESSES:** Comments on the proposal should be submitted in quadruplicate to the Docket Officer, Docket No. R-01, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-2625, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 523-1463.

An additional copy should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, 13 South Thirteenth St., Richmond, VA 23219.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Newell, Occupational Safety and Health Administration, Room N-3507, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 523-1463.

The Safety and Health Codes Board adopted the following Federal OSHA Standards at its meeting on June 9, 1992:

1. Process Safety Management of Highly Hazardous Chemicals, § 1910.119

Effective date of the Standard is September 15, 1992.

2. Amendment to Explosives and Blasting Agents, § 1910.109

Effective date of the amendment is September 15, 1992.

3. Administrative Stay to Process Safety Management of Highly Hazardous Chemicals, § 1910.119

Effective date of the Administrative Stay to the Standard is June 10, 1992.

Effective date for the following provisions of the Stay is December 15, 1992:

operating procedures ¶paragraph (f)!;

contractors ¶paragraph (h)!;

mechanical integrity ¶paragraph (j)!; and

management of change ¶paragraph (l)!.

4. Amendment to Occupational Exposure to Formaldehyde, § 1910.1048

Effective date of the Amendment is August 27, 1992.

The effective dates for the following provisions of the Formaldehyde Amendment are:

Effective date for respiratory protection ¶paragraph (g)! is November 25, 1992.

Effective date for engineering and work practice controls ¶paragraph (d)! is August 27, 1993.

Effective date for medical removal protection ¶paragraph (i)! is February 15, 1993.

Effective date for hazard communication ¶paragraph (m)! is February 15, 1993.

Effective date for periodic training ¶paragraph (n)! is October 15, 1992.

Contact person for further information: John J. Crisanti, Director of Office of Enforcement Policy, telephone (804) 786-2384.

# General Notices/Errata

## VIRGINIA CODE COMMISSION NOTICE TO STATE AGENCIES

**Change of Address:** Our new mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

### FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

#### FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01  
NOTICE of COMMENT PERIOD - RR02  
PROPOSED (Transmittal Sheet) - RR03  
FINAL (Transmittal Sheet) - RR04  
EMERGENCY (Transmittal Sheet) - RR05  
NOTICE of MEETING - RR06  
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08  
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

## ERRATA

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: VR 115-02-02:1. Rules and Regulations Governing the Prevention, Control, and Eradication of Tuberculosis in Bovidae, Cervidae, and Capridae in Virginia.

Publication Date: 8:20 VA.R. 3470-3480 June 29, 1992.

Correction to proposed regulation:

Pages 3470 and 3593, correct the title of VR 115-02-02 to read:

"Rules and Regulations Governing the Prevention, Control and Eradication of Bovine Tuberculosis in Virginia."

Page 3472, correct the first sentence of § 10 to read:

*"To establish or maintain accredited herd status for a herd of cattle, bison, or goats in Virginia, a herd owner shall comply with all the provisions of Part III of the Uniform Methods and Rules—Bovine Tuberculosis Eradication as published by the United States Department of Agriculture, Animal and Plant Health Inspection Services, which Part III is hereby incorporated by reference herein, regarding accredited herds."*

Page 3472, correct § 11 A 2 to read:

*"2. Clean and disinfect in accordance with Part II(R) of the Uniform Methods and Rules—Bovine Tuberculosis Eradication as published by the United States Department of Agriculture, Animal and Plant Health Inspection Services, which Part II(R) is hereby incorporated by reference herein; and"*

Page 3482, correct § 3 D to read:

*"D. Any person owning an animal that is a reactor shall submit the reactor to the State Veterinarian or the State Veterinarian's representative for identification as specified by Part II(6)(I, J, K, L, and M) of the Brucellosis Eradication: Uniform Methods and Rules (which Part II(6)(I, J, K, L, and M) is hereby incorporated by reference herein) and shall isolate the animal under quarantine of the State Veterinarian."*

\* \* \* \* \*

Title of Regulation: VR 115-02-12. Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds into Virginia. **REPEALED**

Publication Date: 8:20 VA.R. 3495 June 29, 1992.

Correction to proposed regulation:

Page 3495, correct the title of the regulation proposed for repeal (VR 115-02-12) to read:

"Rules and Regulations Governing the Admission of Livestock, Poultry, Companion Animals and Other Animals or Birds into Virginia."

\* \* \* \* \*

Title of Regulation: VR 115-02-12:1. Rules and Regulations Pertaining to the Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds into Virginia.

Publication Date: 8:20 V.A.R. 3495-3506 June 29, 1992.

Correction to proposed regulation:

Page 3495, correct the title of VR 115-02-12:1 to read:

"Rules and Regulations Governing the Admission of Livestock, Poultry, Companion Animals and Other Animals or Birds into Virginia."

## DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: VR 355-28-300. Rules and Regulations of the Board of Health, Commonwealth of Virginia, for the Immunization of School Children.

Publication Date: 8:21 V.A.R. 3723-3735 July 13, 1992.

Correction to final regulation:

Page 3727, § 4.1 C, line 8, change "Appendix C" to read "Appendix D"

Page 3728, § 4.1 F, line 8, change "Appendix E" to read "Appendix F"

## BOARD OF MEDICINE AND BOARD OF NURSING

Title of Regulation: VR 465-12-1 and VR 495-03-1. Regulations for Prescriptive Authority for Nurse Practitioners.

Publication Date: 8:21 V.A.R. 3781-3784 July 13, 1992.

Correction to final regulation:

Page 3784, § 3.4 B, line 2, after "he is a licensed" insert "nurse"

Page 3784, Part IV, after heading that reads "Part IV. Discipline" insert "§ 4.1. Grounds for disciplinary action."

# CALENDAR OF EVENTS

## Symbols Key

- † Indicates entries since last publication of the Virginia Register
- ☒ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

## NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

## VIRGINIA CODE COMMISSION

## EXECUTIVE

### VIRGINIA AGRICULTURAL COUNCIL

† August 24, 1992 - 9 a.m. - Open Meeting  
Holiday Inn-Airport, 5203 Williamsburg Road,  
Orly/Heathrow Room, Sandston, Virginia. ☒ (Interpreter  
for deaf provided upon request)

This is the council's annual meeting whereby financial reports and project activities will be reviewed. The council will entertain project requests for 2nd and 3rd year continuation as well as hearings on several new project proposals. The council will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Thomas R. Yates, Assistant Secretary, 1100 Bank Street, Suite 203, Richmond, VA. 23219, telephone (804) 786-6060.

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

September 8, 1992 - Written comments may be submitted through this date.

September 30, 1992 - 1 p.m. - Public Hearing  
1100 Bank Street, 2nd Floor Boardroom, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture

and Consumer Services intends to adopt regulations entitled: VR 115-02-02:1. Rules and Regulations Governing the Prevention, Control and Eradication of Tuberculosis in Bovidae, Cervidae, and Capridae in Virginia and repeal regulations entitled VR 115-02-02. Rules and Regulations Governing the Prevention, Control and Abatement of Bovine Tuberculosis of Cattle in Virginia. The purpose of this action is to review the regulation for effectiveness and continued need, including but not limited to: (i) adding provisions to require testing and subjecting to other requirements within the regulation of (a) all classes of bovidae (not just cattle), (b) all cervidae (many of the deer), and (c) all capridae (goats); (ii) considering alternative ways of disposing of tuberculosis-infected animals; and (iii) a proposal to shorten the time in which a report must be made to the State Veterinarian when tuberculosis is suspected.

Statutory Authority: §§ 3.1-724, 3.1-726, 3.1-730 and 3.1-737 of the Code of Virginia.

Contact: Dr. W. M. Sims, Jr., State Veterinarian, P.O. Box 1163, Richmond, VA 23219, telephone (804) 786-2481.

\*\*\*\*\*

September 8, 1992 - Written comments may be submitted through this date.

September 30, 1992 - 1 p.m. - Public Hearing  
1100 Bank Street, Washington Building, Room 204, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to adopt regulations entitled: VR 115-02-03:1. Rules and Regulations Governing the Prevention, Control and Eradication of Brucellosis of Bovidae in Virginia and repeal regulations entitled VR 115-02-03. Rules and Regulations Governing the Prevention, Control and Eradication of Brucellosis of Cattle in Virginia. The purpose of this action is to review the regulation for effectiveness and continued need, including but not limited to: (i) adding provisions to require testing and subjecting to other requirements within the regulation of all classes of bovidae (not just cattle), (ii) a proposal to add definitions to the regulation to be specific in terms of precisely which bovidae must be tested for brucellosis, (iii) a proposal to expand instances in which a test for brucellosis is required, not just when there is a change of ownership.

Statutory Authority: §§ 3.1-724, 3.1-726, 3.1-730 and 3.1-737

of the Code of Virginia.

Contact: Dr. W. M. Sims, Jr., State Veterinarian, P.O. Box 1163, Richmond, VA 23219, telephone (804) 786-2481.

\*\*\*\*\*

September 8, 1992 - Written comments may be submitted through this date.

September 30, 1992 - 1 p.m. - Public Hearing 1100 Bank Street, Washington Building, Room 204, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to adopt regulations entitled: VR 115-02-12:1. Rules and Regulations Governing the Admission of Livestock, Poultry, Companion Animals and Other Animals or Birds in Virginia and repeal regulations entitled VR 115-02-12. Rules and Regulations Governing the Admission of Livestock, Poultry, Companion Animals and Other Animals or Birds in Virginia. The purpose of this action is to review the regulation for effectiveness and continued need, including but not limited to: (i) adding provisions governing the importation of cervidae--most varieties of deer; (ii) repealing provisions requiring a permit for the importation of psittacine (parrot-like) birds and repealing provisions requiring that they be treated for psittacosis; (iii) repealing provisions requiring South American camelids of the genus Lama to be tested for bluetongue; (iv) requiring rabies vaccination for cats entering the Commonwealth; (v) adding importation requirements for bison, to treat them more consistently with cattle; and (vi) relaxing certain requirements pertaining to feeder cattle.

Statutory Authority: §§ 3.1-724, 3.1-726, 3.1-730 and 3.1-737 of the Code of Virginia.

Contact: Dr. W. M. Sims, Jr., State Veterinarian, P.O. Box 1163, Richmond, VA 23219, telephone (804) 786-2481.

DEPARTMENT OF AIR POLLUTION CONTROL (STATE AIR POLLUTION CONTROL BOARD)

August 26, 1992 - 7 p.m. - Public Hearing State Water Control Board Office Building, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ☐

September 14, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend VR 120-01. Regulations for the Control and Abatement of Air Pollution - Public Participation Procedures (Appendix E). The regulation amendments revise the public participation guidelines to: allow for

supplemental public participation, change and expand the information provided in the notice of intended regulatory action and notice of public comment, and require the preparation of additional supporting documentation and analyses.

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

Contact: Robert A. Mann, Director, Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-5789.

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NOTICE: The written comments date has been extended to September 18, 1992.

September 2, 1992 - 10 a.m. - Public Hearing State Capitol Building, Capitol Square, House Room 1, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend VR 120-01. Regulations for the Control and Abatement of Air Pollution (PARTS I and II). The regulation amendments clarify the provisions relating to (i) making case decisions with regard to process, (ii) statutory basis and appeals; (iii) establish criteria for determining confidential information; and (iv) update various provisions to conform to code changes.

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

Written comments may be submitted until close of business September 18, 1992.

Contact: Robert A. Mann, Director, Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-5789.

ALCOHOLIC BEVERAGE CONTROL BOARD

- † August 17, 1992 - 9 a.m. - Open Meeting
† August 31, 1992 - 9:30 a.m. - Open Meeting
† September 17, 1992 - 9:30 a.m. - Open Meeting
† September 28, 1992 - 9:30 a.m. - Open Meeting
† October 14, 1992 - 9:30 a.m. - Open Meeting
† October 26, 1992 - 9:30 a.m. - Open Meeting
2901 Hermitage Road, Richmond, Virginia. ☐

Receipt and discussion of reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.



# Calendar of Events

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## ASAP BOARD OF DIRECTORS - ROCKBRIDGE

† September 15, 1992 - 3 p.m. - Open Meeting  
2044 Sycamore Avenue, Buena Vista, Virginia. ☒

A meeting to (i) approve minutes of the April 14, 1992 meeting, (ii) discuss old business, (iii) discuss new business; and (iv) receive treasurer's report.

Contact: S. Diane Clark, Director, 2044 Sycamore Ave., Buena Vista, VA 24416, telephone (703) 261-6281.

## BOARD FOR BARBERS

† August 17, 1992 - 9 a.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A meeting to (i) review applications, (ii) review correspondence, (iii) review and disposition of enforcement cases; and (iv) consider routine business.

† August 18, 1992 - 9 a.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A meeting to study the Cut Score for passing the barber examination and review of the barber instructor examination.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

August 26, 1992 - 7 p.m. - Public Hearing  
State Water Control Board, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ☒  
September 14, 1992 - 4 p.m. - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Chesapeake Bay Local Assistance Board intends to repeal regulations entitled: **VR 173-01-00 Public Participation Guidelines** and adopt regulations entitled: **VR 173-01-00:1. Public Participation Guidelines**. The purpose of the proposed action is to repeal VR 173-01-00 Public Participation Guidelines and adopt VR 173-01-00:1 Public Participation Guidelines which establish, in regulation, various provisions to ensure interested persons have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process and establish guidelines which are consistent with those of the other agencies within the Natural Resources Secretariat. Specifically, the proposed guidelines (i) require an expanded notice of intended regulatory action (NOIRA), (ii) require that

either a summary or a copy of comments received in response to the NOIRA be submitted to the Chesapeake Bay Local Assistance Board, and (iii) require the performance of certain analyses.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia

Contact: C. Scott Crafton, Chesapeake Bay Local Assistance Board, Suite 701, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or 1-800-243-7229/TDD ☎

September 24, 1992 - 10 a.m. - Open Meeting  
General Assembly Building, Senate Room B, 910 Capitol Street, Richmond, Virginia. ☒

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by September 17, 1992.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

## Southern Area Review Committee

† August 12, 1992 - 1 p.m. - Open Meeting  
Hampton Roads Planning District Commission, 723 Woodlake Drive, Chesapeake, Virginia. ☒ (Interpreter for deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the Review Committee meeting. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

## CHILD DAY-CARE COUNCIL

† August 20, 1992 - 9 a.m. - Open Meeting  
Koger Executive Center, West End, Surry Building, Conference Room No. 1, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The Child Day-Care Council will meet to discuss issues, concerns and programs that impact child care centers, camps, school age programs, and preschool/nursery schools. The public comment period is 10 a.m. Please call ahead of time for possible changes in meeting time.

Contact: Peggy Friedenber, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

## DEPARTMENT OF COMMERCE (BOARD OF)

September 11, 1992 - 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 Commerce intends to repeal regulations entitled: **VR 190-01-1. Rules and Regulations Governing Employment Agencies** and adopt regulations entitled: **VR 190-01-1:1. Rules and Regulations Governing Employment Agencies**. The proposed regulation requires the licensure of employment agencies and the registration of individuals who act as employment counselors at those businesses. This regulation applies to approximately 42 licensed employment agencies and approximately 200 employment counselors. There is no requirement under the current regulation that employment counselors be registered and therefore the figure of 200 employment counselors is an estimate based upon information received from the industry.

The proposed regulation separates entry, renewal and reinstatement requirements. It also separates standards of conduct from standards of practice. The regulation has been completely rewritten and reorganized. Certain requirements for receipts, records and contracts deleted from the statute are included in the proposed regulation. Fees throughout the regulation have been adjusted in order to conform with the requirements of § 54.1-113 of the Code of Virginia to assure that the expenses of this program are adequately covered by revenues generated from the regulants. Other increases or decreases in fees are explained in the appropriate text.

Statutory Authority: § 54.1-1302 of the Code of Virginia

Contact: David E. Dick, Assistant Director, Department of Commerce, Employment Agencies, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2194.

## COMPENSATION BOARD

August 26, 1992 - 5 p.m. - Open Meeting  
September 30, 1992 - 5 p.m. - Open Meeting  
Ninth Street Office Building, Room 913/913A, 9th Floor,  
202 North Ninth Street, Richmond, Virginia. ☐

A routine meeting to conduct business of the board.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, VA 23206, telephone (804) 786-3886 or (804) 786-3886/TDD ☐

## DEPARTMENT OF CONSERVATION AND RECREATION (BOARD OF)

August 26, 1992 - 7 p.m. - Public Hearing  
State Water Control Board, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ☐  
September 14, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Conservation and Recreation intends to adopt regulations entitled: **VR 215-00-00. Regulatory Public Participation Procedures**. Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be utilized prior to the formation and drafting of the proposed regulation, but shall also be utilized during the entire formation, promulgation and final adoption process of a regulation.

The purpose of the proposed action is to adopt VR 215-00-00. Regulatory Public Participation Procedures which establish, in regulation, various provisions to ensure interested persons have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process and establish procedures which are consistent with those of the other agencies within the Natural Resources Secretariat. Specifically, the proposed VR 215-00-00. Regulatory Public Participation Procedures require an expanded notice of intended regulatory action, require that either a summary or a copy of comments received in response to the NOIRA be submitted to the Board, and require the performance of certain analyses.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-107 of the Code of Virginia

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570.

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August 26, 1992 - 7 p.m. - Public Hearing  
State Water Control Board, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ☐  
September 14, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Conservation and Recreation intends to a repeal regulations entitled: **VR 215-01-00. Public Participation Guidelines** and adopt regulations entitled: **VR 217-00-00. Regulatory Public Participation Procedures**. Section 9-6.14:7.1 of the Code of Virginia requires each

# Calendar of Events

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agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be utilized prior to the formation and drafting of the proposed regulation, but shall also be utilized during the entire formation, promulgation and final adoption process of a regulation. The purpose of the proposed action is to repeal VR 215-01-00, Public Participation Guidelines and adopt VR 217-00-00 Regulatory Public Participation Procedures, which establish, in regulation, various provisions to ensure interested persons have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process and establish procedures which are consistent with those of the other agencies within the Natural Resources Secretariat. Specifically, the proposed VR 217-00-00. Regulatory Public Participation Procedures (i) require an expanded notice of intended regulatory action (NOIRA), (ii) require that either a summary or a copy of comments received in response to the NOIRA be submitted to the Department, and (iii) require the performance of certain analyses.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-104 of the Code of Virginia.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570

## Falls of the James Scenic River Advisory Board

September 18, 1992 - Noon - Open Meeting  
City Hall, Planning Commission Conference Room, Fifth Floor, Richmond, Virginia. ☒

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

## BOARD FOR CONTRACTORS

### Complaints Committee

† September 10, 1992 - 9 a.m. - Open Meeting  
3600 West Broad Street, 5th Floor, Conference Room No. 1, Richmond, Virginia. ☒

A meeting to review and consider complaints filed by consumers against licensed contractors, and to review reports from Informal Fact-Finding conferences.

Contact: A. R. Wade, Assistant Director, Investigation and Adjudication, 3600 W. Broad St., 5th Floor, Richmond, VA

23230, telephone (804) 367-0136.

## BOARD OF CORRECTIONS

August 19, 1992 - 10 a.m. - Open Meeting

6900 Atmore Drive, Board of Corrections Board Room, Richmond, Virginia. ☒

A regular monthly meeting to consider such matters as may be presented to the board.

Contact: Mrs. Vivian Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

## BOARD OF DENTISTRY

August 14, 1992 - 8 a.m. - Open Meeting

Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

Informal conferences.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA, telephone (804) 662-9906.

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

August 29, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to repeal existing regulations entitled: VR 270-01-0052, Standards for Approval of Teacher Preparation Programs in Virginia, and adopt new regulations entitled VR 270-01-0052:1. Regulations Governing Approved Programs for Virginia Institutions of Higher Education. The proposed regulations state the criteria for the approval of programs to train teachers, administrators, and other school personnel in Virginia colleges and universities. The current regulations, VR 270-01-0052, Standards for Approval of Teacher Preparation Programs in Virginia, are being repealed.

Statutory Authority: §§ 22.1-16 and 22.1-298 of the Code of Virginia.

Contact: Dr. Thomas A. Elliott, Division Chief, Compliance Coordination, Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 371-2522 or toll-free 1-800-292-3820.

## EMERGENCY PLANNING COMMITTEE, LOCAL - CITY OF ALEXANDRIA

† September 9, 1992 - 6 p.m. - Open Meeting  
Potomac Electric Power Company, 1400 North Royal Street, Alexandria, Virginia. ☒

An open meeting with committee members and facility emergency coordinators to conduct business in accordance with SARA Title III, Emergency Planning and Community Right-to-Know Act of 1986.

Contact: Charles W. McRorie, Emergency Preparedness Coordinator, 900 Second St., Alexandria, VA 22314, telephone (703) 838-3825 or (703) 838-5056/TDD ☎

## EMERGENCY PLANNING COMMITTEE, LOCAL - PRINCE WILLIAM COUNTY, MANASSAS CITY, AND MANASSAS PARK CITY

† August 17, 1992 - 1:30 p.m. - Open Meeting  
1 County Complex Court, Potomac Conference Room, Prince William, Virginia. ☒

A multi-jurisdictional local emergency planning committee to discuss issues related to hazardous substances in the jurisdictions. SARA Title III provisions and responsibilities for hazardous material emergency response planning.

Contact: John E. Medici, Hazardous Materials Officer, 1 County Complex Court, Internal Zip MC470, Prince William, VA 22192, telephone (703) 792-6800.

## EMERGENCY PLANNING COMMITTEE, LOCAL - CHESTERFIELD COUNTY

September 3, 1992 - 5:30 p.m. - Open Meeting  
October 1, 1992 - 5:30 p.m. - Open Meeting  
Chesterfield County Administration Building, 10,001 Ironbridge Road, Room 502, Chesterfield, Virginia.

A meeting 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

## COUNCIL ON THE ENVIRONMENT

August 26, 1992 - 7 p.m. - Public Hearing  
State Water Control Board, Board Room, 4900 Cox Road, Glen Allen, Virginia. ☒  
September 25, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1

of the Code of Virginia that the Council on the Environment intends to repeal regulations entitled: VR 305-01-001. Public Participation Guidelines and adopt regulations entitled: VR 305-01-001:1. Public Participation Guidelines. The proposed action is to adopt Public Participation Guidelines that establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process and establish guidelines that are consistent with those of other agencies within the Natural Resources Secretariat.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1206 F of the Code of Virginia.

Contact: Hannah Crew, Assistant Administrator, Council on the Environment, Suite 900, 202 N. 9th St., Richmond, VA 23219, telephone (804) 786-4500.

## VIRGINIA FIRE SERVICES BOARD

† August 20, 1992 - 7:30 p.m. - Public Hearing  
Chesapeake Bay Conference Center, Wind Mill Point, Virginia.

A public hearing to discuss fire training and policies. The hearing is open to the public for their input and comments.

† August 21, 1992 - 9 a.m. - Open Meeting  
Chesapeake Bay Conference Center, Wind Mill Point, Virginia.

A business meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

## Education and Training Committee

† August 20, 1992 - 1 p.m. - Open Meeting  
Chesapeake Bay Conference Center, Wind Mill Point, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for their comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

## Fire Prevention and Control Committee

† August 20, 1992 - 9 a.m. - Open Meeting  
Chesapeake Bay Conference Center, Wind Mill Point,

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## Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for their comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

### Legislative-Liaison Committee

† August 20, 1992 - 1 p.m. - Open Meeting  
Chesapeake Bay Conference Center, Wind Mill Point, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for their comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

August 18, 1992 - 9 a.m. - Open Meeting  
Martinsville City Hall, 55 West Church Street, Counsel Chambers, 2nd Floor, Martinsville, Virginia. ☒

Formal hearing.

September 1, 1992 - 9 a.m. - Open Meeting  
1601 Rolling Hills Drive, Surry Building, Richmond, Virginia. ☒

A board meeting. Public comment period will be during the first 30 minutes of the meeting.

September 2, 1992 - 9 a.m. - Open Meeting  
1601 Rolling Hills Drive, Surry Building, Richmond, Virginia. ☒

Informal hearings.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

### BOARD OF GAME AND INLAND FISHERIES

August 27, 1992 - 9:30 a.m. - Open Meeting  
4010 West Broad Street, Richmond, Virginia.

Committees of the Board of Game and Inland Fisheries will meet, beginning at 9:30 a.m. with the Wildlife and Boat Committee, followed by the Planning Committee, Finance Committee, Law and Education Committee and ending with the Liaison Committee.

Each Committee will review those agenda items appropriate to its authority, and make recommendations to the full Board for the adoption and/or the advertisement of such at their August 28 meeting.

During the Wildlife and Boat Committee meeting, staff will present the proposed migratory waterfowl seasons, based on the U.S. Fish and Wildlife Service framework. In addition, a discussion will be held on the disabled hunting and fishing license policy, and a proposed name change for the Trojan Wildlife Management Area to the Princess Anne Wildlife Management Area. Proposed fish regulation changes will also be discussed.

August 28, 1992 - 9:30 a.m. - Open Meeting  
4010 West Broad Street, Richmond, Virginia.

The board will meet to adopt the 1992-93 migratory waterfowl seasons and to propose fish regulation changes. The fish regulation proposals will be advertised for public comment. After public input is received, these proposals will be presented to the board for adoption as final regulations at its October 17, 1992, public meeting to be held on Virginia's Eastern Shore.

Other general and administrative matters, as necessary will be discussed, and appropriate actions will be taken.

Contact: Belle Harding, Secretary to Bud Bristow, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

### BOARD FOR GEOLOGY

† October 9, 1992 - 10 a.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, Conference Room No. 3, Richmond, Virginia. ☒

General board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Virginia Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

### THE GOVERNOR'S TASK FORCE ON FUELS TAX EVASION

† August 24, 1992 - 9:30 a.m. - Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ☒

The task force will examine fuels tax legislation and the process and resources associated with fuels tax administration. No public comment will be received at

this meeting.

Contact: Ralph M. Davis, Assistant Commissioner for Administrative Services, Department of Motor Vehicles, Room 710, Box 27412, Richmond, VA 23269-0001, telephone (804) 367-6815.

## HAZARDOUS MATERIALS TRAINING COMMITTEE

† August 14, 1992 - 10 a.m. - Open Meeting  
Holiday Inn Conference Center, 1021 Koger Center Boulevard, Richmond, Virginia.

† September 23, 1992 - 1 p.m. - Open Meeting  
Radisson Virginia Beach, 1900 Pavillion Drive, Virginia Beach, Virginia.

The purpose of this meeting will be to discuss curriculum course development, and review existing hazardous materials courses.

Contact: Mr. Roger D. Raines, 108 B Courthouse Lane, P.O. Box 447, Bowling Green, VA 22427, telephone (804) 633-9831.

## DEPARTMENT OF HEALTH (STATE BOARD OF)

August 10, 1992 - 1 p.m. - Public Hearing  
Peninsula Health District Auditorium, 416 J. Clyde Morris Boulevard, Newport News, Virginia.

August 11, 1992 - 1 p.m. - Public Hearing  
Roanoke Municipal Building, 215 Church Avenue SW, Room 415, Roanoke, Virginia.

August 14, 1992 - 1 p.m. - Public Hearing  
Prince William Department of Social Services, 7987 Ashton Avenue, Manassas, Virginia.

August 18, 1992 - 1 p.m. - Public Hearing  
James Monroe Building, Conference Room C, Richmond, Virginia.

September 14, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to amend regulations entitled: **VR 355-39-100. Regulations Governing Eligibility Standards and Charges for Medical Care Services.** The purpose of the proposed action is to amend the regulations that establish charges and provide guidelines for determining eligibility for services provided by the Department of Health.

Statutory Authority: § 32.1-11 of the Code of Virginia.

Contact: Dave Burkett, Administrator, Department of

Health, P.O. Box 2448, Room 237, Richmond, VA 23218, telephone (804) 371-4089.

## BOARD OF HEALTH PROFESSIONS

† August 19, 1992 - 10 a.m. - Open Meeting  
General Assembly Building, House Room C, 910 Capitol Square, Richmond, Virginia. ☒

The board invites public comments in the review of the House Joint Resolution No. 26 of the 1992 Session of the General Assembly "to study the feasibility and appropriateness of establishing a board of chiropractic in the Commonwealth." Oral testimony should be limited to five minutes and may be accompanied by written documents of any length. Please call contact person for testimony reservation. All written comments must be received at this address no later than 5:00 p.m. August 31, 1992.

August 20, 1992 - 9 a.m. - Open Meeting  
General Assembly Building, House Room C, 910 Capitol Square, Richmond, Virginia. ☒

The board invites public comments in the review of the House Joint Resolution No. 41 of the 1992 Session of the General Assembly "to investigate the feasibility and desirability of establishing a program of certifying or otherwise assessing the credentials of persons, particularly therapists, who provide mental health treatment to victims of sexual assault and social assault offenders." Oral testimony should be limited to five minutes and may be accompanied by written documents of any length. Please call contact person for testimony reservation. All written comments must be received at this address no later than 5 p.m. August 31, 1992.

Contact: Russell Porter, Research Associate, Department of Health Professions, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

## Research Committee Task Force

August 19, 1992 - 2 p.m. - Open Meeting  
General Assembly Building, House Room 5 West, 910 Capitol Square, Richmond, Virginia. ☒

The committee will meet to review policies and procedures related to regulatory management of health care providers licensed or certified by the Department of Health Professions whose ability to practice safely is, or may be, impaired by chemical dependency. This meeting is open to the public, but no public comments will be accepted at this meeting.

Contact: Russell Porter, Research Associate, Department of Health Professions, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

# Calendar of Events

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## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

August 25, 1992 - 9:30 a.m. - Open Meeting  
September 22, 1992 - 9:30 a.m. - Open Meeting  
Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road,  
Virginia Room, Richmond, Virginia. ☒

A regular monthly meeting.

Contact: Kim Schulte Barnes, Information Officer, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☎

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September 11, 1992 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council. The regulations will implement the statutory changes made to § 9-160 (3) of the Code of Virginia regarding the council's Commercial Diversification Survey and implement the requirement that the council collect IRS Form 990s from not-for-profit health care institutions.

Statutory Authority: §§ 9-160 (3), 9-160 (5) and 9-164 (2) of the Code of Virginia.

Contact: John A. Rupp, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

## DEPARTMENT OF HISTORIC RESOURCES

August 26, 1992 - 7 p.m. - Public Hearing  
State Water Control Board Office, 4900 Cox Road, Glen Allen, Virginia. ☒  
September 30, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Historic Resources intends to adopt regulations entitled: VR 392-01-01. Public Participation Guidelines. The purpose of the proposed action is to adopt Public Participation Guidelines that establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process and establish guidelines that are consistent with those of other agencies within the Natural Resources Secretariat.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2202 of the Code of Virginia.

Contact: H. Bryan Mitchell, Deputy Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

## Board of Historic Resources

August 26, 1992 - 7 p.m. - Public Hearing  
State Water Control Board Office, 4900 Cox Road, Glen Allen, Virginia.  
September 30, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Historic Resources intends to adopt regulations entitled: VR 390-01-01. Public Participation Guidelines. The purpose of the proposed action is to adopt Public Participation Guidelines that establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process and establish guidelines that are consistent with those of other agencies within the Natural Resources Secretariat.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2205 of the Code of Virginia.

Contact: H. Bryan Mitchell, Deputy Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

August 19, 1992 - 10 a.m. - Open Meeting  
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ☒

A general business meeting to include the consideration of the following properties for the Virginia Landmarks Register:

1. Annandale, Botetourt Co.
2. Blandy Experimental Farm, Clarke Co.
3. Samuel Miller House, Lynchburg
4. Whitehurst House, Virginia Beach
5. Chuckatuck Historic District, Suffolk
6. Driver Historic District, Suffolk
7. Holland Historic District, Suffolk
8. Whaleyville Historic District, Suffolk
9. The Pocahontas Historic District as a National Historic Landmark, Tazewell County

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

## State Review Board

August 18, 1992 - 10 a.m. - Open Meeting  
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ☒

A meeting to consider the nomination of the following properties to the National Register of Historic Places:

1. Annandale, Botetourt Co.
2. Blandy Experimental Farm, Clarke Co.
3. Samuel Miller House, Lynchburg
4. Whitehurst House, Virginia Beach
5. Chuckatuck Historic District, Suffolk
6. Driver Historic District, Suffolk
7. Holland Historic District, Suffolk
8. Whaleyville Historic District, Suffolk
9. The Pocahontas Historic District as a National Historic Landmark, Tazewell County

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

† September 14, 1992 - 10 a.m. - Public Hearing  
General Assembly Building, House Room D, Richmond, 910 Capitol Street, Virginia. ☒  
October 12, 1992 - Written comments may be submitted through this date.

Notice is hereby give 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 394-01-02. Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen. Proposed amendments to the standard deal specifically with the certification of blasters and proposes to divide the certification into two categories, restricted and unrestricted. A restricted blaster is limited to conducting blasting operations involving five pounds of explosives or less per shot with instantaneous blasting caps. The proposed changes would permit the applicant for certification as a restricted blaster to utilize a competency test commensurate with that type of blasting operation instead of the comprehensive test previously required for all blasters. The applicant for the restricted certification would also have to meet experience requirements by working under a certified or restricted blaster for at least one year.

### STATEMENT

**Substance:** Proposed adoption by the Board of Housing and Community Development of the 1990 edition of the Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen which will amend and supersede the previous 1990 edition.

**Issues:** Proposed amendments to the standard deal specifically with the certification of blasters and proposes to divide the certification into two categories, restricted and unrestricted. A restricted blaster is limited to

conducting blasting operations involving 5 pounds of explosives or less per shot with instantaneous blasting caps. The proposed changes would permit the applicant for certification as a restricted blaster to utilize a competency test commensurate with that type of blasting operation instead of the comprehensive test previously required for all blasters. The applicant for the restricted certification would also have to meet experience requirements by working under a certified unrestricted or restricted blaster for at least one year

**Basis:** Amendments to this regulation are promulgated under the authority granted to the Board of Housing and Community Development in §§ 27-97 and 36-137 of the Code of Virginia.

**Purpose:** The Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen is statewide regulation providing minimum standards of competency for persons to be certified in their trade areas. The regulation sets out requirements for the certification of plumbers, building-related mechanical workers and electricians; building officials and building code enforcement personnel; "blasters" or persons responsible for the use of explosives; and amusement device inspectors. A listing of approved testing agencies is included in Appendix A of the regulation.

**Estimated impact:** The proposed changes to this regulation are not anticipated to have any negative impact on persons affected due to the fact that the new provisions are less restrictive than what is currently in the regulation. This change will serve to assist the industry by permitting a "restricted blaster" to obtain a certification for his specialization without having to become certified in all aspects of blasting operations. The restricted category certification test will assure that persons with this certification are competent to conduct the limited blasting operations safely.

**Summary:** The Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen is a statewide uniform regulation that must be used by every local governing body that chooses to require certification of plumbers, building-related mechanical workers and electricians; building officials and building code enforcement personnel; persons responsible for the use of explosives; and amusement device inspectors. A listing of approved testing agencies is included in Appendix A of the regulation.

**Statutory Authority:** §§ 27-97 and 36-137 of the Code of Virginia.

Written comments may be submitted until October 12, 1992, to the Code Development office, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1312.

**Contact:** Carolyn Williams, Building Code Supervisor, Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1312,



# Calendar of Events

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telephone (804) 371-7150.

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† **September 14, 1992 - 10 a.m.** – Public Hearing  
General Assembly Building, House Room D, Richmond, 910  
Capitol Street, Virginia. ☒  
**October 12, 1992** – 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 Housing and Community Development intends to amend regulations entitled VR 394-01-04. Virginia Amusement Device Regulations. The proposed amendments to this regulation are a result of statutory changes made during the 1991 session of the General Assembly and a review of public comment submitted to the Board of Housing and Community Development since the effective date of the 1990 edition of the regulation. The definition of "kiddie ride" is proposed to be split into Types A and B to differentiate between those rides that require partial or complete reassembly and those which require little or none. A definition of "passenger tramway" was added to be consistent with new provisions in state law which include passenger tramways as amusement devices. Section 400.1 of the regulation includes tramways within the scope of the regulation. A proposed change to § 1000.3(2) will limit the acceptability of a certificate of inspection for a ride moved from location to location only a Type A kiddie ride. Section 1100.1 is amended to require owners and operators of amusement rides to notify the locality immediately when an accident involving serious injury or fatality occurs, and new provisions in §§ 1100.3 and 1500.3 require action by the building official prior to resuming service and a new certificate of inspection to be issued after an accident. Appendix A, which lists the referenced standards, has a proposed change to include the ANSI B77.1-90 standard for use in inspecting passenger tramways.

## STATEMENT

**Purpose and Substance:** The purpose of this regulation is to provide for mandatory, statewide regulation in the construction, maintenance, operation and inspection of amusement devices. The regulation supplements the provisions of the Uniform Statewide Building Code for the purpose of protecting health, safety and welfare of amusement device users. The technical requirements of the regulation are based on standards developed by the American Society for Testing and Materials (ASTM). An administrative appeals system is established for the resolution of disagreements between building officials and amusement device owners or operators.

The proposed amendments to this regulation are a result of statutory changes made during the 1992 session of the General Assembly and from review of public comment received by the Board of Housing and Community

Development after the effective date of the 1990 edition of the regulation. The board also relies on technical assistance from the Amusement Device Technical Advisory Committee, which is a board appointed committee made up of persons affected by the regulations, including manufacturers, operators and enforcement personnel.

**Issues:** The definition of "kiddie ride" is proposed to be split into Type A and Type B which differentiate between those rides that require partial or complete reassembly and those which require little or none. A definition of "passenger tramway" was added to be consistent with new provisions in state law which group tramways as amusement devices. Section 400.1 of the regulation was modified to include tramways within the scope of the regulation. A proposed change was made to § 1000.3(2) to limit the certificate of inspections validity from location to location to Type A kiddie rides. Section 1100.1 contains a proposed amendment to require notification to the locality upon having an accident involving a serious injury or fatality and also under new provisions in §§ 1100.3 and 1500.3 to require action by the building official prior to resuming service and a new certificate of inspection to be issued. Appendix A, which lists the referenced standards, has a proposed change to include the ANSI B77.1-90 standard for use in inspecting passenger tramways.

**Basis:** Amendments to this regulation are promulgated under the authority granted to the Board of Housing and Community Development in Chapter 6 of Title 36, § 36-98.3 of the Code of Virginia.

**Estimated impact:** The proposed amendments may be divided into two categories. Those which were necessary to incorporate new provisions for passenger tramways will have little or no adverse economic impact due to the fact that tramways were previously regulated using the same standards by the Department of Labor and Industry. Other changes to the regulation simply fine tune the procedures to be followed upon having an accident to assure that the ride is safe to resume operation.

**Summary:** The 1990 edition of the Virginia Amusement Device Regulations is a mandatory, statewide regulation which provides for the administration and enforcement of uniform standards for the construction, maintenance, operation and inspection of amusement devices, whether mobile or affixed to a site. The regulation supplements the provisions of the Uniform Statewide Building Code for the purpose of protecting the health, safety and welfare of amusement device users. The technical requirements of the regulation are based on standards developed by the American Society for Testing and Materials (ASTM). Provisions are included in the regulations for the inspection of amusement devices, reports and investigation of accidents, certification and conduct of operators, and an administrative appeals system is established for the resolution of disagreements between amusement device owners or operators and building officials.

Statutory Authority: §§ 36-98, 36-98.3 and 36-137 of the

Code of Virginia.

Written comments may be submitted until October 12, 1992 to Code Development Office, Dept. of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1312.

Contact: Carolyn Williams, Building Code Supervisor, Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1312, telephone (804) 371-7150.

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† September 14, 1992 - 10 a.m. - Public Hearing  
General Assembly Building, House Room D, Richmond, 910 Capitol Street, Virginia. ☐

October 12, 1992 - 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 Housing and Community Development intends to amend regulations entitled VR 394-01-06, Virginia Statewide Fire Prevention Code/1990. The proposed amendments are to § F-102.0. A change to § F-102.1 requires a local governing body electing to locally enforce the SFPC to take official action to do so, and to provide notification by copy of the adopting ordinance or resolution to the State Fire Marshal's Office. The existing modification provision for the Public Building Safety Regulations will be deleted and replaced by a general modification section applicable to any provision of the regulation. A new requirement for documentation of the modification and making it part of the records of the enforcing agency are also included. These proposed changes are similar to provisions already contained in both Volume I and Volume II of the Uniform Statewide Building Code.

STATEMENT

Substance: Proposed adoption by the Board of Housing and Community Development of a 1990 edition of the Virginia Statewide Fire Prevention Code which will amend and supersede the 1990, First Amendment edition.

Issues: The proposed amendments are to § F-102.0. A change to § F-102.1 requires a local governing body electing to locally enforce the SFPC to take official action to do so, and to provide notification by copy of the adopting ordinance or resolution to the State Fire Marshal's Office. The existing modification provision for the Public Building Safety Regulations will be deleted and replaced by a general modification section applicable to any provision of the regulation. A new requirement for documentation of the modification and making it part of the records of the enforcing agency are also included. These proposed changes are similar to provisions already contained in both Volume I and Volume II of the Uniform Statewide Building Code.

Basis: § 27-97 of the Code of Virginia.

Purpose: The purpose of this regulation is to provide minimum safety standards for the protection of life and property from the hazards of fire or explosion and for the handling, storage and use of explosives or blasting agents.

Estimated impact: The proposed amendments may affect all persons regulated under the Fire Prevention Code however, in a positive way by providing the fire official with the mechanism for more flexible enforcement of the code by permitting the use of professional judgment and expertise in approving alternative methods of compliance with the regulation.

Summary: The 1990 edition of the Virginia Statewide Fire Prevention Code is a mandatory, statewide regulation that must be compiled with for the protection of life and property from the hazards of fire or explosion. Technical requirements of the Statewide Fire Prevention Code are based on the BOCA National Fire Prevention Code, a companion document to the BOCA National Building Code which is incorporated by the Uniform Statewide Building Code. The Fire Prevention Code supersedes all fire prevention regulations heretofore adopted by local government or other political subdivisions. Local governments are empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure. Local enforcement of this code is optional. The State Fire Marshal shall have authority to enforce the Fire Prevention Code in those jurisdictions in which the local governments do not enforce the code. An administrative appeals system is established for resolution of disagreements between the aggrieved party and the enforcing agency.

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

Written comments may be submitted until October 12, 1992 to Code Development Office, Department of Housing and Community Development, 501 N. 2nd St., Richmond, Virginia 23219-1321.

Contact: Carolyn Williams, Building Code Supervisor, Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1312, telephone (804) 371-7150.

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† September 14, 1992 - 10 a.m. - Public Hearing  
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia. ☐

October 12, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations

# Calendar of Events

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entitled VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1990. The proposed amendments to this regulation are a result of statutory changes made during the 1991 and 1992 sessions of the General Assembly and a review of public comment submitted to the Board of Housing and Community Development since the effective date of the 1990 edition of the regulation. Section 105.6 has been amended to contain more specific requirements for plans review response; § 112.3 is changed to require the building official to prosecute a person who has been served notices of violation for failure to obtain a construction permit three or more times within the same calendar year; § 112.4 sets the penalty for violations in accordance with the state law; an amendment to § 115.6 authorizes the building official to revoke a certificate of occupancy under certain conditions and §§ 120.1 and 120.3 add provisions by which certain structures deemed to be either unsafe buildings or public nuisances may be abated or removed. Changes to the BOCA and CABO Codes are proposed in Addenda 1 and 2 of the regulation including new definitions proposed to § 201.0 for family day care homes, small family day care homes, and public nuisances. A new § 309.4.1.1 is added to classify as Use Group R-3 family day care homes and small family day care homes licensed or registered by the Department of Social Services. A proposed exception to § 512.2 would exempt from handicapped accessibility requirements buildings used exclusively for religious or private club activities; and a new section 512.2.1 is added to specify accessible parking space identification requirements mandated by state law. Section 1300.4 identifies .06% by weight as the level of lead content in lead based paint not to be exceeded in new paint applications; amendments to §§ 2700.5 and R-220 require two-pair twisted wire cable to be used in rewiring for telephone jacks. Amendments to § P-1503.8 (Addendum 1) and P-2301 (Addendum 2) provide alternative standards for elective local enforcement where water conservation plumbing fixtures and fittings are necessary due to a lack of present or future water supply; and P-2206.8.2 is amended to add specific requirements for grinder pumps.

## STATEMENT

Substance: Amendments to the regulation are proposed by the Board of Housing and Community Development in order to comply with changes to state law and to be responsive to public comment received from August 27, 1990, until June 12, 1992. The board usually updates the regulation every three years to coincide with the publication of the two nationally recognized model building codes (BOCA and CABO) which are incorporated by reference for use as part of the regulation. However, due to the increased amount of public interest and public comment received during the last several three-year cycles, the board elected to consider the comment received from after the public comment period ended for adopting the 1990 edition of the regulation until June of this year; and proposed certain amendments be made to the regulation in response to these comments at the same time that changes are adopted to adhere to legislative mandates.

Issues: Section 105.6 is amended to contain more specific requirements for plans review response; § 112.4 sets the penalty for violations in accordance with state law; an amendment to § 115.6 authorizes the building official to revoke a certificate of occupancy under certain conditions and §§ 120.1 and 120.3 add provisions by which certain structures deemed to be either unsafe buildings or public nuisances may be abated or removed. Changes to the BOCA and CABO Codes are proposed in Addenda 1 and 2 of the regulation including new definitions proposed to § 201.0 for family day care homes, small family day care homes, and public nuisances. A new § 309.4.1.1 is added to classify as Use Group R-3 family day care homes and small family day care homes licensed or registered by the Department of Social Services. A proposed exception to § 512.2 would exempt from handicapped accessibility requirements buildings used exclusively for religious or private club activities; and a new section 512.2.1 is added to specify accessible parking space identification requirements mandated by state law. Section 1300.4 identifies .06% by weight as the level of lead content in lead based paint not to be exceeded in new paint applications; amendments to §§ 2700.5 and R-220 require two-pair twisted wire cable to be used in rewiring for telephone jacks. Amendments to § P-1503.8 (Addendum 1) and P-2301 (Addendum 2) provide alternative standards for elective local enforcement where water conservation plumbing fixtures and fittings are necessary due to lack of present or future water supply; and P-2206.8.2 is amended to add specific requirements for grinder pumps.

Basis: §§ 36-98 and 36-99 of the Code of Virginia.

Purpose: To update minimum statewide building construction standards for the design, construction, use, change of use, and repair of buildings and structures in the Commonwealth of Virginia.

Estimated impact: The proposed amendments will affect all persons involved in the construction of buildings;

however, in general, the proposed changes would make the regulation less restrictive and permit buildings to be constructed with less or equal cost while still requiring appropriate levels of safety.

**Summary:** The 1990 edition of the Uniform Statewide Building Code, Volume I - New Construction Code is a mandatory, statewide uniform regulation which must be complied with in all buildings or additions hereafter constructed, altered, repaired, or converted to another use group. Its purpose is to protect the health, safety, and welfare of building users, and to provide for energy conservation, water conservation, and accessibility for the physically handicapped and aged. The technical provisions of the regulation are adopted by reference from the BOCA National Building Code/1990 and the CABO One- and Two-Family Dwelling Code/1989 with 1990 Amendments. The New Construction Code specifies the enforcement procedures to be used by local governments. Enforcement by local governments is mandatory. Provisions are made for modifications by the building official when alternate means will provide equivalent health and safety. An administrative appeals system is provided for resolution of disagreements between the building owners or their agents and the building officials.

**Statutory Authority:** §§ 36-98, 36-99 and 36-102 of the Code of Virginia.

Written comments may be submitted until October 12, 1992, to Code Development Office, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321.

**Contact:** Carolyn Williams, Building Code Supervisor, Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1312, telephone (804) 371-7150.

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† **September 14, 1992 - 10 a.m. - Public Hearing**  
General Assembly Building, House Room D, Richmond, 910 Capitol Street, Virginia. ☐

**October 12, 1992 -** 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 Housing and Community Development intends to amend regulations entitled VR 394-01-22. **Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code/1990.** The proposed amendments to this regulation are a result of statutory changes made during the 1991 and 1992 sessions of the General Assembly respond to a review of public comment submitted to the Board of Housing and Community Development since the effective date of the 1990 edition of the regulation. Section 101.4 is changed to clarify the application of the code to buildings built prior to the effective date of Volume I of the building code. Section 104.4 changes the

violation penalty fee to reflect the change to state law; § 105.8 clarifies existing requirements for unsafe buildings and public nuisances; and § 109.5 requires that parking spaces reserved for persons with disabilities be properly identified by January 1, 1993, pursuant to state law. One change has been proposed to the BOCA National Property Maintenance Code in Addendum 1 of Volume II. Section PM-303.4 of BOCA has been amended to change the level of lead in lead based paint requiring abatement or removal in existing dwellings, child and day care centers from .06% to .5% by weight as recommended by the HUD Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing.

## STATEMENT

**Substance:** Proposed adoption by the Board of Housing and Community Development of a 1990, First Amendment edition of the Virginia Uniform Statewide Building Code, Volume II, Building Maintenance Code which will amend and supersede the previous 1990 edition. Proposed changes are made to the regulation in response to changes in state law or to respond to public comment received from August 27, 1990, until June 12, 1992.

**Issues:** Section 101.4 is changed to clarify the application of the code to buildings built prior to the effective date of Volume I of the building code. Section 104.4 changes the violation penalty fee to reflect the change to state law; § 105.8 requires that parking spaces reserved for persons with disabilities be properly identified by January 1, 1993, pursuant to state law. One change has been proposed to the BOCA National Property Maintenance Code in Addendum 1 of Volume II. Section PM-303.4 of BOCA has been amended to change the level of lead in lead based paint requiring abatement or removal in existing dwellings, child and day care centers from .06% to 5% by weight as recommended by the HUD Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing.

**Basis:** § 36-103 of the Code of Virginia.

**Purpose:** The purpose of this regulation is to provide minimum safety standards for proper maintenance of buildings and structures in the Commonwealth. Proposed amendments are to update minimum statewide uniform building maintenance standards for the protection of life and property in the use and maintenance of buildings and structures. Enforcement by local government is optional.

**Estimated impact:** The proposed amendments may affect all owners and occupants of existing buildings; however, in general, the proposed changes would make the regulation less restrictive and permit buildings to be maintained with less or equal cost while still requiring appropriate levels of safety. There are some editorial changes which simply clarify the application of the regulation.

**Summary:** The 1990 edition of the Volume II of the Uniform Statewide Building Code is a mandatory, statewide

# Calendar of Events

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regulation which must be complied with in all buildings and structures to protect the property and the occupants from health and safety hazards that might arise from improper maintenance and use. Technical requirements of Volume II are based on the BOCA National Property Maintenance Code, a companion document to the BOCA National Building Code which is incorporated by Volume I of the Uniform Statewide Building Code, and which, as such, is similarly incorporated, except where amended, by reference into Volume II of the USBC. The Building Maintenance Code supersedes all local regulations heretofore adopted by local government or other political subdivisions. Local enforcement of the code is optional.

Statutory Authority: § 36-103 of the Code of Virginia.

Written comments may be submitted until October 12, 1992, to Code Development Office, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1312.

Contact: Carolyn Williams, Building Code Supervisor, Jackson Center, 501 N. 2nd St., Richmond, VA 23210-1312, telephone (804) 371-7150.

## Regulatory Effectiveness Advisory Committee

† August 19, 1992 - 9 a.m. - Open Meeting  
Virginia Housing Development Authority (VHDA), 601 South Belvidere Street, Conference Room No. 1, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A meeting to review the challenges to the 1992 BOCA National Building Code.

Contact: Carolyn Williams, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1312, telephone (804) 371-7170.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† August 18, 1992 - 11 a.m. - Open Meeting  
601 South Belvidere Street, Richmond, Virginia. ☒

A regular meeting of the Board of Commissioners of the Virginia Housing Development Authority 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; and (iv) 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 its purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia

Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

## COUNCIL ON INFORMATION MANAGEMENT

† September 11, 1992 - 9 a.m. - Open Meeting  
Williamsburg Lodge and Conference Center, "Tidewater Room," Williamsburg, Virginia. ☒

A regular business meeting.

Contact: Linda W. Hening, Administrative Staff Specialist, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD ☎

## LAND EVALUATION ADVISORY COUNCIL

August 26, 1992 - 10 a.m. - Open Meeting  
September 11, 1992 - 10 a.m. - Open Meeting  
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ☒

A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use value assessment program.

Contact: David E. Jordan, Acting Property Tax Director, Virginia Department of Taxation, Property Tax Division, P.O. Box 1-K, Richmond, VA 23201, telephone (804) 367-8020.

## DEPARTMENT OF LABOR AND INDUSTRY

### Safety and Health Codes Board

† August 25, 1992 - 10 a.m. - Open Meeting  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☒

Preliminary agenda:

- 1) Process Safety Management of Highly Hazardous Chemicals, § 1910.119; Technical Corrections
- 2) Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite, §§ 1910.1001 and 1926.58, Final Rule
- 3) Occupational Exposure to Formaldehyde, § 19140.1408; Technical Corrections
- 4) Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite; Technical Corrections
- 5) Air Contaminants, § 1910.1000; Correcting Amendments
- 6) Update of Addresses for Obtaining Technical Manuals; Corrections, §§ 1910.1450 and 1910.1500
- 7) Adoption of Environmental Protection Agency NESHAPS - Asbestos Regulations
- 8) Adoption of Change form for Asbestos
- 9) Occupational Exposure to Bloodborne Pathogens

1910.1030; Correction

10) Correction of Code References for Asbestos, § 54.1 to § 40.1

Contact: John J. Crisanti, Director, Enforcement Policy, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2384.

## STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

Note: Change in August meeting date and time

August 28, 1992 - 8 a.m. - Open Meeting

State Lottery Department, 2201 West Broad Street, Richmond, Virginia. ☒

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled. A work session, open to the public, will follow the board meeting.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

## MARINE RESOURCES COMMISSION

August 25, 1992 - 9:30 a.m. - Open Meeting

September 22, 1992 - 9:30 a.m. - Open Meeting

2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☒ (Interpreter for deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues.

The commission will hear and decide fishery management items: regulatory proposals, fishery management plans, fishery conservation issues, licensing, shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues, and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Cathy W. Everett, Secretary to the Commission, P.O. Box 756, Room 1006, Newport News, VA 23607, telephone (804) 247-8088, toll-free 1-800-541-4646 or (804) 247-2292/TDD ☎

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August 26, 1992 - 7 p.m. - Public Hearing

State Water Control Board, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ☒

September 11, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Marine Resources Commission intends to amend regulations entitled: **VR 450-01-0045, Public Participation Procedures**. The proposed amendments will (i) establish, in regulation, various provisions to ensure interested parties have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process, and (ii) establish guidelines which are consistent with those of the other agencies within the Natural Resources Secretariat.

Statutory Authority: §§ 9-6.14:7.1 and 62.1-13.4 of the Code of Virginia

Contact: Robert W. Grabb, Chief, Habitat Management, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-2252.

## BOARD OF MEDICINE

† August 14, 1992 - 2:30 p.m. - Open Meeting

† August 27, 1992 - 8:30 a.m. - Open Meeting

Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The Informal Conference Committee will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to 32.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Disc., 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

## Credentials Committee

August 15, 1992 - 8 a.m. - Open Meeting

Department of Health Professions, Board Room 3, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) conduct general business; (ii) interview and review medical credentials of applicants applying for licensure in Virginia, in open and executive session; and (iii) discuss any other items which may come before the committee. Public comments will not be received.

Contact: Eugenia K. Dorson, Deputy Executive Director,

# Calendar of Events

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1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9923.

## Executive Committee

**August 14, 1992 - 9 a.m. - Open Meeting**  
Department of Health Professions, Board Room No. 1,  
1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) review closed cases; (ii) review cases/files requiring administrative action; and (iii) consider any other items which may come before the committee. Public comments will not be received.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9923.

## Joint Committees on Acupuncture

**September 17, 1992 - Noon - Open Meeting**  
1601 Rolling Hills Drive, Surry Building, Board Room No. 3, Richmond, Virginia. ☒

The joint Committees on Acupuncture will review proposed regulations pursuant to § 54.1-2956.9 of the Code of Virginia for the practice of acupuncture by acupuncturists in Virginia, and propose recommendations to the full board. The Chairman may entertain public comments.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, Virginia Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9923.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† **August 11, 1992 - 9 a.m. - Open Meeting**  
600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☒

Open meeting to discuss medical assistance services and issues pertinent to the board.

**Contact:** Patricia A. Sykes, Policy Analyst, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958 or toll free 1-800-343-0634/TDD ☒

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† **October 9, 1992 -** Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance services intends to amend regulations entitled: **State Plan for Medical Assistance Relating to Disproportionate Share Adjustments for State Teaching Hospitals. VR 460-02-4.1910. Methods and**

**Standards for Establishing Payment Rates--Inpatient Hospital Care.** The purpose of the proposed action is to promulgate permanent regulations on disproportionate share adjustments for state teaching hospitals. The amendments provide for two types of hospitals (state-owned teaching hospitals and all other hospitals), and vary the payment adjustment for disproportionate share hospitals by type of hospital.

## STATEMENT

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

Section 1902(a)(13)(A) of the Social Security Act is implemented by Title 42 of the Code of Federal Regulations Part 447 Subpart C. This section "requires that the State Plan provide for payment for hospital and long-term care facility services through the use of rates, that the state finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations and quality and safety standards and assure that individuals eligible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time) to ..."care"... of adequate quality."

**Purpose:** The purpose of this action is to promulgate permanent regulations to supersede the existing emergency regulation on the same issue.

**Summary and analysis:** The section of the State Plan affected by this action is the Methods and Standards for Establishing Payment Rates--Inpatient Hospital Care (Attachment 4.19 A).

The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended § 1923(c) of the Social Security Act to give states greater flexibility in making required payment adjustments to hospitals which serve a disproportionate number of low income patients with special needs. This flexibility permits the payment to vary according to the type of hospital. The Commonwealth's current methodology acknowledges only one type of hospital, and does not appropriately recognize the extraordinary costs, volume or proportion of services which the large state-owned teaching hospitals provide to low-income patients and patients eligible for medical assistance.



The emergency regulation provided for two types of hospitals (state-owned teaching hospitals and all other hospitals), and varied the payment adjustment for disproportionate share hospitals by type of hospital.

Hospitals other than state-owned teaching hospitals are continuing to receive an adjustment equal to (i) their Medicaid utilization in excess of 8%, times (ii) the lower of the prospective operating cost rate or ceiling. State-owned teaching hospitals are receiving (i) eleven times their Medicaid utilization in excess of 8%, times (ii) the lower of the prospective operating cost rate or ceiling.

To date, the agency's experience with the emergency regulation has been to significantly increase disproportionate share payments to state-owned teaching hospitals. No comments have been received from non-state-owned hospitals concerning the current emergency regulation.

**Impact:** Only two state-owned teaching hospitals are affected. The estimated funds for this plan are \$36,200,000 (\$18,000,000 GF) in FY 92 and \$64,540,000 (\$32,270,000 GF) in FY 93 which have been appropriated.

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

Written comments may be submitted until October 9, 1992, to William R. Blakely, Jr., Director, Division of Cost Settlement and Audit, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

## Drug Utilization Review Board

† **September 3, 1992 - 3 p.m. – Open Meeting**  
600 East Broad Street, Suite 1300, Richmond, Virginia. ☒

The scheduled session is a regular meeting of the board. Routine business will be conducted.

**Contact:** Carol B. Pugh, Pharm.D., DUR Program Consultant, Division of Quality Care Assurance, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

## MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

**September 3, 1992 - 7 p.m. – Open Meeting**  
502 South Main Street No. 4, Culpeper, Virginia.

From 7 p.m. until 7:30 p.m. the Board of Directors will hold a business meeting to discuss DOC contract, budget, and other related business. Then the CCRB will meet to review cases before it for eligibility to

participate with the program. It will review the previous month's operation (budget and program related business).

**Contact:** Lisa Ann Peacock, Program Director, 502 S. Main St., No. 4, Culpeper, VA 22701, telephone (703) 825-4562.

## VIRGINIA MILITARY INSTITUTE

### Board of Visitors

**September 5, 1992 - 8:30 a.m. – Open Meeting**  
Virginia Military Institute, Smith Hall Board Room, Lexington, Virginia. ☒

A regular meeting of the VMI Board of Visitors to conduct the following business: (i) election of president, (ii) committee appointment, (iii) committee reports.

An opportunity for public comment will be provided immediately after the Superintendent's comments (about 9 a.m.).

**Contact:** Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206, FAX (703) 464-7660.

## DEPARTMENT OF MOTOR VEHICLES

**August 28, 1992 – Written comments may be submitted through this date.**

**August 31, 1992 - 9:30 a.m. – Public Hearing**  
Department of Motor Vehicles, 2300 West Broad Street, Monticello Room, 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 repeal regulations entitled: **VR 485-10-9001. Commercial Driver Training Schools Regulations** and adopt regulations entitled: **VR 485-10-9001:1. Commercial Driver Training Schools Regulations**. Pursuant to § 46.2-1703 of the Code of Virginia, the Commissioner of the Department of Motor Vehicles intends to repeal existing regulations (VR 485-10-9001) and adopt new regulations, VR 485-10-9001:1, pertaining to commercial driver training schools. The proposed regulations will establish the licensing and regulatory provisions for commercial driver training schools and instructors. These regulations may affect any person, group or organization involved or associated with commercial driver training school instruction. Anyone wishing to comment on the proposed regulations may do so by contacting M. E. Smith, Program Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, or by calling (804) 367-2447 on or before



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August 3, 1992.

Statutory Authority: §§ 46.2-203 and 46.2-1703 of the Code of Virginia.

Contact: M. E. Smith, Program Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-2447.

## BOARD FOR OPTICIANS

† August 21, 1992 - 9 a.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

An open meeting to (i) review applications; (ii) administer a special examination; (iii) regulatory review, and (iv) discuss other matters which may require board action.

Contact: Mr. Geralde W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† September 28, 1992 - 10 a.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎.

## BOARD OF PSYCHOLOGY

August 15, 1992 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: VR 565-01-2. **Regulations Governing the Practice of Psychology.** The proposed regulations establish requirements governing the practice of psychology in the Commonwealth. They include requirements necessary for licensure; criteria for the examinations; standards of practice; and procedures for the disciplining of psychologists. The proposed regulations respond to a biennial review conducted in accordance with Executive Order 5 (86) of Governor Gerald L. Baliles. The review of the regulations resulted in revisions to existing regulations. All relevant documents are available for inspection at the office of the Board of Psychology, 1601 Rolling Hills Drive, Richmond, Virginia 23229, telephone (804) 662-9913.

Statutory Authority: §§ 54.1-2400 and 54.1-3600 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, 1601 Rolling Hills Dr., Suite 200, Richmond, VA 23229, telephone (804) 662-9913.

## REAL ESTATE APPRAISER BOARD

August 18, 1992 - 10 a.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A general business meeting.

Contact: Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2175.

## INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

### Coordinating Committee

August 21, 1992 - 8:30 a.m. - Open Meeting  
September 18, 1992 - 8:30 a.m. - Open Meeting  
Office of the Coordinator, Interdepartmental Regulation, 1603 Santa Rosa Road, Tyler Building, Suite 208, Richmond, Virginia. ☒

A regular meeting to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Coordinator, Interdepartmental Regulation, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124.

## DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

### Protection and Advocacy for Individuals with Mental Illness Advisory Council

† August 20, 1992 - 9 a.m. - Open Meeting  
Shoney's Inn, Conference Room, 7007 West Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A regular bimonthly meeting. Time will be provided for public comment at start of meeting.

Contact: Rebecca Currin, Department for Rights of Virginians with Disabilities, Monroe Bldg., 17th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 552-3962 or (804) 225-2042/TDD ☎.

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

August 19, 1992 - 2 p.m. - Open Meeting

August 20, 1992 - if necessary - 9 a.m. - Open Meeting  
Department of Social Services, 8007 Discovery Drive,  
Richmond, Virginia. ☒

A work session and formal business meeting of the board.

Contact: Phyllis Sisk, Staff Specialist, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9236, toll-free 1-800-552-3431 or 1-800-552-7096/TDD ☎

## BOARD OF SOCIAL WORK

September 13, 1992 - 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 Work intends to amend regulations entitled: **VR 620-01-2. Regulations Governing the Practice of Social Work.** The proposed regulations establish standards of practice for social work, supervised experience and examination for licensure and record keeping.

Statutory Authority: Chapter 31 of Title 54.1 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 1601 Rolling Hills Dr., Suite 200, Richmond, VA 23229, telephone (804) 662-9914.

## VIRGINIA SOIL AND WATER CONSERVATION BOARD

August 26, 1992 - 7 p.m. - Public Hearing  
State Water Control Board, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ☒

September 14, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Soil and Water Conservation Board intends to repeal existing regulations entitled: **VR 625-00-00. Public Participation Guidelines** and adopt new regulations entitled: **VR 625-00-00:1. Regulatory Public Participation Procedures.** Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and developments of its regulations. Such guidelines shall not only be utilized prior to the formation and drafting of the proposed regulations, but shall also be utilized during the entire formation, promulgation and final adoption process of a regulation. The purpose of the proposed action is to repeal the existing Public

Participation Guidelines and adopt VR 625-00-00:1. Regulatory Public Participation Procedures, which establish, in regulation, various provisions to ensure interested persons have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process and establish procedures which are consistent with those of the other agencies within the Natural Resources Secretariat. Specifically, the proposed VR 625-00-00:1. Regulatory Public Participation Procedures require an expanded notice of intended regulatory action, require that either a summary or a copy of comments received in response to the NOIRA be submitted to the board, and require the performance of certain analyses.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-502, 10.1-603.18, 10.1-605, and 10.1-637 of the Code of Virginia

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570

## DEPARTMENT OF STATE POLICE

August 28, 1992 - 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 State Police intends to amend regulations entitled: **VR 545-01-03. Standards and Specifications for the Stickers or Decals Used by Counties, Cities and Towns in Lieu of License Plates.** This revision will make the standards and specifications for stickers and decals used in lieu of license plates consistent with existing state law and motor vehicle safety inspection rules and regulations with regards to placement.

Statutory Authority: §§ 46.2-1052 and 52-8.4 of the Code of Virginia.

Contact: Captain J. P. Henries, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

## DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

August 10, 1992 - 1 p.m. - Public Hearing  
Highway Auditorium, 1221 East Broad Street, Richmond, Virginia.

August 17, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commonwealth Transportation Board intends to amend regulations entitled: **VR 385-01-5. Hazardous Materials Transportation Rules and Regulations at**

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**Bridge-Tunnel Facilities.** The Department of Transportation is authorized by §§ 33.1-12(3) and 33.1-49 of the Code of Virginia to regulate use of state highways and the interstate system to protect the safety to traffic. The proposed amendments to the Hazardous Materials Transportation Manual (i) change the regulations to allow vehicles which use natural gas (or gases with similar properties) as fuel to use the tunnel facilities in the Commonwealth; and (ii) change the regulations pertaining to the conditions under which low-pressure liquid oxygen can be transported through tunnel facilities in the Commonwealth.

Amending the manual allows Virginia to keep its regulations up-to-date with new chemicals and how they may be used or transported. Without these amendments, natural gas-powered vehicles and carriers of low-pressure liquid oxygen not in conformance with the amendments will be unable to use the tunnels.

Statutory Authority: §§ 33.1-12(3) and 33.1-49 of the Code of Virginia.

Written comments may be submitted until August 17, 1992, to Mr. J.L. Butner, Traffic Engineering Division, Virginia Department of Transportation, 1401 E. Broad Street, Richmond, VA 23219.

Contact: C.A. Abernathy, Transportation Engineer, Traffic Engineering Division, Virginia Department of Transportation, Room 206, Highway Annex, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2889.

**August 19, 1992 - 2 p.m. - Open Meeting**  
Virginia Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

Work session of the Commonwealth Transportation Board and the Department of Transportation Staff.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6670.

**August 21, 1992 - 10 a.m. - Open Meeting**  
Virginia Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.

Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The

board reserves the right to amend these conditions.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6670.

## TRANSPORTATION SAFETY BOARD

**September 10, 1992 - 9:30 a.m. - Open Meeting**  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ☒

This meeting will deal exclusively with the distribution of USDOT Funds for approved grant requests.

Contact: William H. Leighty, Deputy Commissioner, Transportation Safety, DMV, 2300 W. Broad St., Richmond, VA 23219, telephone (804) 367-6614 or (804) 367-1752/TDD

## VIRGINIA RACING COMMISSION

**September 16, 1992 - 9:30 a.m. - Public Hearing**  
Marion Dupont Scott Equine Center, 542 Old Waterford Road, Leesburg, Virginia.

**September 28, 1992 -** Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to adopt regulations entitled: **VR 662-04-04. Virginia Breeders Fund.** The purpose of the proposed regulation is to establish the conditions under which the Virginia Breeders Funds shall be disbursed to Stallion owners, breeders and owners of racehorses.

Statutory Authority: § 59.1-369 of the Code of Virginia

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

## VIRGINIA RESOURCES AUTHORITY

**August 11, 1992 - 9 a.m. - Open Meeting**  
The Mutual Building, 909 East Main Street, Suite 707, Conference Room A, Richmond, Virginia.

The board will meet to (i) approve minutes of its July 14, 1992, meeting; (ii) review the Authority's operations for the prior months; and (iii) consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the Authority one week prior to the date of the meeting.

Public comments will be received at the beginning of the meeting.

September 15, 1992 - 9 a.m. - Open Meeting  
The Mutual Building, 909 East Main Street, Suite 707,  
Conference Room A, Richmond, Virginia.

The board will meet to (i) approve minutes of its August 11, 1992, meeting; (ii) review the Authority's operations for the prior months; and (iii) consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the Authority one week prior to the date of the meeting.

Public comments will be received at the beginning of the meeting.

Contact: Mr. Shockley D. Gardner, Jr., 909 E. Main St., Suite 707, Mutual Building, Richmond, VA 23219, telephone (804) 644-3100 or FAX number (804) 644-3109.

**VIRGINIA VOLUNTARY FORMULARY BOARD**

September 10, 1992 - 10:30 a.m. - Open Meeting  
1100 Bank Street, Washington Building, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4236.

**DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)**

August 26, 1992 - 7 p.m. - Public Hearing  
State Water Control Board, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ☐

September 14, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to repeal existing regulations entitled: VR 672-01-1. Public Participation Guidelines. and adopt new regulations entitled: VR 672-01-1:1. Public Participation Guidelines. The purpose of the proposed action is to repeal the existing regulations and adopt Public Participation Guidelines which establish, in regulation, various provisions to ensure interested persons have the necessary information to comment on regulatory actions in a meaningful fashion in all phases of the regulatory process and establish guidelines which are consistent with those of the other agencies within the Natural Resources Secretariat. Specifically, the proposed guidelines require an expanded notice of intended regulatory action (NOIRA) to include a

statement as to the need for the regulatory action; a description, if possible, of alternatives available to meet the need; and a request for comments on the costs on the intended regulatory action, comments on the costs and benefits of the alternatives, and suggestions. The proposal requires that either a summary or a copy of comments received in response to the Notice of Intended Regulatory Action be submitted to the Waste Management Board. In addition, the proposal requires that certain analyses be performed, a statement of the performance of the analyses be included in the notice of public comment period, and the analyses be available to the public upon request.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1402 (11) of the Code of Virginia

Contact: Mary Clark German, Public Information Officer, 11th Floor, Monroe Building, 101 North 14th St., Richmond, VA 23219, telephone (804) 225-2992.

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September 1, 1992 - 1 p.m. - Public Hearing  
Wytheville Community College, Grayson Hall Commons, Wytheville, Virginia.

September 2, 1992 - 9 a.m. - Public Hearing  
Central Virginia Community College, Auditorium (Room 2123), Lynchburg, Virginia.

September 15, 1992 - 2 p.m. - Public Hearing  
James City County Board Room, 101-C Mounts Bay Road, Williamsburg, Virginia.

September 16, 1992 - 1 p.m. - Public Hearing  
Culpeper County Board Room, 135 West Cameron Street, Culpeper, Virginia.

September 25, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: VR 672-20-10. Solid Waste Management Regulations. The Virginia Waste Management Board and the Director of the Department of Waste Management propose to amend the Virginia Solid Waste Management Regulations (VR 672-20-10) to incorporate changes in the Virginia Waste Management Act enacted by the General Assembly, to bring Virginia regulations in compliance with the newly promulgated federal Criteria for Municipal Solid Waste Landfills (Part 258, Title 40, Code of Federal Regulations), and to reflect the department's experience with the administration of its regulations gained since 1988.

Statutory Authority: § 10.1-1402 of the Code of Virginia

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Written comments may be submitted until September 25, 1992, to Wladimir Gulevich, Department of Waste Management, Monroe Building, 11th Floor, 101 N. 14th Street, Richmond, Virginia 23219.

**Contact:** Michael P. Murphy, Environmental Programs Manager, 11th Floor, Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-3237.

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## September 15, 1992 - 12:30 p.m. - Public Hearing

James City County Board Room, 101-C Mounts Bay Road, Williamsburg, Virginia.

September 25, 1992 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: VR 672-10-1. Virginia Hazardous Waste Management Regulations. Since the adoption of Amendment 11 of the Virginia Hazardous Waste Management Regulations on March 7, 1991, with an effective date of July 1, 1991, the United States Environmental Protection Agency made a significant number of changes to its regulations. During the period from July 1, 1990 to June 30, 1991, EPA promulgated regulations dealing with wood preserving operations, industrial boilers and furnaces, and added a number of new listings. EPA also made a number of corrections to the toxicity characteristic rule and continued with its promulgation of land disposal requirements. These and other less far-reaching changes require prompt regulatory action by the Commonwealth. At the same time, the Commonwealth is also going back and incorporating a portion of the mining waste changes which were made by EPA in January 1990. Because of pending litigation, these changes were not incorporated into Amendment 11. Furthermore, because of a recent court decision, only a portion of these changes are proposed to be included in Amendment 12 at this time. Several of the changes included in proposed Amendment 12 are intended to make certain provisions no more stringent than their federal counterparts; these include changes regarding delistings, changes impacting upon "clean closures," the closed-loop recycling exclusion, transporter requirements, and notification requirements for minor permit modifications.

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

**Contact:** Karol A. Akers, Policy and Planning Manager, DWM, 101 N. 14th St., 11th Floor, Monroe Building, Richmond, VA 23219, telephone (804) 225-2966.

## BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† September 11, 1992 - 12 noon - Open Meeting  
Roanoke Airport Marriott, 2801 Hershberger Road, Roanoke, Virginia.

A general board meeting. ☐

† October 5, 1992 - 10 p.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☐

**Contact:** Nelle P. Hotchkiss, Assistant Director, Virginia Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD

## STATE WATER CONTROL BOARD

August 12, 1992 - 2 p.m. - Open Meeting  
Harrisonburg City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.

August 13, 1992 - 9 a.m. - Open Meeting  
University of Virginia Southwest Center, Highway 19N, Abingdon, Virginia.

August 13, 1992 - 3 p.m. - Open Meeting  
Roanoke County Administration Center Community Room, 3738 Brambleton Avenue, SW, Roanoke, Virginia.

August 18, 1992 - 9 a.m. - Open Meeting  
State Water Control Board Offices, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ☐

August 18, 1992 - 3 p.m. - Open Meeting  
Virginia Beach City Council Chambers, City Hall Building, 2nd Floor, Courthouse Drive, Virginia Beach, Virginia.

August 24, 1992 - 1 p.m. - Open Meeting  
Prince William County Boardroom, 1 County Complex, McCourt Building, 4850 Davis Ford Road, Prince William, Virginia.

A meeting to receive comments and answer questions of the public on the State Water Control Board's intent to consider the adoption of VR 680-01-01, Fees for Permits and Certificates.

**Contact:** Ms. Pat Woodson, Policy Analyst, State Water Control Board, P.O. Box 11143, Richmond, VA 23230-1143, telephone (804) 527-5166.

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August 12, 1992 - 7 p.m. - Open Meeting  
Harrisonburg City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.

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**August 13, 1992 - 7 p.m. – Open Meeting**  
Northampton County Circuit Court, Business Route 13,  
Eastville, Virginia.

**August 19, 1992 - 7 p.m. – Open Meeting**  
James City County, Board of Supervisors Room, Building C,  
101 C Mounts Bay Road, Williamsburg, Virginia.

A meeting to receive comments and answer questions of the public on the proposed repeal of VR 680-13-01, Rules of the Board and Standards for Water Wells and the proposed adoption of VR 680-13-07, Ground Water Withdrawal Regulations.

**Contact:** Mr. Terry Wagner, Office of Spill Response and Remediation, State Water Control Board, P.O. Box 11143, Richmond, VA 23230-1143, telephone (804) 527-5203.

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**August 18, 1992 - 7 p.m. – Open Meeting**  
Roanoke County Administration Center Community Room,  
3738 Brambleton Avenue, SW, Roanoke, Virginia.

**August 20, 1992 - 7 p.m. – Open Meeting**  
Prince William County, Board Room, 1 County Complex,  
McCourt Building, 4850 Davis Ford Road, Prince William,  
Virginia.

**August 24, 1992 - 7 p.m. – Open Meeting**  
James City County, Board of Supervisors Room, Building C,  
101 C Mounts Bay Road, Williamsburg, Virginia.

A meeting to receive views and comments and answer questions of the public regarding the proposed amendments of VR 680-13-03, Petroleum Underground Storage Tank Financial Responsibility Requirements and the proposed adoption of VR 680-13-06, Virginia Petroleum Storage Tank Fund Requirements.

**Contact:** Ms. Mary-Ellen Kendall, Office of Spill Response and Remediation, State Water Control Board, P.O. Box 11143, Richmond, VA 23230-1143, telephone (804) 527-5195.

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**August 17, 1992 - 7 p.m. – Open Meeting**  
State Water Control Board Offices, Board Room, 4900 Cox  
Road, Innsbrook Corporate Center, Glen Allen, Virginia. ☒

**August 19, 1992 - 7 p.m. – Open Meeting**  
Norfolk City Council Chambers, 1006 City Hall Building,  
810 Union Street, Norfolk, Virginia.

**August 20, 1992 - 7 p.m. – Open Meeting**  
Roanoke County Administration Center Community Room,  
3738 Brambleton Avenue, SW, Roanoke, Virginia.

**August 24, 1992 - 7 p.m. – Open Meeting**  
County of Prince William, 1 County Complex, McCourt  
Building, 4850 Davis Ford Road, Prince William, Virginia.

A meeting to receive views and comments and answer questions of the public regarding VR 680-14-12, Aboveground Storage Tanks Registration Requirements, VR 680-14-13, Aboveground Storage Tanks Prevention Standards and Operational Requirements, and VR 680-14-14, Aboveground Storage Tanks Financial Responsibility Requirements.

**Contact:** David T. Ormes, Office of Spill Response and Remediation, State Water Control Board, P.O. Box 11143, Richmond, VA 23230-1143, telephone (804) 527-5197.

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**August 18, 1992 - 3 p.m. – Public Hearing**  
Roanoke County Administration Center, Community Room,  
3738 Brambleton Avenue, S.W., Roanoke, Virginia.

**August 20, 1992 - 3 p.m. – Public Hearing**  
County of Prince William Board Room, McCourt Building,  
1 County Complex, 4850 Davis Ford Road, Prince William,  
Virginia.

**August 24, 1992 - 3 p.m. – Public Hearing**  
James City County Board of Supervisors Room, Building C,  
101 C Mounts Bay Road, Williamsburg, Virginia.

**September 14, 1992 – Written comments may be submitted through this date.**

Notice is hereby given in accordance with § 9.6-14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-11. Corrective Action Plan (CAP) General Permit.** The purpose of the proposed regulation is to establish a general permit for categories of UST cleanup sites.

Statutory Authority: §§ 62.1-44.15 (10) and 62.1-44.34:9 of the Code of Virginia.

Written comments may be submitted until September 14, 1992 to Ms. Doneva Dalton, Hearing Reporter, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

**Contact:** Richard Ayers, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

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**August 26, 1992 - 7 p.m. – Public Hearing**  
State Water Control Board Offices, Board Room, 4900 Cox  
Road, Innsbrook Corporate Center, Glen Allen.

**September 14, 1992 - 4 p.m. – Written comments may be submitted through this date.**

Notice is hereby given in accordance with § 9.6-14:7.1 of the Code of Virginia that the State Water Control Board intends to repeal regulations entitled: **VR 680-40-01. Public Participation Guidelines** and adopt

# Calendar of Events

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regulations entitled: **VR 680-40-01:1. Public Participation Guidelines.** The purpose of the proposed action is to repeal existing Public Participation Guidelines and adopt new regulations which establish various provisions to ensure interested persons have the necessary information to comment on regulatory actions in a meaningful fashion and establish guidelines consistent with other agencies within the Natural Resources Secretariat.

Statutory Authority: § 62.1-44.15 (7) of the Code of Virginia.

Written comments may be submitted until 4 p.m., September 14, 1992, to Ms. Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cindy M. Berndt, Policy and Planning Supervisor, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5158.

## VIRGINIA WORKERS' COMPENSATION COMMISSION

August 26, 1992 - 10 a.m. - Open Meeting  
1000 DMV Drive, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

Pursuant to House Bill No. 739 amending § 65.2-801 of the Code of Virginia, the Virginia Workers' Compensation Commission is developing regulations for its program for individual self-insurance for workers' compensation. Individuals or organizations may obtain copies of the regulation for the person listed below, and may provide either written or oral comments. Written comments must be delivered to the Commission prior to the date of the hearing, and requests to provide oral comments must also be delivered prior to the date of the hearing.

Contact: Lois Tunstall, Administrative Staff Specialist, Virginia Workers' Compensation Commission, 1000 DMV Dr., Richmond, VA 23220, telephone (804) 367-0580.

## DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

August 24, 1992 - 10 a.m. - Open Meeting

September 10, 1992 - 10 a.m. - Open Meeting  
Peaks of Otter, Bedford, Virginia.  
Virginia Beach, Virginia.

October 8, 1992 - 10 a.m. - Open Meeting  
Department of Youth and Family Services, 700 Centre,  
Richmond, Virginia.

A general business meeting of the board.

Contact: Paul Steiner, Policy Coordinator, Department of Youth and Family Services, P.O. Box 3AG, Richmond, VA 23208-1108, telephone (804) 371-0700.

## State Management Team of the Comprehensive Services Act for At-Risk Youth and Families

† August 13, 1992 - 9 a.m. - Open Meeting  
Koger Center, Wythe Building, Conference Room B, 1604  
Santa Rosa Road, Richmond, Virginia. ☒ (Interpreter for  
deaf provided upon request)

General business to effect the Comprehensive Services  
Act for At-Risk Youth and Families. Please confirm  
meeting details before planning to attend.

Contact: Dian McConnell, Director, Council on Community  
Services for Youth and Families, Department of Youth and  
Family Services, 700 Centre, 4th Floor, Richmond, VA  
23219, telephone (804) 371-0771 or (804) 371-0772/TDD ☒.

## LEGISLATIVE

### JOINT SUBCOMMITTEE CONTINUING THE A. L. PHILPOTT SOUTHSIDE ECONOMIC DEVELOPMENT COMMISSION

† August 21, 1992 - 10 a.m. - Open Meeting  
Longwood College, Farmville, Virginia.

The subcommittee will meet for the purpose of a  
work session. (HJR 71)

Contact: Kathleen Harris, Division of Legislative Services,  
910 Capitol St., Richmond, VA 23219, telephone (804)  
786-3591.

### BLUE RIDGE ECONOMIC DEVELOPMENT COMMISSION

August 17, 1992 - 10 a.m. - Public Hearing  
Central Virginia Community College, Room 2123  
(Auditorium), 3506 Wards Road, Lynchburg, Virginia.

A meeting and public hearing. (HJR 107)

Contact: Edie T. Conley, Staff Attorney, Division of  
Legislative Services, 910 Capitol St., Richmond, VA 23219,  
telephone (804) 786-3591.

### SPECIAL COURTS OF JUSTICE JOINT SUBCOMMITTEE FOR MEDICAL MALPRACTICE

† August 18, 1992 - 10 a.m. - Open Meeting  
General Assembly Building, House Room C, 910 Capitol  
Street, Richmond, Virginia. ☒

Subcommittee will meet to discuss Carry Over House Bill Nos. 961 and 962.

Contact: Mary Devine, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

## SUBCOMMITTEE OF THE HOUSE COMMITTEE ON GENERAL LAWS TO STUDY THE DESIRABILITY OF LEGALIZING RIVERBOAT GAMBLING

August 24, 1992 - 1 p.m. - Open Meeting  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ☐

The subcommittee will meet to study the desirability of legalizing riverboat gambling; assess the potential for increased revenues to localities in the Commonwealth; and determine the type, scope, controls, administration and legislation necessary to protect the public interest and produce maximum revenues if such were the decision.

Contact: Maria J.K. Everett, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

## VIRGINIA HOUSING STUDY COMMISSION

August 13, 1992 - 10 a.m. - Public Hearing  
Nursing Building (CN125), Northern Virginia Community College, Route 236 (Little River Turnpike), Annandale, Virginia.

August 13, 1992 - 1:30 p.m. - Public Hearing  
Nursing Building (CN125), Northern Virginia Community College, Route 236 (Little River Turnpike), Annandale, Virginia.

August 17, 1992 - 10 a.m. - Public Hearing  
General Assembly Building, House Room C, Ninth and Broad Streets, Richmond, Virginia.

August 17, 1992 - 1 p.m. - Public Hearing  
General Assembly Building, House Room C, Ninth and Broad Streets, Richmond, Virginia.

A public hearing on housing issues in Virginia, the Virginia Condominium Act, and HJR 163 (Homelessness in Virginia).

August 17  
10 a.m. - Noon - General housing issues and HJR 163  
1 p.m. - 3 p.m. - Virginia Condominium Act

August 13  
10 a.m. - Noon - Virginia Condominium Act  
1:30 p.m. - 3:30 p.m. - General housing issues and HJR 163

September 22, 1992 - 2 p.m. - Open Meeting  
September 23, 1992 - 9 a.m. - Open Meeting  
Wintergreen, Virginia

1992 Virginia Housing Study Commission legislative work session.

Contact: Nancy M. Ambler, Executive Director, Virginia Housing Study Commission, 601 S. Belvidere St., Richmond, VA (804) 225-3797.

## HOUSE COMMITTEE ON MILITIA AND POLICE

September 10, 1992 - 11 a.m. - Open Meeting  
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia. ☐

The full House Committee on Militia and Police will meet in a work session to discuss "State Police Recruitment Policies."

Contact: Oscar Brinson, Senior Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

September 10, 1992 - 1 p.m. - Public Hearing  
General Assembly Building, House Room D, 910 Capitol Street, Richmond, Virginia. ☐

A public hearing which will focus on Code sections relating to firearms. Persons wishing to speak should contact Lois V. Johnson, House of Delegates, Committee Operations, General Assembly Building, Richmond, Virginia 23219.

Contact: Oscar Brinson, Senior Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

## JOINT SUBCOMMITTEE STUDYING STATUTES OF LIMITATIONS AND ACCRUAL OF CAUSES OF ACTION

August 18, 1992 - 1 p.m. - Open Meeting  
General Assembly Building, 6th Floor Conference Room, 910 Capitol Street, Richmond, Virginia. ☐

Subcommittee will meet to discuss draft of proposed legislation. (HJR 173)

Contact: Mary Devine, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

## VIRGINIA CODE COMMISSION

August 19, 1992 - 9:30 a.m. - Open Meeting  
General Assembly Building, 6th Floor Conference Room, 910 Capitol Street, Richmond, Virginia. ☐



# Calendar of Events

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The Commission will continue with the revision of the Commonwealth's election laws (Title 24.1 of the Code of Virginia).

**Contact:** Joan W. Smith, Registrar of Regulations, General Assembly Building, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

**September 16, 1992 - 9:30 a.m. - Open Meeting**  
Location to be announced.

The Commission will continue with its revision of the election laws (Title 24.1 of the Code of Virginia).

**Contact:** Joan W. Smith, Registrar of Regulations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

**September 17, 1992 - 9:30 a.m. - Open Meeting**  
Location to be announced.

The Commission will continue with its discussion of competitive negotiable bidding for the Code of Virginia and a proposed code of administrative regulations.

**Contact:** Joan W. Smith, Registrar of Regulations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

**October 21, 1992 - 9:30 a.m. - Open Meeting**  
**October 22, 1992 - 9:30 a.m. - Open Meeting**  
Location to be announced.

The Commission will begin working on the revision of the ABC laws. (Title 4 of the Code of Virginia.)

**Contact:** Joan W. Smith, Registrar of Regulations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

## VIRGINIA COMMISSION ON YOUTH

**August 24, 1992 - 1 p.m. - Public Hearing**  
Virginia Beach Center for the Arts, 2200 Parks Avenue, Price Auditorium, Virginia Beach, Virginia. ☒ (Interpreter for deaf provided upon request)

**September 22, 1992 - 1 p.m. - Public Hearing**  
Mary Washington College, 1301 College Avenue, Dodd Auditorium, Fredericksburg, Virginia. ☒ (Interpreter for deaf provided upon request)

A public hearing to solicit testimony relating to Juvenile Crime and Youth Prevention Programs. The Juvenile Crime testimony will be used as part of the study from HJR 36 on Serious Juvenile Offenders and the Youth Prevention Programs testimony will be used as background for the oversight of the Comprehensive Services Act for At-Risk Youth and Families (HB 935 and SB 171). A separate time slot has been set aside

for each topic. The time slots are: 1 p.m.-3 p.m. Juvenile Crime and 4 p.m.-6 p.m. Youth Prevention Programs.

**Contact:** Mary Simmons, Staff Assistant, Commission on Youth, General Assembly Bldg., Suite 517 B, 910 Capitol St., Richmond, VA 23219, telephone (804) 371-2481.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### August 11

† Medical Assistance Services, Board of Virginia Resources Authority

#### August 12

† Chesapeake Bay Local Assistance Board  
- Southern Area Review Committee  
Water Control Board, State

#### August 13

Water Control Board, State  
† Youth and Family Services, Department of  
- State Management Team of the Comprehensive Services Act for At-Risk Youth and Families

#### August 14

Dentistry, Board of  
† Hazardous Materials Training Committee  
Medicine, Board of  
- Executive Committee

#### August 15

Medicine, Board of  
- Credentials Committee

#### August 17

† Alcoholic Beverage Control Board  
Blue Ridge Economic Development Commission  
† Barbers, Board for  
† Local Emergency Planning Committee - Prince William County, Manassas City, and Manassas Park City  
Water Control Board, State

#### August 18

† Barbers, Board for  
Funeral Directors and Embalmers, Board of  
Historic Resources, Department of  
- State Review Board  
† Housing Development Authority, Virginia  
Real Estate Appraiser Board  
† Special Courts of Justice Joint Subcommittee for  
Medical Malpractice  
Statutes of Limitations and Accrual of Cause of Action,  
Joint Subcommittee Studying  
Water Control Board, State

#### August 19

# Calendar of Events

- Commonwealth Transportation Board  
Corrections, Board of  
Health Professions, Board of  
Historic Resources, Board of  
† Housing and Community Development, Department of  
- Regulatory Effectiveness Advisory Committee  
Social Services, State Board of  
Virginia Code Commission  
Water Control Board, State
- August 20**  
† Child Day-Care Council  
† Fire Services Board, Virginia  
- Fire Prevention and Control Committee  
- Fire/EMS Educations and Training Committee  
- Legislative - Liasion Committee  
Health Professions, Board of  
† Rights of Virginians with Disabilities, Department for  
- Protection and Advocacy for Individuals with  
Mental Illness Advisory Council
- August 21**  
Commonwealth Transportation Board  
† Fire Services Board, Virginia  
† Opticians, Board for  
Residential Facilities for Children, Interdepartmental  
Regulation of  
- Coordinating Committee
- August 24**  
† Agricultural Council, Virginia  
General Laws, House Committee on  
† Governor's Task Force on Fuels Tax Evasion  
- Subcommittee Studying Desirability of Legalizing  
Riverboat Gambling  
Water Control Board, State
- August 25**  
Health Services Cost Review Council, Virginia  
† Labor and Industry, Department of  
- Virginia Safety and Health Codes Board  
Marine Resources Commission
- August 26**  
Chesapeake Bay Local Assistance Board  
Compensation Board  
Historic Resources, Board of  
Historic Resources, Department of  
Land Evaluation Advisory Council, State  
Workers' Compensation Commission, Virginia
- August 27**  
† Medicine, Board of  
Game and Inland Fisheries, Board of
- August 28**  
Game and Inland Fisheries, Board of  
Lottery Department, State
- August 31**
- † Alcoholic Beverage Control Board
- September 1**  
Funeral Directors and Embalmers, Board of
- September 2**  
Funeral Directors and Embalmers, Board of
- September 3**  
Emergency Planning Committee, Local - Chesterfield  
County  
† Medical Assistance Services, Department of  
- Drug Utilization Review (DUR) Board  
Middle Virginia Board of Directors and the Middle  
Virginia Community Corrections Resources Board
- September 5**  
Virginia Military Institute  
- Board of Visitors
- September 9**  
† Emergency Planning Committee, Local - City of  
Alexandria
- September 10**  
† Contractors, Board for - Complaints Committee  
House Committee on Militia and Police  
Transportation Safety Board  
Voluntary Formulary Board, Virginia  
Youth and Family Services, Board of
- September 11**  
† Information Management, Council on  
Land Evaluation Advisory Council, State  
† Waste Management Facility Operators, Board for
- September 15**  
† ASAP Policy Board - Rockbridge  
Virginia Resources Authority
- September 16**  
Real Estate Board  
Virginia Code Commission
- September 17**  
† Alcoholic Beverage Control Board  
Board of Medicine  
- Joint Committees on Acupuncture  
Virginia Code Commission
- September 18**  
Falls of the James Scenic River Advisory Board  
Residential Facilities for Children, Interdepartmental  
Regulation of
- September 22**  
Health Services Cost Review Council, Virginia  
Housing Study Commission, Virginia  
Marine Resources Commission
- September 23**

# Calendar of Events

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† Hazardous Materials Training Committee  
Housing Study Commission, Virginia

**September 24**

Chesapeake Bay Local Assistance Board

**September 28**

† Alcoholic Beverage Control Board  
† Professional Soil Scientists, Board for

**September 30**

Compensation Board

**October 1**

Emergency Planning Committee, Local - Chesterfield  
County

**October 5**

† Waste Management Facility Operators, Board for

**October 8**

Youth and Family Services, Board of

**October 9**

† Geology, Board for

**October 14**

† Alcoholic Beverage Control Board

**October 21**

Virginia Code Commission

**October 22**

Virginia Code Commission

**October 26**

† Alcoholic Beverage Control Board

Health, Department of  
Water Control Board, State

**August 20**

† Fire Services Board, Virginia  
Water Control Board, State

**August 24**

Water Control Board, State  
Youth, Virginia Commission on

**August 26**

Air Pollution Control, Department of  
Chesapeake Bay Local Assistance Board  
Conservation and Recreation, Department of  
- Board of Conservation and Recreation  
Environment, Council on the  
Historic Resources, Department of  
- Board of Historic Resources  
Marine Resources Commission  
Soil and Water Conservation Board  
Waste Management, Department of  
Water Control Board, State

**August 31**

Motor Vehicles, Department of

**September 1**

Waste Management, Department of

**September 2**

Air Pollution Control, Department of  
Waste Management, Department of

**September 10**

House Committee on Militia and Police

**September 14**

† Housing and Community Development, Department of

**September 15**

Waste Management, Department of

**September 16**

Virginia Racing Commission  
Waste Management, Department of

**September 22**

Youth, Virginia Commission on

**September 30**

Agriculture and Consumer Services, Board of

## PUBLIC HEARINGS

**August 10**

Health, Department of  
Transportation, Department of

**August 11**

Health, Department of

**August 13**

Housing, Study Commission, Virginia

**August 14**

Health, Department of

**August 17**

Blue Ridge Economic Development Commission  
Housing Study Commission, Virginia

**August 18**