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# THE VIRGINIA REGISTER

OF REGULATIONS

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# 1994

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## VIRGINIA REGISTER

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

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

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

### ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

### EMERGENCY REGULATIONS

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

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

### STATEMENT

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

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## Symbol Key †

† Indicates entries since last publication of the Virginia Register

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

### Notice of Intended Regulatory Action

#### AMENDED NOTICE

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-02-02. Rules and Regulations Governing the Prevention, Control, and Eradication of Bovine Tuberculosis in Virginia.** The purpose of the proposed regulation 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; (iii) a proposal to shorten the time in which a report must be made to the State Veterinarian when tuberculosis is suspected; (iv) requiring owners of cervidae to maintain records for three years to include: (a) owners name and address, (b) individual identification of each animal to include species, (c) name and address of where the animal was purchased, (d) date of purchase, (e) date and to whom the animal was sold, and (f) date and results of any official tests performed; and (v) requiring dealers in livestock/exotic species to register with the State Veterinarian's office.

The agency invites comment on whether there should be an advisor appointed for the present regulatory action. An advisor is: (i) a standing advisory panel; (ii) an ad-hoc advisory panel; (iii) consultation with groups, (iv) consultation with individuals; or (v) any combination thereof.

The agency plans to hold a public hearing on the proposed regulation after it is published.

Statutory Authority: §§ 3.1-724, 3.1-726, and 3.1-730 of the Code of Virginia.

Written comments may be submitted until 8:30 a.m. on June 6, 1994, to Dr. W.M. Sims, Jr., VDACS, Division of Animal Health, P. O. Box 1163, Richmond, VA 23209-1163.

**Contact:** T.R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, 1100 Bank Street, P. O. Box 1163, Richmond, VA 23209-1163, telephone (804) 786-2483.

V.A.R. Doc. No. R94-831; Filed April 12, 1994, 3:06 p.m.

### Notice of Intended Regulatory Action

#### AMENDED NOTICE

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-02-12. Rules and Regulations Pertaining to the Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds into Virginia.** The purpose of the proposed regulation 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.

The agency invites comment on whether there should be an advisor appointed for the present regulatory action. An advisor is: (i) a standing advisory panel; (ii) an ad-hoc advisory panel; (iii) consultation with individuals; or (v) any combination thereof.

The agency plans to hold a public hearing on the proposed regulation after it is published.

Statutory Authority: §§ 3.1-724, 3.1-726, and 3.1-730 of the Code of Virginia.

Written comments may be submitted until 8:30 a.m. on June 6, 1994, to Dr. W.M. Sims, Jr., VDACS, Division of Animal Health, P. O. Box 1163, Richmond, VA 23209-1163.

**Contact:** T.R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, 1100 Bank Street, P. O. Box 1165, Richmond, VA 23209-1163, telephone (804) 786-2483.

V.A.R. Doc. No. R94-832; Filed April 12, 1994, 3:06 p.m.

# Notices of Intended Regulatory Action

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## 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 promulgating regulations entitled: **VR 120-99-04. Regulation for the Control of Motor Vehicle Emissions in the Richmond Area.** The purpose of the proposed action is to develop a regulation for the testing of emissions from motor vehicles located in or primarily operated in the Richmond area which conforms to state law and federal requirements.

**Public Meeting:** A public meeting will be held by the department in the Board Room, Department of Environmental Quality, Innsbrook, 4900 Cox Road, Glen Allen, Virginia, at 7 p.m. on May 18, 1994, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

**Accessibility to Persons with Disabilities:** The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility should contact Ms. Doneva Dalton at the Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, or by telephone at (804) 762-4379 or TDD (804) 762-4021. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than May 4, 1994.

**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 May 18, 1994, and provide your name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. If you wish to be on the group, you are encouraged to attend the public meeting mentioned above.

**Public Hearing Plans:** After publication in The Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation drafted pursuant to this notice.

**Need:** One of the primary goals of the federal Clean Air Act (Act) is the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). These standards, designed to protect public health and welfare, apply to six pollutants, of which ozone is the primary focus of this proposed action. Ozone is formed when volatile organic compounds (VOCs) and nitrogen oxides (NOx) in the air react together in the presence of sunlight. VOCs are chemicals contained in gasoline, polishes, paints, varnishes, cleaning fluids, inks, and other household and industrial products. NOx emissions are a byproduct from the combustion of fuels and industrial processes.

The National Ambient Air Quality Standard for ozone is 0.12 parts per million (ppm) and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. When concentrations of ozone in the ambient air exceed the federal standard the area is considered to be out of compliance and is classified as "nonattainment." Numerous counties and cities within the Northern Virginia, Richmond, and Hampton Roads areas have been identified as ozone nonattainment areas according to new provisions of the Act.

States are required to develop plans to ensure that areas will come into compliance with the federal health standard. Failure to develop adequate programs to meet the ozone air quality standard: (i) will result in the continued violations of the standard; (ii) may result in assumption of the program by EPA at which time the Commonwealth would lose authority over matters affecting its citizens; and (iii) may result in the implementation of sanctions by EPA, such as more restrictive requirements on new major industrial facilities and loss of federal funds for highway construction. Furthermore, if a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent control requirements.

More vehicle emissions inspection programs, known as inspection and maintenance (I/M) programs, are an integral part of the effort to reduce mobile source air pollution. Cars and trucks create about half of the ozone air pollution. Of all highway vehicles, passenger cars and light trucks emit most of the vehicle-related carbon monoxide and ozone-forming hydrocarbons. Tremendous progress has been made in reducing these pollutants; however, total vehicle emissions remain high. This is because the number of vehicle miles travelled on our highways has doubled in the last 20 years, offsetting much of the technological progress in vehicle emission control over the same two decades. Ongoing efforts to reduce emissions from individual vehicles will be necessary to achieve our air quality goals.

I/M programs achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions and requiring them to be repaired. Minor malfunctions in the emissions control system can increase emissions significantly. The average car on the road can emit three to four times the carbon monoxide and hydrocarbons allowed by new car standards if emission control systems are malfunctioning. Unfortunately, rarely is it obvious which cars have malfunctions as the emissions themselves may not be noticeable and emission control malfunctions do not necessarily affect vehicle driveability. I/M programs provide a way to check whether the emission control systems on a vehicle are working correctly. All new passenger cars and trucks sold in the United States today must meet stringent air pollution standards and those standards became more

# Notices of Intended Regulatory Action

stringent in model year 1994, but they can only retain this low-polluting profile if the emission controls and engine are functioning properly. An I/M program is designed to ensure that vehicles stay clean in actual use. This, in turn, can substantially reduce the amount of volatile organic compounds, carbon monoxide, and nitrogen oxides emitted to the ambient air, thereby reducing the formation of ozone and lowering ozone concentrations.

## Alternatives:

1. Draft new regulations which will provide for implementation of a motor vehicle emissions testing program that meets the provisions of the state code, federal Clean Air Act and associated EPA regulations and policies.

2. No regulatory alternatives to a basic I/M program have been promulgated by EPA as meeting the requirements of the Act. Adopting an unapprovable program will result in sanctions being imposed by EPA.

3. Take no action to develop the regulations and risk sanctions by EPA.

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

Applicable Federal Requirements: The 1990 Amendments to the Clean Air Act represent the most comprehensive piece of clean air legislation ever enacted to address air quality planning requirements for areas that had not attained the federal air quality standard for ozone (that is, nonattainment areas). The new Act established a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution problem. Nonattainment areas are classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of its own class. Virginia's ozone nonattainment areas are classified as marginal for the Hampton Roads Nonattainment Area, moderate for the Richmond Nonattainment Area, and serious for the Northern Virginia Nonattainment Area.

The Richmond area has an ozone air pollution problem classified by the EPA as "moderate." The problem is a result of emissions from both industrial sources and motor vehicles. The Act requires that all areas classified as moderate must implement a vehicle inspection and maintenance program, commonly referred to as I/M.

The Act requires that basic I/M programs be implemented as expeditiously as practicable. The program implemented

by the state must achieve emission reductions equivalent to or greater than those resultant from the EPA model program having the following characteristics:

- Centralized testing,
- Annual testing,
- Idle emission test,
- Testing of 1968 and later model year vehicles,
- Testing of light duty vehicles,
- Twenty percent emission test failure rate among pre-1981 model year vehicles,
- Zero percent waiver rate, and
- One hundred percent compliance rate.

However, the state has the flexibility to design its own program and demonstrate that it is as effective as the EPA model program in reducing emissions. Legislation was passed by the General Assembly of Virginia in 1993 and 1994 that provides authority for a basic I/M program to be implemented in the Richmond nonattainment area. The program will apply to motor vehicles that have actual gross weights of 8,500 pounds or less registered in the affected counties and cities. Key provisions of the legislation include:

- A biennial inspection;
- An inspection fee cap of \$17;
- A minimum repair cost of \$75 for pre-1981 vehicles and \$200 for 1981 and newer vehicles to qualify for a waiver;
- Motor vehicles being titled for the first time may be registered for up to two years without being subject to an emissions inspection;
- An exemption for any of the following vehicles: (i) vehicles powered by a diesel engine; (ii) motorcycles; (iii) vehicles which, at the time of manufacture were not designed to meet emission standards set or approved by the federal government; or (iv) any antique motor vehicle as defined in § 46.2-100 and licensed pursuant to § 46.2-730;
- The requirement for the inspection to apply to all vehicles registered and/or operated in the affected area including (i) vehicles owned by government entities; (ii) vehicles owned by military personnel residing in the affected areas; and (iii) vehicles owned by leasing or rental companies; and
- The program shall be a basic, test and repair program with the greatest number of inspection



# Notices of Intended Regulatory Action

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facilities consistent with the consumer protection and fee provisions in accordance with the Clean Air Act.

The legislation directs the State Air Pollution Control Board to adopt regulations to implement the program.

Statutory Authority: § 46.2-1180 of the Code of Virginia.

Written comments may be submitted until close of business May 18, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Mary E. Major, Policy Analyst Senior, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4423.

VA.R. Doc. No. R94-757; Filed March 30, 1994, 10:55 a.m.

## BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to consider amending regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed action is to amend the current licensure and registration requirements and standards of practice and conduct. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-404 of the Code of Virginia.

Written comments may be submitted until May 18, 1994.

**Contact:** Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VA.R. Doc. No. R94-743; Filed March 28, 1994, 12:24 p.m.

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider amending regulations entitled: **VR 270-01-0014. Regulations Governing the Management of the Student's Scholastic Record.** The purpose of the proposed action is to revise the regulations to comport with changes in the Virginia Code and to reflect changes in policies and procedures governing the

management of student records. The agency intends to hold a public hearing on the proposed amendments after publication.

Statutory Authority: §§ 4 and 5(e) of Article VIII of the Constitution of Virginia and §§ 22.1-16 and 22.1-20 of the Code of Virginia.

Written comments may be submitted until June 16, 1994.

**Contact:** Michelle Hathcock, Associate Specialist, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2339.

VA.R. Doc. No. R94-897; Filed April 18, 1994, 3:40 p.m.



## 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 promulgating regulations entitled: **VR 355-17-300. Fees for Permits Involving Land Application or Marketing or Distribution of Biosolids.** The purpose of the proposed action is to develop a regulation setting forth a fee assessment and collection system for permits issued for land application or marketing or distribution of biosolids. This permit fee system will replace the Virginia Pollution Abatement (VPA) fees for Land Application of Municipal Sludge (VR 680-01-01). A public hearing will be held in July or August 1994.

Statutory Authority: § 32.1-164.5 of the Code of Virginia (Chapter 288, 1994 Acts of Assembly).

Written comments may be submitted until June 17, 1994.

**Contact:** C.M. Sawyer, P.E., Division Director, Department of Health, Division of Wastewater Engineering, P. O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

VA.R. Doc. No. R94-899; Filed April 20, 1994, 12:30 p.m.

### 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 355-20-100 (formerly VR 355-20-01). Virginia Radiation Protection Regulations.** The proposed action is to adopt the 1991 version of the "Suggested State Regulations for Control of Radiation" published by the Conference of Radiation Control Program Directors, Inc.; revise the

# Notices of Intended Regulatory Action

protection standards resulting from changes to 10 CFR 20; and consider adoption of comments solicited from the public. The agency intends to hold a public hearing on the proposed regulation after publication.

**Purpose:** The purpose of this Notice of Intended Regulatory Action is to solicit public comments regarding revisions to the Virginia Radiation Protection Regulations. The agency intends to adopt the model regulations contained in the document, "Suggested State Regulations for Control of Radiation," published by the Conference of Radiation Control Program Director, Inc. (CRCPD) and available from CRCPD, 205 Capital Avenue, Frankfort, Kentucky 40601, telephone (502) 227-4543. The revisions also include replacing Part V, radiation protection standards, with the new federal Part 10 CFR 20 standards.

A summary of changes proposed by the agency's staff follows:

1. Update regulations from the latest version of the "Suggested State Regulations for Control of Radiation."
2. Implement Code of Virginia provisions for bonding of radioactive material licensees.
3. Remove all references to radioactive materials regulated by NRC and NRC Agreement states in Part IV.
4. Adopt the new federal 10 CFR 20 in Part V, radiation protection standards.
5. Adopt provisions of the Mammography Quality Standards Act.

The agency requests public comment for the following issues:

1. What qualifications should private inspectors have? Should individuals be allowed to work as interns and the supervisor not be on site for all of the surveys performed by the intern?
2. Should there be other categories of private inspectors besides diagnostic x-ray and radiation therapy machines, such as mammography, dental, CT, or others? What qualifications should they have?
3. Should the agency specify equipment used by private inspectors and require proof of equipment calibrations?
4. What data should private inspectors report to the agency for it to certify x-ray machines?
5. Should there be any difference in what data the private inspector provides the agency for compliant machines versus noncompliant machines?
6. Should the inspection procedures be prescriptive, or

should the agency provide guidance for the conduct of the inspection, or should the inspection procedure be left to the private inspector's judgment?

7. Should x-ray equipment manufactured prior to September 1974 (the date that the U.S. FDA began certification of x-ray machines manufactured for use in the healing arts) be certified for use in the healing arts after the year 2000?
8. Should portable x-ray machines be used as fixed machines in dental and medical facilities?
9. Should stretch cords be allowed for dental intraoral and panoramic machines?
10. Should dosimetry be eliminated for dental facilities that use machines with stretch cords or have open bay operatories?
11. How should the agency address the issue of exposure versus dose that is reported for occupational workers while performing interventional diagnostic procedures?
12. What limits should be placed on fluoroscopic x-ray machines that have an output rate exceeding 20 R/min?
13. Should nonimage-intensified fluoroscopic machines be certified for use in the healing arts?
14. What elements should a quality assurance program have at a facility with x-ray equipment used in the healing arts? Examples are processor temperature and time, fog measurements, sensitometric measurements, phantom exposure trends, and phantom image scores.
15. How frequently should analytical x-ray diffraction equipment and industrial x-ray equipment be inspected?
16. Should the shielding design of linear accelerators producing beam energies greater than 18 MeV be required to include calculations of neutron production or should the facility measure the neutron production for evaluating the effectiveness of the shielding design?

Any individual or organization interested in participating in the development of specific rules and regulations should also contact the Bureau of Radiological Health and ask to be placed on the interested parties list.

The Radiation Advisory Board will review all public comments and assist the agency in the review and development of the regulations for the Board of Health.

Statutory Authority: § 32.1-299 of the Code of Virginia.

Written comments may be submitted until June 17, 1994.

# Notices of Intended Regulatory Action

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**Contact:** Leslie P. Foldesi, Director, Bureau of Radiological Health, 1500 E. Main St., Room 104A, Richmond, VA 23219, telephone (804) 786-5932, FAX (804) 786-6979 or toll-free 1-800-468-0138.

VA.R. Doc. No. R94-755; Filed March 30, 1994, 10:19 a.m.

## † 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 355-29-100 (Formerly 355-29-01). Regulations Governing Vital Records.** The purpose of the proposed action is to amend fees charged for certification of vital records as authorized by the 1994 General Assembly through passage of SB 402. One public hearing is planned during the public comment period following publication of the proposed revisions.

Statutory Authority: §§ 32.1-273 and 32.1-273.1 (Chapter 373, 1994 Acts of Assembly) of the Code of Virginia.

Written comments may be submitted until June 15, 1994.

**Contact:** Deborah M. Little, Director, Office of Vital Records and Health Statistics, Department of Health, James Madison Building, Room 305, 109 Governor Street, Richmond, VA 23219, telephone (804) 371-6077.

VA.R. Doc. No. R94-898; Filed April 19, 1994, 11:41 a.m.

## 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 355-30-102. Virginia State Medical Facilities Plan: Perinatal Services.** The purpose of the proposed action is to amend the criteria and standards for approval of projects for establishment of neonatal special care services. A public hearing is planned during the public comment period to commence with the publication of the regulations.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until May 30, 1994.

**Contact:** Paul E. Parker, Director, Office of Resources Development, Department of Health, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

VA.R. Doc. No. R94-741; Filed March 25, 1994, 1:15 p.m.

## 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 355-30-104. Virginia State Medical Facilities Plan:**

**General Surgical Services.** The purpose of the proposed action is to amend the criteria and standards for approval of projects involving surgical services and facilities. A public hearing is planned during the public comment period to commence with the publication of the regulations.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until May 30, 1994.

**Contact:** Paul E. Parker, Director, Office of Resources Development, Department of Health, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

VA.R. Doc. No. R94-740; Filed March 25, 1994, 1:15 p.m.

## 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 355-30-107. Virginia State Medical Facilities Plan: Medical Rehabilitation Services.** The purpose of the proposed action is to amend the criteria and standards for approval of projects which involve medical rehabilitation services and facilities. A public hearing is planned during the public comment period to commence with the publication of the regulations.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until May 30, 1994.

**Contact:** Paul E. Parker, Director, Office of Resources Development, Department of Health, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

VA.R. Doc. No. R94-744; Filed March 28, 1994, 11 a.m.

## 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 355-30-111. Virginia State Medical Facilities Plan: Radiation Therapy Services.** The purpose of the proposed action is to amend the criteria and standards for approval of projects which involve radiation therapy services. A public hearing is planned during the public comment period to commence with the publication of the regulations.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Written comments may be submitted until May 30, 1994.

**Contact:** Paul E. Parker, Director, Office of Resources Development, Department of Health, 1500 E. Main St.,

# Notices of Intended Regulatory Action

Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

V.A.R. Doc. No. R94-742; Filed March 28, 1994, 9:05 a.m.

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Housing and Community Development intends to consider amending regulations: **VR 394-01-107. Procedures for Allocation of Low Income Housing Tax Credits.** The purpose of the proposed action is to modify the existing allocation plan to reflect changes in scoring criteria and other administrative procedures. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-139 of the Code of Virginia, Governor's Executive Order No. Forty (91), and § 42 of the Internal Revenue Code.

Written comments may be submitted until May 20, 1994.

**Contact:** H. Graham Driver, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7122.

V.A.R. Doc. No. R94-776; Filed March 30, 1994, 11:31 a.m.

## COUNCIL ON HUMAN RIGHTS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Council on Human Rights intends to consider promulgating regulations entitled: **VR 402-01-01:1. Public Participation Guidelines.** The purpose of the proposed regulation is to comply with the Administrative Process Act to ensure public participation. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Written comments may be submitted until May 18, 1994.

**Contact:** Sandra D. Norman, Executive Assistant, Council on Human Rights, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 225-2292 or toll free 1-800-633-5510.

V.A.R. Doc. No. R94-774; Filed March 30, 1994, 11:53 a.m.

## VIRGINIA MANUFACTURED HOUSING BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Manufactured Housing Board intends to consider amending regulations entitled: **VR 449-01-02. Manufactured Housing Licensing and Transaction Recovery Fund Regulations.** The purpose of the proposed action is to amend fee schedules and licensing requirements based on legislative changes made by the 1994 General Assembly. The board will hold a public hearing on proposed amendments to the proposed regulations after publication.

Statutory Authority: § 36-85.18 of the Code of Virginia.

Written comments may be submitted until June 2, 1994.

**Contact:** Curtis L. McIver, Associate Director, Department of Housing and Community Development, 501 N. 2nd Street, Richmond, VA 23219, telephone (804) 371-7160.

V.A.R. Doc. No. R94-817; Filed April 12, 1994, 11:27 a.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care: Reimbursement for Organ Transplantation Services.** The purpose of the proposed action is to modify and clarify the reimbursement methodology for organ transplantation services. The agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until June 15, 1994, to Betty Cochran, Director, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

V.A.R. Doc. No. R94-900; Filed April 25, 1994, 11:19 a.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Income Scale for Indigent Children.**

# Notices of Intended Regulatory Action

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The purpose of the proposed action is to properly define in the State Plan the income methodology necessary to determine eligibility for children ages 6 to 19 to meet the requirements of the General Assembly and HCFA. The agency does not intend to conduct public hearings regarding this regulatory change.

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

Written comments may be submitted until June 1, 1994, to Roberta Jonas, Policy Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R94-795; Filed April 11, 1994, 11:03 a.m.

## BOARD OF MEDICINE

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend sections pertaining to unprofessional conduct, sections pertaining to examinations for chiropractic licensure, and the section pertaining to physician acupuncturists. There will be no public hearing unless requested. The regulations further specify statutory changes.

Statutory Authority: §§ 54.1-2400, 54.1-2914, and 54.1-2931 of the Code of Virginia.

Written comments may be submitted until June 17, 1994, to Hilary H. Conner, M.D., Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717.

**Contact:** Eugenia Dorson, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R94-896; Filed April 22, 1994, 4:06 p.m.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-10-01. Certification of Radiological Technology Practitioners.** The purpose of the proposed action is to amend the regulations due to new statutory changes as mandated by the General Assembly. The agency intends to

hold a public hearing on the proposed amendments after publication.

Statutory Authority: §§ 54.1-2956.8:1 and 54.1-2956.8:2 (Chapter 803, 1994 Acts of Assembly) and § 54.1-2400 of the Code of Virginia.

Written comments may be submitted until June 16, 1994, to Hilary H. Conner, M.D., Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717.

**Contact:** Eugenia Dorson, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎

## BOARD OF PROFESSIONAL COUNSELORS

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider amending regulations entitled: **VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.** The proposed regulations establish standards of practice for certified substance abuse counseling including education, supervised experience and examination for certification. The agency intends to hold a public hearing on the proposed amendments after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Written comments may be submitted until June 15, 1994, to Evelyn B. Brown, Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

**Contact:** Evelyn B. Brown, Executive Director or Bernice Parker, Administrative Assistant, Department of Health Professions, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-7328.

VA.R. Doc. No. R94-901; Filed April 25, 1994, 2:38 p.m.

## REAL ESTATE BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider amending regulations entitled: **VR 585-01-3. Virginia Real Estate Time-Share Regulations.** The purpose of the proposed action is to review and seek public comment on the registration and disclosure requirements of time-shares and related products offered and/or disposed of in the Commonwealth of Virginia. Other changes to the regulations which may be necessary

# Notices of Intended Regulatory Action

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will be considered. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 55-396 of the Code of Virginia.

Written comments may be submitted until May 20, 1994.

**Contact:** Emily O. Wingfield, Property Registration Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8510.

VA.R. Doc. No. R94-775; Filed March 30, 1994, 10:42 a.m.

## DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider amending regulations entitled: **VR 615-01-29. Aid to Families with Dependent Children (AFDC) Program - Disregarded Income and Resources.** The purpose of the proposed regulation is to exempt all bona fide loans from consideration, both as income and as a resource, in evaluating financial eligibility for AFDC. A public hearing is not planned. The State Board of Social Services will consider public comments on the proposed regulations at its regularly scheduled meeting.

Statutory Authority: § 63.1-25 of the Code of Virginia and 45 CFR 233.20(a)(3)(iv)(B) and (xxi).

Written comments may be submitted until June 2, 1994, to Constance O. Hall, AFDC Program Manager, Division of Benefit Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849.

**Contact:** Peggy Friedenber, Legislative Analyst, 730 E. Broad Street, Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. R94-816; Filed April 12, 1994, 4:50 p.m.



# PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

## Symbol Key

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

## VIRGINIA EMPLOYMENT COMMISSION

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

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

Public Hearing Date: June 22, 1994 - 10:30 a.m.

Written comments may be submitted through July 15, 1994.

(See Calendar of Events section for additional information)

Basis: The Virginia Employment Commission (VEC) is authorized to adopt, amend or rescind rules and regulations governing administration of the agency pursuant to § 60.2-111 of the Code of Virginia. Consistent with this authority, the proposed amendments to VR 300-01-1 will permit more effective administration of the Virginia Unemployment Compensation Act.

Purpose, Substance and Issues: The VEC proposes this amendment to define and thereby clarify terms-of-art used within these regulations, and to make permanent the 1993 emergency amendments to the agency's Public Participation Guidelines, which were effected to ensure consistency with the Virginia Administrative Process Act.

The emergency amendments to the Public Participation Guidelines provided that the VEC shall receive and respond to all petitions for regulatory amendment, and shall solicit participation of its Advisory Board in meetings of its Regulatory Review Committee.

The need for added definitions came about as a result of proposed amendments to other agency regulations. The advantage to users of VEC regulations are that terms-of-art will be better defined and the regulations as a whole, and current agency practice, will be more easily understood. The agency will benefit likewise by more effectively serving its customers. The VEC does not anticipate any disadvantages as a result of these amendments.

Impact: No fiscal impact is anticipated as a result of this change, nor will there be any effect on specific individual localities.

### Summary:

*The proposed amendment to Regulations and General Rules Affecting Unemployment Compensation, VR 300-01-1, adds new definitions to those already present in the regulation, and amends language in certain*

*existing definitions.*

*These added definitions codify current practice, setting forth no additional rights or responsibilities under the agency's regulations.*

*The proposed amendment also makes permanent the 1993 emergency amendments to the agency's Public Participation Guidelines. These amendments provide that the VEC shall receive and respond to all petitions for regulatory amendment, and shall seek the participation of its State Advisory Board in meetings of the agency's Regulatory Review Committee.*

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

### § 1. Definitions.

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

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

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

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

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

"Area of high unemployment" means that geographic area of Virginia, including all cities and counties served by a particular full-service unemployment insurance office, where the average unemployment rate as determined by the commission has been 10% or more during the first four of the last five completed calendar quarters. A full-service unemployment insurance office is any office offering tax, benefits and adjudicatory services.

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

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

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

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

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

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

*"In-person hearing"* means a hearing where the parties, witnesses and representatives personally appear before the appeals examiner or special examiner.

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

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

*"Interested jurisdiction"* means any participating jurisdiction to which an election submitted under regulation VR 300-01-2, Part V, VR 300-01-5 is sent for its approval and *"interested agency"* means the agency of such jurisdiction.

*"Job service office"* means an office of the commission

*providing job information and referral services.*

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

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

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

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

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

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

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

*"Paying state"* means (i) the state in which a combined-wage claimant files a combined-wage claim, if the claimant qualifies for unemployment benefits in that state on the basis of combined employment and wages, and combining will increase either the weekly benefit amount or the maximum benefit amount, or (ii) if the state in which a combined-wage claimant files a combined-wage claim is not the paying state under the criterion set forth in (i) above, or if the combined-wage claim is filed in Canada or the U.S. Virgin Islands, then the paying state shall be that state where the

# Proposed Regulations

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combined-wage claimant was last employed in covered employment among the states in which the claimant qualifies for unemployment benefits on the basis of combined employment and wages.

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

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

*"Severance and dismissal pay"* means, for the purpose of taxation and benefits, all payments made by an employer at or subsequent to an employee's separation, except that payments directly attributable to service performed prior to separation shall not be treated as severance or dismissal pay. Such payments may be allocated by the employer for any period following separation so long as such allocation is at a weekly rate at least equal to the average weekly wage received by such employee during the last calendar quarter preceding the separation, and will in such cases be deemed to have been paid in those weeks covered by the allocation. If no allocation is made by the employer, such payments will be deemed allocated to the last day of work.

*"Split hearing"* means an in-person hearing where one or more parties, representatives or witnesses are allowed to participate telephonically.

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

*"Telephone hearing"* means a hearing where all parties, witnesses and representatives participate before the appeals examiner by way of a telephone conference call.

*"Total unemployment"* means the unemployment of an individual in a week regardless of whether he is separated or attached to an employing unit's payroll, when for any week in which he performs no work and has no wages payable to him, regardless of whether or not he is attached to an employing unit's payroll.

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

*"Unemployment insurance office"* means an office of the commission providing unemployment insurance services.

## § 2. Development of regulations.

A. Pursuant to § 9-6.14:7.1 of the Code of Virginia, the commission shall solicit the input of interested parties in the formulation and the development of its rules and regulations. *The commission shall receive petitions from any party proposing new regulations or amendment of existing regulations. All such proposals shall be reviewed by the commission and receive response within 180 days. Formulation and development of all new or amended regulations shall be subject to the following public participation guidelines shall be used for this purpose.*

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

1. The Governor's Cabinet Secretaries.
2. Members of the Senate Committee on Commerce and Labor.
3. Members of the House Committee on Labor and Commerce.
4. Members of the State Advisory Board.
5. Special interest groups known to the Virginia Employment Commission.
6. Any individual or entity requesting to be an interested party.
7. Those parties who have expressed an interest in VEC regulations through oral or written comments in the past.

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

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

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

# Proposed Regulations

orally to the Commission. The Virginia Employment Commission intends for the State Advisory Board to participate in all meetings of the agency's Regulatory Review Committee during the process in which regulatory amendments are being formulated. Any proposed amendments shall be submitted to members of the advisory board and to special interest groups and others registering interest in working with the commission. If sufficient interest is expressed to the commission in forming additional advisory groups, the commission will constitute such advisory groups as may be appropriate to solicit a full range of views. These groups shall be invited to submit data, views, and arguments regarding the proposed amendments. Any responses to such solicitation shall be considered by the commission in its deliberations.

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

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

H. Once the public participation guidelines have been implemented, the Commission may draft a regulation and proceed with adoption in accordance with the Administrative Process Act. During the formal procedures required by the Administrative Process Act; and these public participation guidelines, written input will be solicited from the interested parties and the general public in writing to the Commission and at public hearings held at Richmond and, in the discretion of the Commission, at other locations. At the discretion of the commission, and in accordance with applicable law, one or more public hearings will be held in Richmond and at any other location deemed appropriate to ensure adequate public participation.

### § 3. Review of regulations.

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

V.A.R. Doc. No. R94-909; Filed April 26, 1994, 5:06 p.m.

\* \* \* \* \*

Title of Regulation: VR 300-01-2. Unemployment Taxes.

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

Public Hearing Date: June 22, 1994 - 10:30 a.m.

Written comments may be submitted through July 15, 1994.

(See Calendar of Events section for additional information)

Basis: The Virginia Employment Commission (VEC) is authorized to adopt, amend or rescind rules and regulations governing administration of the agency pursuant to § 60.2-111 of the Code of Virginia. The proposed amendments to VR 300-01-2 will permit more effective administration of the Virginia Unemployment Compensation Act.

Purpose: The VEC proposes amendments to VR 300-01-2 to reorganize and clarify this regulation.

Substance and Issues: A review of the regulations revealed deficiencies in the organization and drafting of certain provisions making them difficult to identify, read or comprehend, particularly by individuals unfamiliar with the regulations. The proposed amendment would not effect any substantive change to current regulations.

The primary advantage resulting from the proposed amendments is that persons using VEC regulations will be able to more readily identify provisions affecting them and more easily comprehend such provisions. The VEC does not anticipate any disadvantages to the public or the agency as a result of the amendments.

Impact: There will be no fiscal impact resulting from the proposed amendments, nor will there be any effect on specific individual localities.

### Summary:

The proposed amendment to Regulations and General Rules Affecting Unemployment Compensation, VR 300-01-2, involves minor clarifications of existing provisions and deletion of a number of provisions concerning reporting requirements, employer accounts, and employer elections to cover multistate workers under the unemployment laws of a single jurisdiction.

The clarifying language does not affect the substantive rights or responsibilities of any party under the agency's regulations. The deleted provisions, which concern varied subject matter, are to be adopted under new regulations and will remain substantively the same.

VR 300-01-2. Unemployment Taxes.

PART I:  
LIABILITY FOR TAXES OR PAYMENTS IN LIEU  
THEREOF.

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## § 1-1. 1. Taxable employers.

A. Taxes shall become due and be payable quarterly for all taxable employers on the last day of the month next following the end of the calendar quarter for which they have accrued by all employers except the Commonwealth of Virginia, Governmental entities and those nonprofit organizations which have elected to finance their benefit costs on a reimbursable basis, pursuant to the provisions of §§ 60.2-501 through 60.2-507 of the Code of Virginia. This subsection shall not apply to reimbursable employers, including governmental entities and nonprofit organizations electing coverage under the provisions of §§ 60.2-501 through 60.2-507 of the Code of Virginia.

B. The first tax payment of an employer who becomes liable for taxes in any year shall become due and be payable on the next due date following the month in which he became subject to the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of Code of Virginia Act. The first payment of such an employer becoming liable in the course of a calendar year, shall include taxes with respect to for all wages payable for employment for each such employing unit from the first day of the calendar year.

C. The Payment for each of said quarters calendar quarter shall include taxes with respect to for wages payable for employment in all pay periods (weekly, biweekly, semi-monthly, monthly) ending within each such calendar quarter.

D. Upon written request of any employer filed with the commission on or before the due date of any tax payment, the commission for good cause may grant in writing an extension of time for the payment of such taxes, but (i) no extension of time shall exceed thirty 30 days, and (ii) no extension shall postpone payment beyond the last date for filing tax returns under the Federal Unemployment Tax Act, and (iii) interest as provided in § 60.2-519 of the Code of Virginia shall be payable from the original due date as if no extension had been granted.

## § 1-2. 2. Reimbursable employers.

### A. Bond to be furnished by reimbursable employers.

A. All nonprofit organizations, pursuant to the provisions of § 60.2-501 of the Code of Virginia shall file with the Chief of Tax at the Commission's administrative office a surety bond equal to 1.0% of the employer's taxable wages, as defined in § 60.2-229 of the Code of Virginia, for the most recent four calendar quarters prior to the election to make payments in lieu of taxes; such bond to be. Such bond shall be executed by an approved bonding company. Any such nonprofit organization having made the election to make payments in lieu of taxes prior to the effective date of these rules and regulations shall file with the Chief of Tax at the commission's administrative office a surety bond equal to 1.0% of the employer's taxable payroll for the most recent four calendar quarters prior to

the effective date of these rules and regulations. If the nonprofit organization did not pay wages in each of such four calendar quarters the amount of the bond or deposit shall be 1.0% of the taxable payroll estimated for four calendar quarters from any such quarters in which the organization did pay wages. If the nonprofit organization did not pay wages in any quarter, then the amount of bond or deposit shall be 1.0% of taxable payroll estimated by the organization, such estimate to be adjusted at the end of four calendar quarters by the commission.

### B. Deposit in lieu of bond.

B. In lieu of the bond set forth in subsection A, any nonprofit organization may elect to deposit with the commission money or securities equal to 1.0% of the employer's taxable payroll for the most recent four calendar quarters prior to the election to make payments in lieu of taxes rather than filing the above mentioned bond. Any deposit of money or securities shall be retained in an escrow account until liability is terminated, at which time it shall be returned to the organization less any deductions. The commission may deduct from the money deposited funds, or sell the securities to the extent necessary to provide, a sum sufficient to satisfy any due and unpaid payments in lieu of taxes, or any unpaid taxes and any applicable interests and penalties. Within thirty 30 days following any such deduction the employer must deposit sufficient additional money or securities to make whole its deposit at the prior 1.0% level.

If any nonprofit organization fails to file such bond with the Commission within thirty 30 days after such election, the commission may terminate the organization's election to make payments in lieu of taxes.

## PART II. REQUIRED RECORDS AND REPORTS.

### § 2-1. Employing unit records.

A. Each employing unit as defined under § 60.2-211 of the Code of Virginia having services performed for it, shall maintain records reasonably protected against damage or loss as hereinafter indicated and shall preserve such records. These records shall include for each worker:

1. Full legal name;
2. Social security account number;
3. State or states in which his services are performed; and if any of such services are performed outside the Commonwealth of Virginia not incidental to the services within the Commonwealth of Virginia, his base of operations with respect to such services (or if there is no base of operations then the place from which such services are directed or controlled) and his residence (by state). Where the services are performed outside the United States, the country in which performed;

# Proposed Regulations

4. The date of hire, rehire, or return to work after temporary lay-off;

5. The date when work ceased and the reason for such cessation;

6. Scheduled hours (except for workers without a fixed schedule of hours, such as those working outside their employer's establishment in such a manner that the employer has no record or definite knowledge of their working hours);

7. a. Wages earned in any week of partial unemployment as such week is defined in VR 300-01-1;

b. Whether any week was in fact a week of less than full-time work;

c. Time lost, if any, by each such worker, and the reason therefor;

8. Total wages in each pay period and the total wages payable for all pay periods ending in each quarter showing separately (i) money wages, including tips and dismissal or severance pay and (ii) the cash value of other remuneration.

9. Any special payments for service other than those rendered exclusively in a given quarter, such as annual bonuses, gifts, prizes, etc., showing separately, (i) money payments, (ii) other remuneration, and (iii) nature of said payments;

10. Amounts paid each worker as advancement, allowance or reimbursement for traveling or other business expenses, dates of payment, and the amounts of expenditures actually incurred and accounted for by such worker;

11. Location in which the worker's services are performed within or outside of the United States and dates such services are performed out of the United States. For the purposes of this subsection, "United States" means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

B. Records required by this regulation to be maintained by employing units under the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of the Code of Virginia shall be preserved for four years from the date of payment of the tax based thereon and shall be subject to examination and audit by the Commission.

C. If such records are not maintained, there shall be a presumption in favor of the party making an allegation, and the burden of overcoming such presumption shall rest upon the party which has failed to maintain the required records.

## PART III:

## EMPLOYER REPORTS.

### § 3.1. Required reports.

A. Each employer as defined in § 60.2-210 of the Code of Virginia, shall report to the Commission for each calendar quarter all the information concerning the number of workers subject to the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of the Code of Virginia and the total wages payable with respect to employment in pay periods ending within each such quarter. Upon request, each such employer shall furnish the Commission additional information revealing the wages earned by an individual in his employment during the time intervening between the last pay period for which wages were paid in any quarter and the end of such quarter.

B. Each employer shall report quarterly, not later than the last day of the month following the end of the calendar quarter, on forms prescribed by the Commission the following:

1. Employer's name, address, and any registration number assigned to him by the Commission;
2. The quarterly period covered by the report;
3. The social security account numbers of the workers;
4. The full legal names of workers with surnames last;
5. Each worker's total wages paid for the quarter. Such reports shall be submitted for each of the calendar quarters of each year.

C. An employer shall immediately notify the Commission of the filing of any voluntary or involuntary petition in bankruptcy or other proceeding under the Federal Bankruptcy Code and, also, of the commencement of any receivership or similar proceeding, or of any assignment for benefit of creditors, and of any order of court under the laws of Virginia with respect to the foregoing.

### D. Employing unit reports.

1. Each employing unit shall make such reports as the Commission may require and shall comply with instructions printed upon any report form issued by the Commission pertaining to the preparation and return of such report.

2. Any employing unit which becomes an employer shall give notice to the Commission of that fact within thirty days. The notice shall contain the employer's name, home address, business address, and name of business, if any.

3. Any employer who terminates his business for any reason or transfers or sells the whole or any part of his business or changes the name or address, or both,



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of his business shall within thirty days of such action give notice of such fact in writing to the Commission. The notice shall contain the employer's name, address, and account number along with the name, address, and account number of any new owner or part owner.

## E. Officers of Corporation:

Every corporation shall file with the Commission a verified list of its officers and registered agent. Where it is claimed that any of the officers are not in the corporation's employment, a complete statement of the reasons shall be presented with said list.

An officer of a corporation to be considered as being in the employment of a corporation shall perform services, and these services shall be performed either (i) for remuneration or (ii) under a contract of hire.

## PART IV. COMBINED EMPLOYER ACCOUNTS.

### § 4.1. Group accounts for employers:

A. All applications for the establishment of a group account pursuant to the provisions of § 60.2-505 of the Code of Virginia shall show:

1. Name, address, and established account number of member employing units;
2. Name and address of the authorized group representative;
3. Signature of authorized representative of each employing unit;
4. An authorization for the representative named by the group to act for the group.

B. Approval of an application for a group account shall be contingent upon the active employing unit account of each proposed member being currently paid with no existing delinquencies.

### C. A group account shall:

1. Become effective after approval by the Commission, as of the first day of the calendar year succeeding the year in which the application is received by the Commission; however, such application shall be received by the Commission not later than 30 days prior to the beginning of the calendar year in which the joint account becomes effective;
2. Remain in effect for not less than two calendar years;
3. Be terminated upon written request received by the Commission no later than 30 days prior to the beginning of the calendar year for which such

termination shall be effective, or at the discretion of the Commission.

D. An active employing unit which is a member of a continuing group account may withdraw from such group account effective January 1, or other date at the discretion of the Commission:

1. Any employing unit which is a member of a group account may apply for withdrawal from such group account upon written notice to the Commission not less than 60 days prior to the desired date of withdrawal.

2. Within 10 days of receipt of such notice, the Commission shall approve or deny such application and give notice thereof to the employing unit and the group account.

3. If the withdrawal will eliminate the group account, notice will be given to the account by the Commission and the account will be terminated effective as of the date of withdrawal.

4. If there are two or more employers who will remain in the group account after the effective date of such withdrawal, the authorized representative shall submit an amended application pursuant to subsection A of this section not less than 30 days prior to the effective date of the withdrawal.

5. Upon approval of such application for withdrawal, the withdrawal from such group account shall become effective January 1, or such other date as determined by the Commission.

E. An active employer may be added to an existing authorized group account provided that the authorized representative submits an amended application to the Commission for approval 30 days prior to the effective date. (Effective January 1, or other date at the discretion of the Commission.)

F. Initial responsibility to the Commission for payment of the quarterly cumulative billing shall rest with the authorized representative of the group account; however, if he does not meet that responsibility within 30 days from the date the billing was mailed to him by the Commission, each member of the group shall be liable for payments in lieu of taxes in accordance with § 60.2-505 of the Code of Virginia.

G. Past due or unpaid amounts in lieu of taxes by a group account are subject to the same interest, penalty, assessment, or other collection provisions of the Act as apply to employer taxes pursuant to §§ 60.2-513 and 60.2-519 through 60.2-524 of the Code of Virginia. Although responsibility for payment of the group account to the Commission shall rest with the authorized representative of the group account, each member of the group account continues to be legally liable for his part of the group

account until it is paid.

H. The representative shall file, within 30 days after the end of each calendar quarter, the wage reports of each member of the group on forms furnished by the Commission; however, failure to furnish such forms shall not relieve the representative from filing such reports.

I. The Commission shall issue a quarterly billing for each group account with respect to the combined benefit charges of all members of the group and shall mail such billing to the last known address of the authorized representative of the group.

## § 4.2. Joint accounts for governmental entities.

A. All applications for the establishment of a joint account pursuant to the provisions of § 60.2-507 of the Code of Virginia shall show:

1. Name, address, and established account number of member employing units;
2. Name and address of the authorized joint account representative;
3. Signature of authorized representative of each employing unit;
4. An authorization for the representative named by the member units to act for the joint account.

B. Approval of an application for a joint account shall be contingent upon the active employing unit account of each proposed member being currently paid with no existing delinquencies.

C. A joint account shall:

1. Become effective after approval by the Commission, as of the first day of the calendar year succeeding the year in which the application is received by the Commission; however, such application must be received by the Commission not later than 30 days prior to the beginning of the calendar year in which the joint account becomes effective;
2. Remain in effect for not less than two calendar years;
3. Be terminated upon written request received by the Commission no later than 30 days prior to the beginning of the calendar year for which such termination shall be effective, or at the discretion of the Commission.

D. An active employing unit which is a member of a continuing joint account may withdraw from such joint account effective January 1, or other date at the discretion of the Commission, provided that:

1. Any employing unit which is a member of a joint account may apply for withdrawal from such joint account upon written notice to the Commission not less than 60 days prior to the desired date of withdrawal.

2. Within 10 days of receipt of such notice, the Commission shall approve or deny such application and give notice thereof to the employing unit and the joint account.

3. If the withdrawal will eliminate the joint account, notice will be given to the account by the Commission and the account will be terminated effective as of the date of withdrawal.

4. If there are two or more employers who will remain in the joint account after the effective date of such withdrawal, the authorized representative shall submit an amended application pursuant to paragraph A of this part not less than 30 days prior to the effective date of the withdrawal.

5. Upon approval of such application for withdrawal, the withdrawal from such joint account shall become effective January 1, or such other date as determined by the Commission.

E. An active employer may be added to an existing authorized joint account provided that the authorized representative submits an amended application to the Commission for approval 30 days prior to the effective date. (Effective January 1, or other date at the discretion of the Commission.)

F. Each joint account may elect to finance benefits to its employees by either taxes, (as set forth in §§ 60.2-526 through 60.2-533 of the Code of Virginia), or payments in lieu of taxes as set forth in § 60.2-501 of the Code of Virginia. Such election shall be made upon forms provided by the Commission and shall become effective on the first day of the calendar year succeeding such election and shall remain effective for at least one calendar year. Such election shall be received by the Commission at least 30 days prior to the date on which the election becomes effective.

Nothing contained in this subsection shall prevent a joint account which has elected a method for financing benefits to its employees from electing to finance benefits by the alternative method during any subsequent year.

G. Any joint account electing to finance benefits to its employees by taxes shall receive a tax rate computed, pursuant to the provisions of §§ 60.2-526 through 60.2-533 of the Code of Virginia, on the combined experience of each of its member units.

H. Initial responsibility to the Commission for payment of the quarterly cumulative billing shall rest with the authorized representative of the joint account; however, if

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he does not meet that responsibility within 30 days from the date the billing was mailed to him by the Commission, each member of the joint account shall be liable for payments in lieu of taxes in accordance with § 60.2-505 of the Code of Virginia. Past due or unpaid amounts in lieu of taxes by a joint account are subject to the same interest, penalty, assessment, or other collection provisions of the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) of the Code of Virginia as apply to employer taxes pursuant to §§ 60.2-513 and 60.2-519 through 60.2-524 of the Code of Virginia.

I. Any joint account electing to finance benefits to its employees by taxes pursuant to §§ 60.2-526 through 60.2-533 of the Code of Virginia shall follow the procedures set forth in Part I, § 1.1 of these regulations.

J. The representative shall file, within 30 days after the end of each calendar quarter, the wage reports of each member of the joint account on forms furnished by the Commission; however, the failure to furnish such forms shall not relieve the representative from filing such reports.

K. The Commission shall issue a quarterly billing for each joint account with respect to the combined benefit charges of all members of the joint account and shall mail such billing to the last known address of the authorized representative of said joint account.

## PART V.

### EMPLOYER ELECTIONS TO COVER MULTI-STATE WORKERS.

#### § 5.1. Interstate Reciprocal Coverage Arrangement.

A. This section shall govern the Commission in its administrative cooperation with other states subscribing to the Interstate Reciprocal Coverage Arrangement pursuant to Title 60.2 of the Code of Virginia, hereinafter referred to as "the Arrangement."

B. Submission and approval of coverage elections under the Interstate Reciprocal Coverage Arrangement is made as follows:

1. Any employing unit may file an election to cover under the law of a single participating jurisdiction all of the services performed for him by an individual who customarily works for him in more than one participating jurisdiction.

Such an election may be filed, with respect to an individual, with any participating jurisdiction in which (i) any part of the individual's services are performed, (ii) the individual has his residence, or (iii) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

2. The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove

the election.

If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable and shall notify the agency of the elected jurisdiction accordingly.

In case its law so requires, any such interested agency may, before taking action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in the election.

3. If the agency of the elected jurisdiction or the agency of any interested jurisdiction disapproved the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and reasons therefor.

4. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

5. In case any such election is approved only in part or is disapproved by some of such agencies, the electing employing unit may withdraw its election within 10 days after being notified of such action.

#### C. Effective period of elections.

##### 1. Commencement.

An election duly approved under this section shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election as approved, specifies the beginning of a different calendar quarter.

If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay taxes for the earlier period in question.

##### 2. Termination.

a. The application of any election to any individual under this section shall terminate if the agency of the elected jurisdiction finds the nature of the services customarily performed by the individual for the electing unit has changed so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be

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effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.

b. Except as provided in subparagraph a, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

c. Whenever an election under this section ceases to apply to any individual under subparagraph a or b, the electing unit shall notify the affected individual accordingly.

## D. Reports and notices by the electing unit.

1. The electing unit shall promptly notify each individual affected by its approved election, on the form supplied by the elected jurisdiction and shall furnish the elected agency a copy of such notice.

2. Whenever an individual covered by an election under this section is separated from his employment, the electing unit shall again notify him forthwith as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

3. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

## E. Approval of reciprocal coverage elections.

The authority to approve or disapprove reciprocal coverage elections in accordance with this section shall be vested in the Commissioner or his duly authorized representative.

VA.R. Doc. No. R94-908; Filed April 26, 1994, 7:35 a.m.

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Title of Regulation: VR 300-01-3. Benefits (REPEALING).

Title of Regulation: VR 300-01-3:1. Required Records and Reports.

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

Public Hearing Date: June 22, 1994 - 10:30 a.m.

Written comments may be submitted through July 15, 1994.

(See Calendar of Events section for additional information)

Basis: The Virginia Employment Commission (VEC) is authorized to adopt, amend or rescind rules and regulations governing administration of the agency pursuant to § 60.2-111 of the Code of Virginia. The proposed amendment to VR 300-01-3 will provide for more effective administration of the Virginia Unemployment Compensation Act.

Purpose: The VEC proposes repeal of current VR 300-01-3, and adoption of VR 300-01-3:1 entitled "Required Records and Reports." The purpose of this action is to reorganize and clarify these regulations.

Substance and Issues: A review of the regulations revealed deficiencies in the organization and drafting of certain provisions making them difficult to identify, read or comprehend, particularly by individuals unfamiliar with the regulations. The proposed amendments, while correcting such deficiencies, will not effect any substantive change to current regulations.

The primary advantage resulting from the proposed amendments is that persons using VEC regulations will be able to more readily identify provisions affecting them and more easily comprehend such provisions. The VEC does not anticipate any disadvantages to the public or the agency as a result of the amendments.

Impact: There will be no fiscal impact resulting from the proposed amendments, nor will there be any effect on specific individual localities.

## Summary:

*The proposed amendment to Regulations and General Rules Affecting Unemployment Compensation repeals all provisions under VR 300-01-3 and promulgates "VR 300-01-3:1, Required Records and Reports." The new regulation contains provisions specifying the type and nature of records to be maintained by employers for unemployment compensation purposes, and the manner of reporting necessary information to the Virginia Employment Commission.*

*All provisions subject to the repeal of this regulation are to be adopted in a modified form under new regulations, but will remain substantively the same.*

VR 300-01-3:1. Required Records and Reports.

§ 1. Employing unit records.

*A. Each employing unit as defined under § 60.2-211 of the Code of Virginia, having services performed for it, shall maintain records reasonably protected against*

# Proposed Regulations

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damage or loss as hereinafter indicated and shall preserve such records. These records shall include for each worker:

1. A full legal name;
2. A social security account number;
3. The state or states in which his services are performed; and if any of such services are performed outside the Commonwealth of Virginia not incidental to the services within the Commonwealth of Virginia, his base of operations with respect to such services (or if there is no base of operations then the place from which such services are directed or controlled) and his residence (by state). Where the services are performed outside the United States, the country in which performed;
4. The date of hire, rehire, or return to work after temporary lay off;
5. The date when work ceased and the reason for such cessation;
6. Scheduled hours (except for workers without a fixed schedule of hours, such as those working outside their employer's establishment in such a manner that the employer has no record or definite knowledge of their working hours);
7. a. Wages earned in any week of partial unemployment as such week is defined in VR 300-01-1;  
b. Whether any week was in fact a week of less than full-time work;  
c. Time lost, if any, by each such worker, and the reason therefor;
8. Total wages in each pay period, and the total wages payable for all pay periods ending in each quarter, showing separately (i) money wages, including tips and dismissal or severance pay, and (ii) the cash value of other remuneration;
9. Any special payments for service other than those rendered exclusively in a given quarter, such as annual bonuses, gifts, prizes, etc., showing separately (i) money payments, (ii) other remuneration, and (iii) nature of said payments;
10. Amounts paid each worker as advancement, allowance or reimbursement for traveling or other business expenses, dates of payment, and the amounts of expenditures actually incurred and accounted for by such worker;
11. Location in which the worker's services are performed within or outside of the United States and dates such services are performed outside of the United States. For the purposes of this subdivision,

"United States" means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the U. S. Virgin Islands.

B. Records required by this regulation to be maintained by employing units under the Act shall be preserved for four years from the date of payment of the tax based thereon and shall be subject to examination and audit by the commission.

C. If such records are not maintained, there shall be a presumption in favor of the party making an allegation, and the burden of overcoming such presumption shall rest upon the party failing to maintain the required records.

## § 2. Required reports.

A. Each employer, as defined in § 60.2-210 of the Code of Virginia, shall report to the commission for each calendar quarter all the information concerning the number of workers subject to the Act and the total wages payable with respect to employment in all pay periods ending within each such quarter. Upon request, each such employer shall furnish the commission additional information revealing the wages earned by an individual in his employment during the time between the last pay period for which wages were paid in any quarter and the end of such quarter.

B. Each employer shall report quarterly, not later than the last day of the month following the end of the calendar quarter, on forms prescribed by the commission, the following:

1. Employer's name, address, and any registration number assigned to him by the commission;
2. The quarterly period covered by the report;
3. The social security account numbers of the workers;
4. The full legal names of workers, with surnames last;
5. Each worker's total wages paid for the quarter.

Such reports shall be submitted for each calendar quarter of each year.

C. An employer shall immediately notify the commission of the filing of any voluntary or involuntary petition in bankruptcy or other proceeding under the Federal Bankruptcy Code, the commencement of any receivership or similar proceeding, or of any assignment for benefit of creditors, and any order of court under the laws of Virginia with respect to the foregoing.

D. Each employing unit shall make such reports as the commission may require and shall comply with instructions printed upon any report form issued by the commission pertaining to the preparation and return of such report.

1. Any employing unit which becomes an employer shall give notice to the commission of that fact within 30 days. The notice shall contain the employer's name, home address, business address, and name of business, if any.

2. Any employer who terminates his business for any reason or transfers or sells the whole or any part of his business or changes the name or address, or both, of his business, shall within 30 days of such action give notice of such fact in writing to the commission. The notice shall contain the employer's name, address, and account number, along with the name, address, and account number of any new owner or part owner.

E. Every corporation shall file with the commission a verified list of its officers and registered agent. Where it is claimed that any of the officers are not in the corporation's employment, a complete statement of the reasons shall be presented with said list.

An officer of a corporation, to be considered as being in the employment of a corporation, shall perform services, and these services shall be performed either (i) for remuneration or (ii) under a contract of hire.

V.A.R. Doc. Nos. R94-907 and R94-919; Filed April 20, 1994, 5:06 p.m.

\* \* \* \* \*

**Title of Regulation:** VR 300-01-4. Adjudication (REPEALING).

**Title of Regulation:** VR 300-01-4:1. Combined Employer Accounts.

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

**Public Hearing Date:** June 22, 1994 - 10:30 a.m.

Written comments may be submitted through July 15, 1994.

(See Calendar of Events section for additional information)

**Basis:** The Virginia Employment Commission (VEC) is authorized to adopt, amend or rescind rules and regulations governing administration of the agency pursuant to § 60.2-111 of the Code of Virginia. The proposed amendment will enable more effective administration of the Virginia Unemployment Compensation Act.

**Purpose:** The VEC proposes repeal of current VR 300-01-4, and adoption of new VR 300-01-4:1 entitled "Combined Employer Accounts." The purpose of this action is to reorganize and clarify these regulations.

**Substance and Issues:** A review of the regulations revealed deficiencies in the organization and drafting of certain provisions making them difficult to identify, read or comprehend, particularly by individuals unfamiliar with

the regulations. The proposed amendments, while correcting such deficiencies, will not effect any substantive change to current regulations.

The primary advantage resulting from the proposed amendments is that persons using VEC regulations will be able to more readily identify provisions affecting them and more easily comprehend such provisions. The VEC does not anticipate any disadvantages to the public or the agency as a result of the amendments.

**Impact:** There will be no fiscal impact resulting from the proposed amendments, nor will there be any effect on specific individual localities.

**Summary:**

The proposed amendment to Regulations and General Rules Affecting Unemployment Compensation repeals all provisions under VR 300-01-4 and promulgates a new regulation VR 300-01-4:1 entitled "Combined Employer Accounts." The new regulation will contain provisions setting forth the process for establishment of group accounts and joint accounts for unemployment compensation purposes, and provisions governing maintenance and termination of such accounts. These provisions remain substantively the same as current regulatory provisions governing group and joint accounts, which are being repealed concurrent with the promulgation of this regulation.

All provisions subject to the repeal of this regulation are to be adopted in a modified form under new regulations.

VR 300-01-4:1. Combined Employer Accounts.

§ 1. Group accounts for employers.

A. All applications for the establishment of a group account pursuant to the provisions of § 60.2-505 of the Code of Virginia shall show:

1. The name, address, and established account number of member employing units;
2. The name and address of the authorized group representative;
3. The signature of an authorized representative of each employing unit;
4. An authorization for the representative named by the group to act for the group.

B. Approval of an application for a group account shall be contingent upon the active employing unit account of each proposed member being currently paid.

C. A group account shall:



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1. Become effective after approval by the commission, as of the first day of the calendar year succeeding the year in which the application is received by the commission; however, such application shall be received by the commission not later than 30 days prior to the beginning of the calendar year in which the joint account becomes effective;

2. Remain in effect for not less than two calendar years;

3. Be terminated upon written request received by the commission no later than 30 days prior to the beginning of the calendar year for which such termination shall be effective, or at the discretion of the commission.

D. An active employing unit which is a member of a continuing group account may withdraw from such group account effective January 1, or other date at the discretion of the commission, according to the following provisions:

1. Written notice must be provided to the commission not less than 60 days prior to the desired date of withdrawal.

2. Within 10 days of receipt of such notice, the commission shall approve or deny such application and give notice thereof to the employing unit and the group account.

3. If the withdrawal will eliminate the group account, notice will be given to the account by the commission and the account will be terminated effective as of the date of withdrawal.

4. If there are two or more employers who will remain in the group account after the effective date of such withdrawal, the authorized representative shall submit an amended application pursuant to subsection A of this section not less than 30 days prior to the effective date of the withdrawal.

5. Upon approval of such application for withdrawal, the withdrawal from such group account shall become effective January 1, or such other date as determined by the commission.

E. An active employer may be added to an existing authorized group account provided that the authorized representative submits an amended application to the commission for approval 30 days prior to the effective date. (Effective January 1, or other date at the discretion of the commission.)

F. Initial responsibility to the commission for payment of the quarterly cumulative billing shall rest with the authorized representative of the group account; however, if he does not meet that responsibility within 30 days from the date the billing was mailed to him by the commission, each member of the group shall be liable for payments in

lieu of taxes in accordance with § 60.2-505 of the Code of Virginia.

G. Past due or unpaid amounts in lieu of taxes by a group account are subject to the same interest, penalty, assessment, or other collection provisions of the Act as apply to employer taxes pursuant to §§ 60.2-513 and 60.2-519 through 60.2-524 of the Code of Virginia. Although responsibility for payment of the group account to the commission shall rest with the authorized representative of the group account, each member of the group account continues to be legally liable for his part of the group account until it is paid.

H. The representative shall file, within 30 days after the end of each calendar quarter, the wage reports of each member of the group on forms furnished by the commission; however, failure to furnish such forms shall not relieve the representative from filing such reports.

I. The commission shall issue a quarterly billing for each group account with respect to the combined benefit charges of all members of the group and shall mail such billing to the last known address of the authorized representative of the group.

## § 2. Joint accounts for governmental entities.

A. All applications for the establishment of a joint account pursuant to the provisions of § 60.2-507 of the Code of Virginia shall show:

1. The name, address, and established account number of member employing units;

2. The name and address of the authorized joint representative;

3. The signature of an authorized representative of each employing unit;

4. An authorization for the representative named by the member units to act for the joint account.

B. Approval of an application for a joint account shall be contingent upon the active employing unit account of each proposed member being currently paid.

C. A joint account shall:

1. Become effective after approval by the commission, as of the first day of the calendar year succeeding the year in which the application is received by the commission; however, such application must be received by the commission not later than 30 days prior to the beginning of the calendar year in which the joint account becomes effective;

2. Remain in effect for not less than two calendar years;

3. Be terminated upon written request received by the commission no later than 30 days prior to the beginning of the calendar year for which such termination shall be effective, or at the discretion of the commission.

D. An active employing unit which is a member of a continuing joint account may withdraw from such joint account effective January 1, or other date at the discretion of the commission, according to the following provisions:

- 1. Written notice must be provided to the commission not less than 60 days prior to the desired date of withdrawal.
- 2. Within 10 days of receipt of such notice, the commission shall approve or deny such application and give notice thereof to the employing unit and the joint account.
- 3. If the withdrawal will eliminate the joint account, notice will be given to the account by the commission and the account will be terminated effective as of the date of withdrawal.
- 4. If there are two or more employers who will remain in the joint account after the effective date of such withdrawal, the authorized representative shall submit an amended application pursuant to subsection A of § 1 of this regulation not less than 30 days prior to the effective date of the withdrawal.
- 5. Upon approval of such application for withdrawal, the withdrawal from such joint account shall become effective January 1, or such other date as determined by the commission.

E. An active employer may be added to an existing authorized joint account provided that the authorized representative submits an amended application to the commission for approval 30 days prior to the effective date. (Effective January 1, or other date at the discretion of the commission.)

F. Each joint account may elect to finance benefits to its employees by either taxes (as set forth in §§ 60.2-526 through 60.2-533 of the Code of Virginia) or payments in lieu of taxes as set forth in § 60.2-501 of the Code of Virginia. Such election shall be made upon forms provided by the commission and shall become effective on the first day of the calendar year succeeding such election and shall remain effective for at least one calendar year. Such election shall be received by the commission at least 30 days prior to the date on which the election becomes effective. Nothing contained in this subsection shall prevent a joint account which has elected a method for financing benefits to its employees from electing to finance benefits by the alternative method during any subsequent year.

G. Any joint account electing to finance benefits to its

employees by taxes shall receive a tax rate computed, pursuant to the provisions of §§ 60.2-526 through 60.2-533 of the Code of Virginia, on the combined experience of each of its member units.

H. Initial responsibility to the commission for payment of the quarterly cumulate billing shall rest with the authorized representative of the joint account; however, if he does not meet that responsibility within 30 days from the date the billing was mailed to him by the commission, each member of the joint account shall be liable for payments in lieu of taxes in accordance with § 60.2-505 of the Code of Virginia. Past due or unpaid amounts in lieu of taxes by a joint account are subject to the same interest, penalty, assessment, or other collection provisions of the Act as apply to employer taxes pursuant to §§ 60.2-513 and 60.2-519 through 60.2-524 of the Code of Virginia.

I. Any joint account electing to finance benefits to its employees by taxes pursuant to §§ 60.2-526 through 60.2-533 of the Code of Virginia shall follow the procedures set forth in § 1 of VR 300-01-2.

J. The representative shall file, within 30 days after the end of each calendar quarter, the wage reports of each member of the joint account on forms furnished by the commission; however, failure to furnish such forms shall not relieve the representative from filing such reports.

K. The commission shall issue a quarterly billing for each joint account with respect to the combined benefit charges of all members of the joint account and shall mail such billing to the last known address of the authorized representative of said joint account.

VA.R. Doc. Nos. R94-906 and R94-910; Filed April 26, 1994, 5:06 p.m.

\* \* \* \* \*

**Title of Regulation:** VR 300-01-5. Employer Elections to Cover Multistate Workers.

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

**Public Hearing Date:** June 22, 1994 - 10:30 a.m.

Written comments may be submitted through July 15, 1994.

(See Calendar of Events section for additional information)

**Basis:** The Virginia Employment Commission (VEC) is authorized to adopt, amend or rescind rules and regulations governing administration of the agency pursuant to § 60.2-111 of the Code of Virginia.

**Purpose:** The VEC proposes adoption of VR 300-01-5 of the Regulations and General Rules Affecting Unemployment Compensation, entitled "Employer Elections to Cover Multistate Workers." The purpose of this action is to reorganize and clarify existing regulations.

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Substance and Issues: A review of the regulations revealed a number of deficiencies making certain provisions difficult to read or comprehend, particularly by individuals unfamiliar with the regulations. The proposed new regulation will involve no substantive changes, but will contain provisions currently found in existing regulations. While correcting identified deficiencies, adoption of the regulation will not effect any substantive change to current regulations or agency practice.

The primary advantage resulting from adoption of the proposed regulation is that persons using VEC regulations will be able to more readily identify provisions affecting them and more easily comprehend such provisions. The VEC does not anticipate any disadvantages to the public or the agency.

Impact: Adoption of the proposed regulation will have no fiscal impact, nor will there be any effect on specific individual localities.

## Summary:

*The proposed amendment to Regulations and General Rules Affecting Unemployment Compensation, adopting VR 300-01-5, establishes provisions for governing of employing units electing to cover multistate workers under the unemployment compensation laws of a single state. The regulation sets forth criteria for administrative cooperation with other states who have subscribed to a reciprocal agreement concerning such workers. These provisions remain substantively the same as current regulatory provisions governing coverage of multistate workers, which are being repealed concurrent with the promulgation of this regulation.*

VR 300-01-5. Employer Elections to Cover Multistate Workers.

### § 1. Interstate Reciprocal Coverage Arrangement.

A. This section shall govern the commission in its administrative cooperation with other states subscribing to the Interstate Reciprocal Coverage Arrangement pursuant to Title 60.2 of the Code of Virginia hereinafter referred to as "the Arrangement."

B. Submission and approval of coverage elections under the Interstate Reciprocal Coverage Arrangement is made as follows:

1. Any employing unit may file an election to cover under the law of a single participating jurisdiction all of the services performed for him by an individual who customarily works for him in more than one participating jurisdiction.

Such an election may be filed, with respect to an individual, with any participating jurisdiction in which (i) any part of the individual's services are performed,

(ii) the individual has his residence, or (iii) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

2. The agency of the elected jurisdiction shall initially approve or disapprove the election.

If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable, and shall notify the agency of the elected jurisdiction accordingly.

In case its law so requires, any such interested agency may, before taking action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

3. If the agency of the elected jurisdiction or the agency of any interested jurisdiction disapproved the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and reasons therefor.

4. Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

5. In case any such election is approved only in part or is disapproved by some of such agencies, the electing employing unit may withdraw its election within 10 days after being notified of such action.

### C. The effective period of elections shall be as follows:

1. An election duly approved under this section shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election, as approved, specifies the beginning of a different calendar quarter.

If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay taxes for the earlier period in question.

2. a. The application of any election to any individual under this section shall terminate if the agency of the elected jurisdiction finds the services customarily performed by the individual for the electing unit are no longer customarily performed in more than one participating jurisdiction. Such termination shall be

effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.

b. Except as provided in subdivision a, each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

c. Whenever an election under this section ceases to apply to any individual under subdivision a or b, the electing unit shall notify the affected individual accordingly.

D. 1. The electing unit shall promptly notify each individual affected by its approved election, on the form supplied by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

2. Whenever an individual covered by an election under this section is separated from his employment, the electing unit shall again notify him forthwith as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

3. The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

E. The authority to approve or disapprove reciprocal coverage elections in accordance with this section shall be vested in the commissioner or his duly authorized representative.

V.A.R. Doc. No. R94-905; Filed April 26, 1994, 5:05 p.m.

\* \* \* \* \*

**Title of Regulation:** VR 300-01-6. Benefits.

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

**Public Hearing Date:** June 22, 1994 - 10:30 a.m.

Written comments may be submitted through July 15, 1994.

(See Calendar of Events section for additional information)

**Basis:** The Virginia Employment Commission (VEC) is

authorized to adopt, amend or rescind rules and regulations governing administration of the agency pursuant to § 60.2-111 of the Code of Virginia. Adoption of proposed regulation VR 300-01-6 will enable more effective administration of the Virginia Unemployment Compensation Act.

**Purpose:** The VEC proposes adoption of VR 300-01-6, entitled "Benefits," to replace provisions within an existing regulation by that name. The purpose of this action is to reorganize and clarify existing regulations.

**Substance and Issues:** A review of the regulations revealed deficiencies in the organization and drafting of certain provisions making them difficult to identify, read or comprehend, particularly by individuals unfamiliar with the regulations. The proposed new regulation will contain provisions currently found in existing regulations. While correcting identified deficiencies, adoption of the regulation will not effect any substantive change to current regulations or agency practice.

The primary advantage resulting from adoption of the proposed regulation is that persons using VEC regulations will be able to more readily identify provisions affecting them and more easily comprehend such provisions. The VEC does not anticipate any disadvantages to the public or the agency.

**Impact:** Adoption of the proposed regulation will have no fiscal impact, nor will there be any effect on specific individual localities.

**Summary:**

The proposed amendment to Regulations and General Rules Affecting Unemployment Compensation, adopting VR 300-01-6, establishes provisions governing the application for, and payment of, benefits under the Virginia Unemployment Compensation Act. These provisions remain substantively the same as current regulatory provisions governing benefits, which are being repealed concurrent with the promulgation of this regulation.

VR 300-01-6. Benefits.

**§ 1. Total and part-total unemployment.**

A. An individual's week of total or part-total unemployment shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day he files his claim at the local unemployment insurance office and registers with a Job Service office, except as provided in subdivisions 1 and 2 of this subsection; and, thereafter, the seven-consecutive-day period following any week of such employment, provided the individual reports as required by subsection C of this section.

1. A week of total or part-total unemployment of an individual located in an area served only by the

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itinerant service of the commission shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of such individual's unemployment, provided that such individual registers in person with such itinerant service at the first available opportunity following the commencement of his total or part-total unemployment except as provided in subdivision 2 of this subsection; and, thereafter, the seven-consecutive-day period following any week of such unemployment provided the individual reports as required by subsection C of this section.

2. A week of total or part-total unemployment of an individual affected by a mass separation or a labor dispute with respect to which arrangements are made for group reporting by the employer shall consist of the seven-consecutive-day period beginning with the Sunday prior to the first day of his unemployment provided that the group reporting is conducted within 13 days following the first day of unemployment.

B. Whenever an employing unit receives an Employer's Report of Separation and Wage Information form from the commission informing it that an individual has filed a claim for benefits, such employing unit shall within five calendar days after receipt of such information form complete the report and return it to the office from which the informatory notice was sent. That portion of the Employer's Report of Separation and Wage Information to be completed by the employing unit shall set forth:

1. The date the worker began working;
2. The last day on which he actually worked;
3. A check mark in the block indicating the reason for separation and a brief statement of the reason for the separation;
4. Such other information as is required by such form. The employing unit's official name and account number, if any, assigned to such employing unit by the commission shall appear on the signed report;
5. The name and title of the official signing the report shall be provided as well as certification that the information contained in the report is accurate and complete to the best knowledge of that official.

C. In cases involving a mass separation, as defined in VR 300-01-1, an employer shall file a list of workers involved in the mass separation with the unemployment insurance office nearest such workers' place of employment within 24 hours of the date of separation (except as provided below), and shall not be required to file individual reports for such workers as otherwise provided by this section. Such list shall include the workers' social security account numbers.

Where the total unemployment is due to a labor dispute,

the employer shall file with the local unemployment insurance office nearest his place of business, in lieu of a mass separation notice or individual workers separation notices, a notice setting forth the existence of such dispute and the approximate number of workers affected. Upon request by the commission, such employer shall furnish to the commission the names and social security account numbers of the workers ordinarily attached to the department or the establishment where unemployment is caused by a labor dispute.

D. To file a claim for benefits, a claimant shall appear personally at the unemployment insurance office most accessible to him or at a location designated by the commission, and shall there file a claim for benefits setting forth (i) his unemployment and that he claims benefits, (ii) that he is able to work and is available for work, and (iii) such other information as is required. A claim for benefits, when filed, may also constitute the individual's registration for work.

1. Except as otherwise provided in this section the claimant shall continue to report as directed during a continuous period of unemployment. The commission, however, for reasons found to constitute good cause for any claimant's inability to continue to report to the unemployment insurance office at which he registered and filed his claim for benefits, may permit such claimant to report to any other unemployment insurance office.

2. The commission shall permit continued claims to be filed by mail, or such other means as the commission may authorize, unless special conditions require in-person reporting. Such special conditions may include:

- a. When a claimant is reporting back to claim his first week(s) after filing an initial, additional, or reopened claim and he has not returned to work in the meantime;
- b. When a claimant needs assistance in order to completely and accurately fill out his claim forms so as to avoid delays in processing his claims by mail;
- c. When, in the opinion of the local unemployment insurance manager or deputy, there is a question of eligibility or qualification which must be resolved through an in-person interview;
- d. When a claimant who would normally be reporting by mail receives no additional claim forms and he wishes to continue claiming benefits;
- e. When a claimant requests to report in person due to problems associated with the receipt of mail.

E. All initial total or part-total unemployment claims shall be effective consistent with the provisions set forth in

subsection A of this section, except that an earlier effective date may apply for late filing of claims in the following cases:

1. The commission is at fault due to a representative of the commission giving inadequate or misleading information to an individual about filing a claim;
2. A previous claim was filed against a wrong liable state;
3. Filing was delayed due to circumstances attributable to the commission;
4. A transitional claim is filed within 14 days from the date the Notice of Benefit Year Ending was mailed to the claimant by the commission;
5. When claiming benefits under any special unemployment insurance program, the claimant becomes eligible for regular unemployment insurance when the calendar quarter changes;
6. When the wrong type of claim was taken by a local unemployment insurance office;
7. With respect to reopened or additional claims only, when the claimant can show circumstances beyond his control which prevented or prohibited him from reporting earlier.

F. An individual shall be deemed to have reported at the proper time if he claims benefit rights within 28 days after either the calendar week ending date of his last continued claim filed, or the calendar date on which the initial claim was filed. If the 28th day falls upon a date when the local unemployment insurance office is closed, the final date for late filing shall be extended to the next day the office is open. Failure to file within the time limit shall automatically suspend the claim series and the claimant must file an additional or reopened claim in accordance with this section in order to begin a new claim series.

G. Normally, all claimants whose unemployment is total or part-total must make an active search for work by contacting prospective employers in an effort to find work during each week claimed in order to meet the eligibility requirements of § 60.2-612 of the Code of Virginia. A claimant who is temporarily unemployed with an expected return to work date within a reasonable period of time as determined by the commission which can be verified from employer information may be considered attached to his regular employer so as to meet the requirement that he be actively seeking and unable to find suitable work if he performs all suitable work which his regular employer has for him during the week or weeks claimed while attached. Attachment will end if the claimant does not return to work as scheduled or if changed circumstances indicate he has become separated.

H. In areas of high unemployment as defined in § 1 of VR 300-01-1, the commission has the authority, in the absence of federal law to the contrary, to adjust the work search requirement of the Act. Any adjustment will be made quarterly within the designated area of high unemployment as follows:

1. The adjustment will be implemented by requiring claimants filing claims for benefits through the full-service unemployment insurance office serving an area experiencing a total unemployment rate of 10% through 19.9% to make one job contact with an employer each week.
2. The adjustment will be implemented by waiving the search for work requirement of all claimants filing claims for benefits through the full-service unemployment insurance office serving an area experiencing a total unemployment rate of 20% or more.
3. No adjustment will be made for claimants filing claims for benefits through the full-service unemployment insurance office serving an area experiencing a total unemployment rate below 10%.

## § 2. Partial unemployment.

A. With respect to a partially unemployed individual, a week of partial unemployment shall consist of a calendar week beginning on Sunday and ending at midnight on Saturday. Total wages payable to partially unemployed workers are to be reported on a calendar week basis.

B. Upon filing of a new claim for partial benefits in each claimant's benefit year the commission shall promptly notify the employer of such claimant's weekly benefit amount, the date on which his benefit year commenced, and the effective date of the claim for partial benefits. Similar notice shall likewise be given at least once during the claimant's benefit year to each subsequent employer to whom the claimant is attached during a period of partial unemployment for which he claims benefits. Upon receipt of the notice the employer shall record this information for use in the preparation of the evidence he is required to furnish periodically as required in subsection C of this section.

C. After the employer has been notified of the benefit year, the weekly benefit amount, and the effective date of the claim for partial benefits of any worker in his employ (pursuant to subsection B of this section) the employer shall, within seven days, furnish the employee with written evidence concerning any week or weeks of partial unemployment which ended on or before the receipt of such notice and which began on or after the effective date of the employee's claim for partial benefits. The employer, until otherwise notified, shall, within 14 days after the termination of any pay period which includes a week or weeks of partial unemployment, and which ends after the date of receipt of such notification, furnish the employee

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with written evidence concerning his partial unemployment with respect to such week or weeks. Written evidence of partial unemployment required by this subsection shall be furnished by means of a Statement of Partial Unemployment, Form VEC-B-31, or other suitable medium approved by the commission. Such evidence need not be furnished, however, where the worker's earnings for a week of partial unemployment equals or exceeds his weekly benefit amount.

The information contained on such medium shall be in ink or typewritten and shall show:

1. The name of the employer and employer account number;
2. The name and social security account number of the worker;
3. The date delivered to the worker;
4. The calendar week ending date;
5. The gross amount of wages earned in such week, by day;
6. The reason and the number of days or hours involved where the worker's earnings were reduced for any cause other than lack of work;
7. The following certification, or one similar:

"During the week or weeks covered by this report, the worker whose name is entered worked less than full time and earned less than his weekly benefit amount for total unemployment because of lack of work, or otherwise shown. I certify that to the best of my knowledge, this information is true and correct";

8. A signature (actual or facsimile) by the employer to the above certification or other identification of the authority supplying the evidence.

D. The new claim for benefits for partial unemployment shall be dated to the first day of the beginning of the individual's week of partial unemployment as defined in subsection A of this section. However, in no event shall such new claim be back dated to include a week which ended more than 28 days prior to the date the individual was furnished the Statement of Partial Unemployment, or other written evidence concerning his partial unemployment, as provided in subsection C, by the employer.

E. 1. Upon filing a claim as specified in subsection D of this section, the commission shall cause the notice referred to in subsection B of this section to be sent to the employer. Thereafter, the employer shall make available to the claimant the Statement of Partial Unemployment, Form VEC-B-31, or other written evidence concerning his

partial unemployment, as provided in subsection C of this section. Such written evidence of partial unemployment shall be presented to the local unemployment insurance office within 14 days after it is delivered to him by the employer, and failure to do so, within that time, shall render the claim invalid as to the week or weeks to which the statement or other evidence relates.

2. For each subsequent week the partial claim is continued the employer shall furnish the claimant with the evidence of partial unemployment as provided in subsection C of this section and the claimant shall continue to present such evidence to the local unemployment insurance office within 14 days after it is delivered to him by the employer. Failure to do so shall render the claim invalid with respect to the week or weeks to which the statement or other evidence relates.

3. Notwithstanding the provisions of subdivisions 1 and 2 of this subsection, the commission shall permit the claimant to file a continued claim by mail, or otherwise, in the same circumstances applicable to a claimant for total or part-total unemployment compensation.

F. With respect to any week claimed, a partially unemployed claimant shall be deemed to be actively seeking work if he performs all suitable work offered to him by his regular employer.

§ 3. Disposition of benefit checks payable to a deceased claimant.

If a claimant has met the eligibility requirements of the Act and completed all forms prescribed by the commission prior to his death, upon proof thereof, the check(s) for all benefits due shall be payable to the decedent's estate.

§ 4. Commission approval of training other than that under Section 302 of the Job Training Partnership Act or Section 2296 of the Trade Act.

A. Training shall be approved for an eligible claimant under the provisions of § 60.2-613 of the Code of Virginia only if the commission finds that:

1. Prospects for continuing employment for which the claimant is qualified by training and experience are minimal and are not likely to improve in the foreseeable future in the locality in which he resides or is claiming benefits;

2. The proposed training course of instruction is vocational or technical training or retraining in schools or classes that are conducted as programs designed to prepare an individual for gainful employment in the occupation for which training is applicable. The training course shall require a minimum of 30 hours attendance each week;

3. The proposed training course has been approved by an appropriate accrediting agency or, if none exists in the state, the training complies with quality and supervision standards established by the commission, or is licensed by an agency of the state in which it is being given;

4. The claimant has the required qualifications and aptitude to complete the course successfully;

5. The training does not include programs of instruction which are primarily intended to lead toward a baccalaureate or higher degree from an institution of higher education.

B. Benefits may be paid to an otherwise eligible claimant while he is attending training only if the commission finds that the claimant is enrolled in and regularly attending the course of instruction approved for him by the commission.

C. A claimant shall request training approval on forms provided by the commission. The claimant's enrollment and attendance shall be reported to the commission periodically as directed by the local unemployment insurance office to which he reports.

V.A.R. Doc. No. R94-904; Filed April 26, 1994, 5:05 p.m.

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**Title of Regulation:** VR 300-01-7. Interstate and Multistate Claimants.

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

**Public Hearing Date:** June 22, 1994 - 10:30 a.m.

Written comments may be submitted through July 15, 1994.

(See Calendar of Events section for additional information)

**Basis:** The Virginia Employment Commission (VEC) is authorized to adopt, amend or rescind rules and regulations governing administration of the agency pursuant to § 60.2-111 of the Code of Virginia. Adoption of proposed regulation VR 300-01-7 will permit more effective administration of the Virginia Unemployment Compensation Act.

**Purpose:** The VEC proposes adoption of VR 300-01-7, entitled "Interstate and Multistate Claimants" to promulgate provisions currently found elsewhere in VEC regulations. The purpose of this action is to reorganize and clarify existing regulations.

**Substance and Issues:** A review of the regulations revealed deficiencies in the organization and drafting of certain provisions making them difficult to identify, read or comprehend, particularly by individuals unfamiliar with the regulations. The proposed new regulation will contain

provisions currently found in existing regulations. While correcting identified deficiencies, adoption of the regulation will not effect any substantive change to current regulations or agency practice.

The primary advantage resulting from adoption of the proposed regulation is that persons using VEC regulations will be able to more readily identify provisions affecting them and more easily comprehend such provisions. The VEC does not anticipate any disadvantages to the public or the agency.

**Impact:** Adoption of the proposed regulation will have no fiscal impact, nor will there be any effect on specific individual localities.

**Summary:**

The proposed amendment to Regulations and General Rules Affecting Unemployment Compensation, adopting VR 300-01-7, establishes provisions governing the VEC in administrative cooperation with other states maintaining comparable provisions for treatment of unemployment compensation claims by individuals involving two or more states. These provisions remain substantively the same as current regulatory provisions which are being repealed concurrent with the promulgation of this regulation.

VR 300-01-7. Interstate and Multistate Claimants.

§ 1. Cooperative agreement.

A. This section shall govern the commission in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

B. A week of unemployment for an interstate claimant shall consist of any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

C. Each interstate claimant shall be registered for work through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state.

D. If a claimant files a claim against any state and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits. For the purposes of this regulation, benefit



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credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable or whenever benefits are affected by the application of a seasonal restriction.

E. Claims for benefits or a waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed and processed in accordance with the type of week in use in the agent state.

Claims shall be filed in accordance with agent state regulations for intrastate claims in local unemployment insurance offices, at an itinerant point or by mail.

1. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week or one reporting period late. If a claimant files more than one reporting period late, an initial claim shall be used to begin a claim series and no continued claim for a past period shall be accepted.

2. With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

F. The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state. The liable state may utilize the telephone or mail to directly ascertain facts from the parties.

The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

G. The agent state shall afford all reasonable cooperation in the holding of hearings in connection with appealed interstate benefit claims.

With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state, or the date it was mailed by the claimant, whichever is earlier.

H. This section shall apply in all its provisions to claims taken in and for Canada.

## § 2. Interstate cooperation.

A. This section, approved by the Secretary of Labor pursuant to § 3304(a)(9)(B), Federal Unemployment Tax Act and adopted under § 60.2-609 of the Code of Virginia, shall govern the Virginia Employment Commission in its administrative cooperation with other states relating to the Interstate Arrangement for Combining Employment and Wages.

B. A claim for benefits shall be filed by a combined-wage claimant in the same manner as by a claimant who is eligible for benefits under the unemployment insurance law of the paying state.

C. Benefits, in all cases, shall be paid to a combined-wage claimant from the unemployment insurance fund of the paying state, and all benefit rights shall be determined by the paying state pursuant to its unemployment insurance law.

D. Wages paid to a claimant during the paying state's applicable base period, including wages reported for that period by a transferring state as available for the payment of benefits under the arrangement, shall be included by the paying state in determining such claimant's benefit rights.

Wages, once they have been transferred and used in a determination which established monetary eligibility for benefits in the paying state, shall be unavailable for determining monetary eligibility for benefits under the unemployment insurance law of the transferring state, except to the extent that wages are usable for redetermination purposes.

E. Each state, with respect to any combined-wage claimant, in utilizing forms approved by the Interstate Benefit Payment Committee, shall:

1. Promptly request any other state in which the claimant has worked to furnish a report of the claimant's unused covered wages during the base period of the paying state as well as his current eligibility under the law of such state.

2. When acting as the transferring state, report promptly upon the request of any state the amount of any claimant's unused covered wages during the applicable base period and the current monetary eligibility of such claimant under the law of the transferring state.

3. When acting as the paying state, send to each transferring state a copy of the initial determination, together with an explanatory statement.

4. When acting as the paying state, send to the claimant a copy of the initial determination, noting his rights to appeal.

5. When acting as the paying state, send to each transferring state a statement of the benefits chargeable to each state. This is done at the end of each quarter in which any benefits have been paid, and each statement shall include the benefits paid during such quarter as to each combined-wage claimant. The ratio of each charge to total benefits paid shall be equal to the ratio of the wages reported by the transferring state (and used in the monetary determination) to the total wages used in the determination.

F. A transferring state shall, as soon as practicable after receipt of a statement as set forth in subsection E, reimburse the paying state accordingly.

G. A claimant's wages shall not be combined, notwithstanding any other provision of this arrangement, if the paying state finds that based on combined wages the claimant would be ineligible for benefits. Wages reported by the transferring state shall in such event be returned to and reinstated by such state. The provisions of the interstate benefit payment arrangement shall apply to each claimant.

H. Whenever this plan applies, it will supersede any inconsistent provision of the Interstate Benefit Payment Plan and the regulation thereunder.

VA.R. Doc. No. R94-903; Filed April 26, 1994, 5:05 p.m.

\* \* \* \* \*

**Title of Regulation:** VR 300-01-8. Adjudication.

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

**Public Hearing Date:** June 22, 1994 - 10:30 a.m.

Written comments may be submitted through July 15, 1994.

(See Calendar of Events section for additional information)

**Basis:** The Virginia Employment Commission (VEC) is authorized to adopt, amend or rescind rules and regulations governing administration of the agency pursuant to § 60.2-111 of the Code of Virginia.

**Purpose:** The VEC proposes adoption of VR 300-01-8, entitled "Adjudication," to replace current VR 300-01-4 of the same name. The purpose of this action is to reorganize and clarify existing regulations, and to assure greater efficiency in the administrative adjudication of claims.

**Substance and Issues:** A review of the regulations revealed deficiencies in the organization and drafting of certain provisions making them difficult to identify, read or comprehend, particularly by individuals unfamiliar with the regulations. The proposed reorganization of these regulations involved adoption of new regulations, including

this one. The provisions within the proposed regulation are essentially the same as current provisions; however, changes are made in the procedure for reopening a case and a provision granting a right to oral argument on appeal.

The primary advantages resulting from adoption of the proposed regulation are that persons using VEC regulations will be able to more readily identify provisions affecting them and more easily comprehend such provisions, and handling of administrative appeals will be made more efficient. Accordingly, both the agency and the public will be saved time and money in administrative proceedings affected by these provisions. The agency does not recognize any disadvantages resulting from adoption of this regulation. Potential disadvantages could be perceived by parties who are delayed (though not deprived of) an oral argument before the commission, or parties who do not receive a hearing on reopening of a case due to their failure to state good cause for such reopening.

**Impact:** Adoption of the proposed regulation will have no fiscal impact, nor will there be any effect on specific individual localities.

#### Summary:

The proposed amendment to Regulations and General Rules Affecting Unemployment Compensation, adopting VR 300-01-8, establishes provisions governing the administrative adjudication of benefit claims filed with the Virginia Employment Commission pursuant to the Virginia Unemployment Compensation Act. This regulation will replace current VR 300-01-4, of the same title, which is being repealed concurrent with promulgation of this regulation.

In addition to reorganizing and recodifying the provisions currently found in VR 300-01-4, certain provisions are being amended as follows:

1. A presumption identifying postmark date (if placed in U.S. mail) or receipt date as the filing date of an administrative appeal is set forth, codifying current agency practice.

2. The criteria for granting of a split hearing is set forth; namely, for interstate claimants who wish to appear personally, and (at the request of a party or at the discretion of commission) when an intrastate claimant files a claim involving an out-of-state employer or in cases of a "bona fide emergency or other compelling circumstance." Notice requirements for such hearings are also set forth.

3. Concerning the reopening of a case prior to issuance of the decision, the new provision allows for a hearing on the issue where good cause (in the discretion of the examiner) is given. The current regulation states that, in such circumstances, the hearing shall be granted upon request (regardless of

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whether good cause exists).

4. A conclusive presumption controlling the filing date of a request for a hearing in an appeal before the commission is set forth, specifically granting the authority to remand a case to an appeals examiner where the record is defective or insufficient. A current provision setting forth a right to oral argument on request is deleted.

VR 300-01-8. Adjudication.

## § 1. Deputy's determinations.

A. Whenever, after a claim is filed, a deputy obtains information from a claimant, employer, or third party which could affect the claimant's entitlement to benefits, he shall initiate further investigation. The deputy may contact the parties in person or by telephone to obtain information. Documentary evidence prepared specifically for the claim or for other purposes may be considered by the deputy. Any party to an investigation may be represented by counsel or a duly authorized representative. No information or evidence shall be considered by the deputy unless the claimant has been given the opportunity to see or hear it and comment upon it. Information concerning eligibility or qualification for benefits shall be entered into commission records.

B. A predetermination fact-finding proceeding may be scheduled by the deputy whenever a request is made by the claimant, his last 30-day employing unit, or his interested subsequent employing unit, for the purpose of gathering information to determine benefit eligibility or qualification. Notice of the date, time and location will be mailed to the parties five days before the scheduled proceeding, but such notice may be waived with the parties' consent.

The proceeding may be conducted telephonically or in person with the deputy presiding. This informal interview shall not be recorded in any way, although notes can be taken by the deputy. Statements made by parties or witnesses shall not be taken under oath and formal examination or cross-examination shall not be permitted. The deputy shall direct questions to the parties and witnesses. The parties may also ask questions of each other and the witnesses. Rebuttal to statements made by opposing parties or witnesses shall be permitted. Any party to a predetermination proceeding may be represented by counsel or other duly authorized agent. The record of facts of the proceeding shall become a part of the commission's records.

C. As soon as possible following the acquisition of facts necessary to make a determination, either from the parties' submissions or from a predetermination proceeding, the deputy shall render a determination in writing which shall include the effective date of any qualification or disqualification, the dates of any eligibility or ineligibility, the law or regulation upon which the

determination is based, and the reasons for the determination, together with information concerning the filing of an appeal. This determination shall be promptly mailed to the parties at their last known addresses.

## § 2. First level appeals.

A. The claimant, his last 30-day employing unit, or any subsequent employing unit with a direct interest in an issue may appeal from an adverse deputy's determination as specified in § 60.2-619 of the Code of Virginia.

1. Appeals shall be filed with the commission through the local unemployment insurance office where the claim was filed, or at the administrative office of the commission in Richmond, Virginia. Appeals shall be presumed to be filed on the date of receipt by the commission. An appeal mailed to the commission shall be presumed to be filed on the date of postmark by the United States Postal Service.

2. Appeals shall be in writing and should set forth the grounds upon which they are sought, as well as the social security account number of the claimant; however, any document in writing submitted by a party or his authorized representative expressing a desire to appeal shall be sufficient to initiate an appeal. Agency personnel shall furnish an appellant or his authorized representative whatever assistance is necessary to file an appeal.

B. After the filing of an appeal, the record in connection with the claim, together with the notice of appeal, shall be assigned to an appeal tribunal consisting of a salaried examiner only. Should evidence indicate that the appeal was not filed within the time prescribed by law, the first issue to be considered at the hearing shall be whether the appeal was timely filed or whether there exists good cause for extending the appeal period.

1. In all cases except those coming under the provisions of subdivisions 2 and 3 of this subsection, an in-person hearing shall be scheduled in the local unemployment insurance office where the claim was filed or subsequently transferred. At the discretion of the commission, an in-person hearing may be scheduled at some other convenient location, provided that the alternate location is not such a distance from the claimant's residence as to cause undue hardship or unreasonable travelling expense.

2. In cases where the claimant has filed an interstate claim, or upon the consent of all parties, a telephone hearing shall be scheduled. An interstate claimant, upon request, shall be allowed to personally appear for participation in an in-person or split hearing. In such case, the claimant will be scheduled to appear at the local unemployment insurance office of the commission located nearest his residence, or any other convenient location.

3. A split hearing may be scheduled upon the request of any party, or at the discretion of the commission, when:

a. The claimant has worked for an employer in another state, and thereafter returns to Virginia and files an intrastate claim naming the out-of-state employer as an interested party; or

b. A bona fide emergency or other compelling circumstance makes attendance at an in-person hearing by a party, material witness, or representative unreasonably difficult.

4. After an in-person hearing has been scheduled and the notice of hearing mailed, either the Chief Appeals Examiner or the appeals examiner assigned to the case may grant a request for a split hearing for any of the reasons set forth in subdivision 3 of this subsection. In such case, a new notice of hearing need not be issued, but all interested parties and their representatives should be informed of the agency's action and the telephonic procedures as soon as practicable.

5. The notice of hearing shall set forth the particular statutory provisions and points at issue which must be considered to resolve the case. The appeals examiner may consider any other applicable issues which are raised or become evident during the course of the hearing provided that all parties in interest are present and all agree on the record to waive the statutory notice requirement with respect to such new issue. The appeals examiner may refer a new issue back to the deputy if it has not been ruled upon at that level and may, upon his own motion, postpone or continue the case if a new issue has become evident and it is necessary to give proper statutory notice in order to proceed.

C. The Office of First Level Appeals shall endeavor to schedule hearings as soon as possible in the order in which appeals are received. Special requests regarding dates or times of hearings will be given consideration; however, they need not always be honored. Requests for postponement of scheduled hearings shall be granted only when a party or his authorized representative demonstrates good cause for an inability to appear at the scheduled date and time. Good cause shall be deemed to exist if a likelihood of material and substantial harm is shown. Postponements may be granted only by the Chief Appeals Examiner, the Clerk of the Commission-Lower Authority, the examiner assigned to hear the case, or an appeals examiner acting in charge of the Office of First Level Appeals, although they may be communicated to the parties by other authorized persons. A postponed hearing may be rescheduled without notice if all parties in interest agree. Otherwise, notice of a postponed hearing shall be given as if it were a new hearing.

D. Once a hearing has commenced, it may be continued

only by the presiding appeals examiner, either upon his own motion or that of a party. Continuances may be granted in situations where: (i) there is insufficient time to properly hear the evidence; or (ii) unexpected or unavoidable circumstances arise during the course of a hearing which require a continuance in order to protect the substantive or procedural rights of the parties.

A continued hearing may be rescheduled by the presiding appeals examiner without written notice if all parties in interest are present and all concur. Otherwise, notice of a continued hearing shall be given as if it were a new hearing.

E. If the appellant wishes to withdraw his appeal, a request, together with the reasons therefor, must be made in writing and sent to the Clerk of the Commission-Lower Authority at the commission's administrative office in Richmond, Virginia. The request will be granted only if the appeals examiner assigned to hear the case is satisfied that:

1. The appellant understands the effect that withdrawal will have upon benefit entitlement, potential benefit charges, and potential overpayment;

2. The request is not the result of any coercion, collusion, or illegal waiver of benefits prohibited under § 60.2-107 of the Code of Virginia; and

3. The appealed determination is not clearly erroneous based upon the existing record.

Once granted, a withdrawal cannot be rescinded unless an evidentiary hearing on the issue of rescission is held before an appeals examiner and the former appellant demonstrates that the criteria required for withdrawal were not fully met.

F. In any hearing before an appeals examiner, all testimony shall be taken under oath or affirmation and a record of the proceedings shall be made by the presiding appeals examiner who shall inform all parties of this fact. No other recording of the proceedings other than that specifically authorized by the Act shall be permitted.

The appeals examiner shall conduct the hearing in such a manner as to ascertain the substantive rights of the parties without having to be bound by common law, statutory rules of evidence, or technical rules of procedure. In addition to testimony, the appeals examiner may accept relevant documents or other evidence into the record as exhibits, upon the motion of a party.

1. Where a party is unrepresented, the appeals examiner shall assist that party in presenting his case and testing the case of the opposing party.

2. At any hearing before an appeals examiner, an interested party may appear in person, by counsel, or by an authorized representative. All such persons will

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be permitted to attend the entire hearing.

3. An employer shall be permitted one representative, in addition to counsel or duly authorized agent, who may attend the entire proceeding. The appeals examiner shall exclude any other witnesses from the hearing until such time as their testimony is to be taken. Observers may be permitted to attend the hearing so long as there is no objection by a party.

4. The appeals examiner shall control the order of proof, rule upon the admission of evidence, and may examine and cross-examine witnesses. The examiner shall have the authority to maintain order and eject disruptive or unruly individuals. At a hearing, the parties, counsel, or duly authorized representatives shall be given an opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation and rebuttal. On motion of the appeals examiner alone, documents already in a claimant's file or obtained during the course of a hearing may be admitted into the record as exhibits. Before the hearing is closed, the parties shall be given an opportunity to present oral argument on all the issues of law and fact to be decided. In addition, the appeals examiner may permit the parties to submit written arguments.

G. The decision of the appeals examiner shall be reduced to writing and shall state the issues, findings of fact, opinion or reasons for the decision, and final judgement of the examiner. A copy of the decision shall be mailed to each of the interested parties and their known representatives who have requested to be notified of the decision. If the decision is rendered by an appeals examiner other than the one who presided at the hearing, that examiner shall review the record of the hearing and so state in the decision.

H. If any party believes that the appeals examiner exhibits bias towards one or more parties in a case, a challenge to the interest of such appeals examiner shall be made promptly after the discovery of facts on which such challenge is based, but not later than the date on which the decision is issued. Unless made at the hearing, such challenge shall be set forth in writing with the reasons therefor, and sent to the Chief Appeals Examiner at the administrative office of the commission in Richmond, Virginia. If the Chief Appeals Examiner does not disqualify the challenged appeals examiner, the appeals examiner shall continue to participate in the hearing and render a decision in the case. If the challenged appeals examiner is disqualified, or chooses to withdraw, the Chief Appeals Examiner, or another appeals examiner appointed by him, shall decide the case. Failure to disqualify shall be subject to review by the commission on appeal by the aggrieved party, in the same manner as any other issue in the case.

I. Any party who is unable to appear for the scheduled hearing, or who appeared but wishes to present additional evidence, may request a reopening of the case, which will

be granted if good cause is shown. The request, together with the reasons therefor, shall be made in writing and sent to the Chief Appeals Examiner in the administrative office of the commission in Richmond, Virginia.

1. Where a request for reopening is received before the decision of the appeals examiner is issued, the decision shall be withheld if the Chief Appeals Examiner, or the appeals examiner assigned to the case, finds that the reasons given in the request, if proven, would establish good cause to reopen the hearing. In that event, a hearing will be scheduled on the reopening issue. If, after the hearing, the appeals examiner should decide that reopening is warranted, the case shall be reopened for the taking of additional evidence. If no reasons are given for the reopening request, or if the reasons given would not establish good cause to reopen the hearing, the appeals examiner shall render a decision denying the request and adjudicating the merits of the case. In any event, the decision concerning the issue of reopening shall be subject to review by the commission on appeal by the aggrieved party.

2. A request for reopening after the appeals examiner has issued his decision on the merits of the case, but within the appeal period, shall be mailed to the Office of Commission Appeals and shall set forth in writing the reasons therefor. If the commission is of the opinion that the written request establishes good cause for reopening it shall remand the case to the Chief Appeals Examiner. If the commission is of the opinion that the written request does not set forth good cause for reopening it shall treat the request as an appeal to the commission on the merits of the case pursuant to this part.

3. Once a decision is rendered and becomes final, it cannot be reopened for any reason. A request for a reopening after the decision of the appeals examiner has become final shall be treated as an untimely appeal to the commission pursuant to this regulation. In the discretion of the commission, a hearing on the issue of reopening may be held.

## § 3. Commission review.

A. The commission may acquire jurisdiction over a case in any of the following ways:

1. Any party to a hearing before an appeals examiner may appeal the decision within the time limit set forth in § 60.2-620 of the Code of Virginia. The party appealing shall file with the commission, through the local unemployment insurance office where the claim was filed or at the administrative office of the commission in Richmond, Virginia, a notice of appeal which shall be in writing and should set forth the grounds upon which the appeal is sought. Appeals shall be presumed to be filed on the date of receipt by the commission. An appeal mailed to the

commission shall be presumed to be filed on the date of postmark by the United States Postal Service.

2. At any time before the decision of the appeals examiner becomes final, the commission may on its own motion assume jurisdiction of any case pending before an appeals examiner and place such case on the appeal docket of the commission. The commission may consider and review the case and affirm, modify, or set aside and vacate the decision of the appeals examiner on the basis of the evidence previously submitted as shown by the record, or may direct the taking of additional evidence before the commission or the appeals examiner. Such additional evidence may not be taken unless notice of the time and place of the taking thereof has been mailed to all parties to the case at least seven days before such time.

3. If the appeal to the commission is not filed within the statutory time limit set forth in § 60.2-620 of the Code of Virginia, the appellant shall set forth in writing the reasons for the late filing. If the reasons set forth, if proven, would show good cause for extending the appeal period, the commission shall schedule a hearing to take testimony on the issue of good cause for late filing. If the reasons set forth in the notice of appeal are insufficient to show good cause for late filing, the appeal shall be dismissed and the decision of the appeals examiner shall become the final decision of the commission.

B. Except as otherwise provided by this rule, all appeals to the commission shall be decided on the basis of a review of the evidence in the record. The commission, in its discretion, may direct the taking of additional evidence after giving written notice of such hearing to the parties, provided:

1. It is shown that the additional evidence is material and not merely cumulative, corroborative or collateral, could not have been presented at the prior hearing through the exercise of due diligence, and is likely to produce a different result at a new hearing; or

2. The record of the proceedings before the appeals examiner is insufficient to enable the commission to make proper, accurate, or complete findings of fact and conclusions of law.

A party wishing to present additional evidence or oral argument before the commission must file a written request within 14 days from the date of delivery or mailing of the Notice of Appeal. A request for a hearing shall be deemed to be filed on the date of receipt by the commission. A request for a hearing mailed to the Office of Commission Appeals shall be deemed to be filed on the date of postmark by the United States Postal Service. In such cases, the postmark date shall be conclusive as to the date of filing. The commission shall notify the parties of the time and place where additional evidence will be taken or oral argument will be heard. Such notice shall be

mailed to the parties and their last known representatives at least seven days in advance of the scheduled hearing. A request to present additional evidence will be granted only if the aforementioned guidelines are met. If, after a review of the record of the case, the commission determines that the record is either defective or insufficient, the case may be remanded to the appeals examiner for further proceedings, even if a request for a hearing or transcript has been received.

C. Postponements, continuances and withdrawals of appeals before the commission shall be handled in the same manner as lower authority appeals, as set forth in this regulation, except that requests shall be made through the Office of Commission Appeals or through the special examiner assigned to hear the case. Only a special examiner shall have the authority to grant a postponement.

D. Prior to a hearing before the commission for the purpose of taking additional evidence or for oral argument, and upon the request of an interested party, a transcript of the hearing held before the appeals examiner shall be furnished to all interested parties. Where no request for a transcript is made and the hearing lasted less than 45 minutes, the tape may be replayed for the parties prior to the commission hearing in lieu of furnishing a transcript. A hearing before the commission for additional evidence shall be conducted under the same rules as outlined in subsection F of § 2 of this regulation for the conduct of hearings at the lower authority level, except that the party being granted the right to present additional evidence shall proceed first. If both parties are allowed to present additional evidence, the appellant shall proceed first. Oral argument shall commence with the appellant, allowing the appellee the chance to respond with oral argument and rebuttal, and close with the appellant in rebuttal.

E. The decision of the commission affirming, modifying, or setting aside any decision of an appeals examiner shall be in writing and shall be delivered or mailed to each party to the appeal as well as to their known representatives who have requested to be notified of the decision. The date of such notification shall be recorded on the commission's appeal docket.

F. Any party to an appeal before the commission who was unable to appear for the scheduled hearing may request a reopening of the matter. The request shall be in writing to the Office of Commission Appeals and shall set forth the basis upon which it is being made. If the commission is of the opinion that the reasons in the request show good cause to reopen, the request for reopening shall be granted. If the commission is of the opinion that the reasons given in the request do not show good cause, reopening shall be denied. In the discretion of the commission, a hearing on the issue of reopening may be held. Once a decision is rendered and has become final, the case may not thereafter be reopened for any reason.

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G. A challenge to the interest of the commission may be made orally during a hearing or in writing before or after a hearing, but only prior to the date the commission's decision becomes final. The commission shall promptly hear the challenge, and proceedings with respect to the matter at issue shall not continue until the challenge is decided. In case of a written challenge, the challenge should be addressed to the Office of Commission Appeals, at the commission's administrative office in Richmond, Virginia.

## § 4. Oaths and subpoenas.

A. The special examiner, the appeals examiner, and the Clerk of the Commission shall have the power to administer oaths, to take depositions, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records, and to take such action as may be necessary in any hearing.

B. Upon the request of any party to a proceeding, the Clerk of the Commission, in the name of the commission, may issue subpoenas requiring the attendance of witnesses at any designated time and place fixed by the special examiner or appeals examiner for the hearing of a claim or any issue therein.

Upon a written request of any party specifying with reasonable certainty any books, papers, correspondence, memoranda, or other desired records, the Clerk of the Commission may issue a subpoena duces tecum requiring the production of such evidence at any designated time and place fixed by the special examiner or appeals examiner for the hearing of a claim or any issue therein.

A request for a subpoena ad testificandum or subpoena duces tecum may be denied if there is no showing of relevance to the subject of the appeal, if it appears that the request would only produce cumulative evidence or testimony, or if it appears that the request would not serve the interest of the party making it. If such request is denied, it may be renewed at the hearing and a proffer of evidence or testimony may be made. The appeals examiner or special examiner hearing the case shall continue the hearing if it appears that the subpoena should be issued.

C. Witnesses subpoenaed for appeals before the appeals examiner or the commission, or both, shall, upon request, be allowed expenses as provided in § 14.1-190 of the Code of Virginia.

V.A.R. Doc. No. R94-902; Filed April 26, 1994, 5:05 p.m.

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD OF)

Title of Regulation: VR 470-02-03. Rules and Regulations

for the Licensure of Private Psychiatric Hospitals (REPEALING).

V.A.R. Doc. No. R94-912, Filed April 27, 1994, 9:18 a.m.

Title of Regulation: VR 470-02-07. Rules and Regulations for the Licensure of Correctional Psychiatric Facilities (REPEALING).

V.A.R. Doc. No. R94-914, Filed April 27, 1994, 9:18 a.m.

Title of Regulation: VR 470-02-08. Rules and Regulations for the Licensure of Supported Residential Programs and Residential Respite Care/Emergency Services Facilities (REPEALING).

V.A.R. Doc. No. R94-915, Filed April 27, 1994, 9:18 a.m.

Title of Regulation: VR 470-02-09. Rules and Regulations for the Licensure of Outpatient Facilities (REPEALING).

V.A.R. Doc. No. R94-916, Filed April 27, 1994, 9:18 a.m.

Title of Regulation: VR 470-02-10. Rules and Regulations for the Licensure of Day Support Programs (REPEALING).

V.A.R. Doc. No. R94-918, Filed April 27, 1994, 9:18 a.m.

Title of Regulation: VR 470-02-11. Rules and Regulations for the Licensure of Residential Facilities (REPEALING).

V.A.R. Doc. No. R94-917, Filed April 27, 1994, 9:18 a.m.

Title of Regulation: VR 470-02-13. Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services.

Statutory Authority: § 37.1-10 and Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia.

### Public Hearing Dates:

June 22, 1994 - 10 a.m. (Roanoke)

June 24, 1994 - 10 a.m. (Fairfax)

June 27, 1994 - 10 a.m. (Glen Allen)

July 6, 1994 - 10 a.m. (Norfolk)

Written comments may be submitted until August 16, 1994.

(See Calendar of Events section for additional information)

Basis: Section 37.1-183.1(1) provides that "No person shall establish, conduct, maintain or operate in this Commonwealth any facility or institution as defined in § 37.1-179 . . . without first being duly licensed under this chapter, except where such facility or institution is exempt

from licensing.”

Section 37.1-179 defines “facility” or “institution” as “any facility or institution not operated by an agency of the federal government by whatever name or designation which provides care or treatment for mentally ill or mentally retarded persons, or persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants including the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled drug methadone. Such institution or facility shall include a hospital as defined in § 32.1-123, out-patient clinic, special school, halfway house, home and any other similar or related facility.”

Section 37.1-179.1 authorizes the Commissioner to grant licenses “subject to rules and regulations promulgated by the Board.”

The State Mental Health, Mental Retardation and Substance Abuse Services Board is authorized under § 37.1-10(6) “to make, adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Commissioner or the Department.”

**Purpose:** The primary purpose of this regulation is to specify minimum standards to protect the health, safety and welfare of consumers served by programs providing care or treatment for persons with mental illness, mental retardation, developmental disability, or problems with substance abuse. It provides a single comprehensive regulation for licensure purposes that promotes consistency and efficiency in the regulatory process and assures compatibility of regulatory requirements with current clinical and programmatic practice and patterns of service delivery.

**Substance:** The proposed regulation will govern the licensure of all facilities and programs currently licensed and may be expanded to include new types of facilities and programs. The regulation is intended to specify minimum standards for the assurance of the protection of the health, safety and welfare of the sometimes vulnerable individuals receiving services in these facilities. The regulation provides generic requirements applicable to all service and facility types and special requirements for specific programs and services.

The licensure regulations currently in effect differ in structure, procedural requirements, generic content, and clarity of requirements. They may also differ in their congruence with currently accepted standards of care and practice for the types of organizations regulated. In an effort to improve the efficiency and effectiveness of the department’s licensure program, the State Mental Health, Mental Retardation and Substance Abuse Services Board mandated a comprehensive review, revision and reorganization of the licensure regulations, excluding the interdepartmental licensure regulations governing

residential facilities for children.

The department, in collaboration with a diverse group of individuals, has been working to revise the current regulations. The focus of regulatory revision has been to “redesign” the regulations to ensure consistency with current clinical practices and patterns of service delivery. Some licensure regulations which were paper and time intensive have been modified to add more flexibility to compliance. The result is more flexible, less prescriptive standards, allowing service providers to be more responsive to the unique needs of consumers.

Every effort has been made to develop standards that allow flexibility in service delivery in meeting the unique needs of consumers.

Most licensees will endeavor to exceed, or are already exceeding, these standards in the course of providing high quality services.

In addition, the revision process identified changes in the types of licenses to be issued. These changes will ultimately reduce the number of licenses required to operate a facility or provide services.

Upon the effective date of these regulations, the following regulations will be repealed:

VR 470-02-03 Rules and Regulations for the Licensure of Private Psychiatric Hospitals

VR 470-02-07 Rules and Regulations for the Licensure of Correctional Psychiatric Facilities

VR 470-02-08 Rules and Regulations for the Licensure of Supported Residential Programs and Residential Respite Care/Emergency Services Facilities

VR 470-02-09 Rules and Regulations for the Licensure of Outpatient Facilities

VR 470-02-10 Rules and Regulations for the Licensure of Day Support Programs

VR 470-02-11 Rules and Regulations for the Licensure of Residential Facilities

The revision and consolidation of the regulations permit the reduction in the number of separate regulations and permit a more efficient regulatory process. The revised regulations are compatible with current clinical and programmatic practices and with contemporary patterns of service delivery. The redesigned regulations are more flexible and less prescriptive, allowing providers to be more responsive to the unique needs of consumers.

**Issues:** The department and the board see the revised regulations as assuring a more consistent and more efficient and effective regulatory process that, at the same time, protects the health, safety and welfare of consumers.



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The regulations allow the service provider to be more responsive to unique consumer needs through greater flexibility in service design. Although the regulations allow more flexibility in compliance, some licensees may find that they need to make slight revisions to their policies, procedure, and some forms.

**Estimated Impact:** The department currently licenses 749 facilities and approximately 75 new facilities are licensed each year. Of the currently licensed facilities, 299 provide some type of residential treatment and have a total licensed capacity of 7266 persons with mental illness, mental retardation, developmental disability, or problems with substance abuse. The remaining 450 licensed facilities include outpatient, day support, and other types of programs that are not assigned a licensed capacity. These latter facilities serve an average of approximately 14,199 persons daily. In general, it is estimated that facilities to be licensed under the proposed regulations will serve more than 22,000 persons daily.

The annual budget for the Office of Licensure is approximately \$950,000 from the general fund. It is anticipated that enforcement of these new regulations will require no more resources than needed at present.

The department believes that the proposed regulations, while more flexible and less prescriptive, do not establish a higher standard than required in the current licensure regulations. Therefore, there should be a minimal difference in cost for compliance to regulated entities.

**Alternative Approaches Considered:** The department considered three alternative approaches to meet the need the proposed regulations address.

1. **Continuing to Use Current Regulations.** The department has, for several years, used separate regulations to license programs serving adults with mental illness, mental retardation, developmental disability, or problems with substance abuse. These licensure regulations differ in structure, procedural requirements, generic content, and clarity of requirements. They may also differ in their congruence with currently accepted standards of care and practice for the types of organizations regulated. In an effort to improve the efficiency and effectiveness of the department's licensure program, the State Mental Health, Mental Retardation and Substance Abuse Services Board mandated a comprehensive review, revision and reorganization of the licensure regulations, excluding the interdepartmental licensure regulations governing residential facilities for children. Given these considerations, the department rejected this alternative.

2. **Deemed Status for Facilities That Are Accredited By Other Authorities.** This alternative was found to have serious drawbacks. Not all facilities subject to licensure in the Commonwealth are currently

accredited or eligible for accreditation. Such a policy could require facilities to become accredited, a much more expensive process than licensure. Finally, since accreditation surveys are conducted by surveyors who may be based out-of-state at intervals as long as three years, the department believes that such a process would give insufficient protection of the health, safety, and welfare of clients.

3. **No Licensure of Facilities.** The Code of Virginia currently requires the department to license facilities under regulations promulgated by the board. The department considered recommending a repeal of these requirements, but found that the absence of a licensure program would provide no reassurance to the consuming public that programs meet minimum standards, would provide insufficient protection for the health, safety and welfare of our clients, and potentially would be a positive danger to persons with mental illness, mental retardation, developmental disability, or problems with substance abuse.

The department believes that the proposed regulations are the least burdensome available alternative for adequately protecting the health, safety, and welfare of persons with mental illness, mental retardation, developmental disability, or problems with substance abuse.

**Fiscal Impact:** The budget for the department's Office of Licensure is approximately \$950,000 per year from the general fund. 749 treatment facilities are currently licensed by the department. It is anticipated that enforcement of the proposed regulations will require no additional resources.

The proposed regulations do not establish a higher standard than required in the current licensure regulations. The department believes that additional costs for compliance to regulated facilities should be minimal.

## Summary:

*VR 470-02-13, Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation, and Substance Abuse Services, is a major redraft and consolidation of the department's licensure regulations. The new regulation will replace six current licensure regulations. Except for residential facilities for children, the new regulation will include all other licensable facilities and programs including, but not limited to, halfway houses, residential treatment centers, substance abuse treatment and rehabilitation facilities, domiciliary facilities, shelter care facilities, group homes and any other similar or related residential facility, outpatient services, respite care services, day support services, supportive residential services, sponsored placements, residential community, residential services, inpatient services, treatment services in correctional facilities, intensive in-home services, opioid replacement therapy, sobering up services, and any other similar or related*

treatment services.

## Preamble:

The Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services are the basis of all inspections conducted by the Office of Licensure staff. This document is divided into four sections. The introduction will give a brief overview of the licensure process and Definitions section will provide an explanation of terms used throughout the document. The Administrative Services section contains standards applicable to most provider organizations and includes such issues as governing structure, administrative roles, and fiscal and personnel management. The Services and Supports section contains the standards related to clinical services and other client related issues. And the last section, Specialized Services, contains standards which address ancillary services and other services provided in atypical circumstances.

These regulations are intended to specify minimum standards for the assurance of the protection of the health, safety and welfare of individuals receiving services. Most licensees will endeavor to exceed, or are already exceeding, these standards in the course of providing high quality services.

## Authority

The regulations contained in this document are intended to fulfill the requirements of Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia, which authorizes the Department of Mental Health, Mental Retardation and Substance Abuse Services, through the Office of Licensure, to license:

any facility or institution not operated by an agency of the federal government by whatever name or designation which provides care or treatment for mentally ill or mentally retarded persons, or persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants including the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled drug methadone. Such institution or facility shall include a hospital as defined in § 32.1-123, out-patient clinic, special school, halfway house, home and any other similar or related facility.

No organization may deliver services without first receiving a license from the department. Providing services without a license is unlawful and may result in imposition of appropriate civil action by the Commonwealth of Virginia against the organization.

The Office of Licensure of the Department of Mental Health, Mental Retardation and Substance Abuse Services has the responsibility for monitoring compliance with these regulations. Representatives of the Office of Licensure are authorized to make the

necessary inspections to determine compliance. Announced and unannounced site visits are made at reasonable times, giving regard to minimizing disruption of services. Inspections may include, but are not limited to:

1. Observation of service delivery
2. An inspection of the organization's physical plant
3. A review of clinical and administrative records
4. Interviews with clients, staff and administrators

The Office of Licensure will make at least one unannounced inspection of each licensed organization annually. As a condition of licensure, an organization must comply with all reasonable requests from the Office of Licensure to conduct on-site inspections of facilities and records and to interview staff and clients.

## Application for Licensure

Individuals and organizations seeking licensure from the Department of Mental Health, Mental Retardation and Substance Abuse Services are encouraged to obtain preapplication consultation from the Office of Licensure. An application for licensure is required of all new programs and facilities that are not currently licensed. The application provides general information about the provider organization, including administrative structure and types and location of services. In addition, the applicant organization is asked to provide a staffing plan, a program plan and description, documentation of financial viability, and documentation of authority to conduct business in the Commonwealth of Virginia. Applications may be obtained from the Office of Licensure.

Applicants for licensure will be asked to specify the type of license they are seeking. A provider license authorizes the provision of services in any one or combination of services, e.g., outpatient services, respite care services, day support services, supportive residential services, sponsored placements, residential community, residential services, inpatient, prison based treatment services, intensive in-home services, opioid replacement therapy, sobering up services, or other similar or related services. A provider license is intended to cover all services offered irrespective of the number and types of services offered. A facility license authorizes an organization to operate a building wherein 24-hour residential services are provided for five or more persons with mental illness, mental retardation, developmental disability, or problems with substance abuse, including halfway houses, residential treatment centers, substance abuse treatment and rehabilitation facilities, domiciliary facilities, shelter care facilities, group homes and any other similar or related facility, except a private family home. A

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facility license is a building or structure license and may be issued in conjunction with a provider license.

## Licensing Process

Upon receipt of an application for licensure, a licensure specialist will be assigned to provide consultative services and to conduct the regulatory compliance reviews. The administrative operations, services and physical environment of each organization are subject to inspection. The licensure specialist may request supplemental materials to support the organization's application. The specialist may also examine the results of previous licensure reviews and actions related to the organization to determine the extent to which those reviews and actions have an impact on the application under consideration.

Compliance with the standards is measured qualitatively using the following rating scale:

**Substantial Compliance (SC):** indicates the organization consistently meets all major provisions of the standard.

**Partial Compliance (PC):** indicates the organization meets some of the provisions of the standard.

**Noncompliance (NC):** indicates the organization fails to meet provisions of the standard.

**Not Applicable (NA):** indicates the organization is not required to meet the provisions of the standard

## Corrective Action Procedures

Within 30 days of the completion of any licensure review, the Office of Licensure will issue an Inspection Report. The purpose of the report is to identify the strengths and weaknesses in the organization, as they relate to regulatory compliance. The applicant organization is expected to submit Plan of Correction for each standard found to be not in compliance. The Plan of Correction serves as one measure of determining the need for additional on-site inspections. Typically, the Plan of Correction must be submitted within 10 business days of issuance of the Inspection Report. Extensions are granted upon request; however, no extension may be granted for more than 30 days. When a finding of noncompliance with a licensure standard is determined to pose a danger to the health, safety or welfare of clients, immediate corrective action may be requested.

## Public Notice/Consumer Comment

The Department of Mental Health, Mental Retardation and Substance Abuse Services values the input of consumers and the general public. An integral part of the licensure process is the public and consumer comment period held in conjunction with an organization's application for a new license or license

renewal. During this period, the applicant organization must post a notice of its application in prominent locations in its place of business, and the department will publish a public notice in newspapers of general circulation. Both of these notices will invite written comments regarding the quality and effectiveness of the organization's services. Comments received by the department will be summarized in the licensure inspection report.

## Issuance of Licenses

After conducting on-site inspections and considering materials submitted in support of an application for licensure, including plans of correction, the Office of Licensure may recommend issuance of a license in one of three categories:

A conditional license may be issued to an organization that has not previously held a license issued by the Department of Mental Health, Mental Retardation and Substance Abuse. This organization will also be establishing a program or facility that, at the time of application, does not have sufficient client participation to demonstrate compliance with applicable standards. Typically, compliance with standards relating to clinical records, treatment plans, and personnel recruitment, selection and qualifications cannot be demonstrated until the program/facility is in operation. The conditional license permits the applicant organization to demonstrate compliance with the standards and allows the Office of Licensure an opportunity to evaluate the organization's compliance. A conditional license may be renewed, but the term of a conditional license may not exceed six successive months.

A provisional license may be issued to an organization that is in partial compliance with the regulatory standards. The Office of Licensure may recommend a provisional license under the following circumstances:

1. Operation of the program/facility will not pose a danger to the health, safety and welfare of individuals receiving services,
2. The organization has submitted a Plan of Correction which addresses standards found to be in partial compliance or noncompliance,
3. The Office of Licensure has approved the Plan of Correction,
4. Where feasible, corrective actions have been taken prior to the issuance of the license

A provisional license may be renewed, but the term of a provisional license may not exceed six successive months.

A full license will be issued after an organization

demonstrates substantial compliance with the standards. A full license may be granted for up to three years.

## License Renewal and Modification

The Office of Licensure will notify each licensee of the upcoming expiration of its license. Organizations holding a full license will be notified 60 days before the expiration of their license. Organizations holding conditional or provisional licenses will be notified 30 days before the expiration of their license. Organizations holding conditional or provisional licenses may, at their discretion, request an early compliance review by contacting their assigned licensure specialist. The Office of Licensure will provide all of the necessary application materials in the notification packet. The application process will consist of confirming the intent to continue operation and updating information that has changed since the last application. Upon receipt of the renewal application, the Office of Licensure will conduct an on-site licensure compliance review as described above.

As a condition of licensure, an organization must apply for modification of license under the following circumstances:

1. A change occurs in the geographic location of the organization (e.g., move from one Virginia city to another)
2. A change occurs in the setting(s) where services are provided (e.g. outpatient clinic to home-based)
3. The addition of one or more treatment categories are proposed (e.g., outpatient, day support, residential, inpatient)
4. A change in required staff qualifications or organizational structure is adopted
5. A change is proposed in the disability of the population served (mental health, mental retardation, substance abuse) in combination with any of the above.

Requests for modification of licenses as outlined above may be made of the licensure specialist assigned to the organization. Depending upon the scope of the change and upon the organization's previous compliance with licensure standards, application for modification of the license may not require on-site inspection before approval of the request. Licenses may not be transferred or assigned. A new application must be made and a new license issued when there is a change in ownership.

Denial, Revocation, Suspension or Nonrenewal of a License

An application for licensure or licensure renewal may be denied and a full, conditional, or provisional license may be revoked or suspended for one or more of the following reasons:

1. Violation of state and local laws, ordinances, rules, regulations and codes relating to building, health, fire protection, safety, sanitation and zoning
2. Violation of the licensing standards contained in this document
3. Conduct or practices which jeopardize the health, safety or welfare of clients
4. Permitting, aiding or abetting the commission of an illegal act in a licensed organization
5. Failure or refusal to submit reports or make records available as requested by a the Office of Licensure
6. Refusal to admit a representative of the Office of Licensure to the premises at a reasonable time.

An organization will be notified in writing of the department's intent to deny, revoke or suspend a license. Under the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) the organization has the right and the opportunity to appeal the department's decision. Within 10 days of receipt of the department's decision, the organization may file a request for an informal hearing or a formal administrative hearing. The department will provide the organization with a detailed summary of the facts of record that support the decision to deny, revoke or suspend the license. Procedures associated with the informal hearing and formal administrative hearings may be obtained by writing:

Commissioner  
Department of Mental Health, Mental Retardation and  
Substance Abuse Services  
P.O. Box 1797  
Richmond, VA 23214

Upon revocation or suspension of the license the organization must surrender its license to a representative of the Office of Licensure. If revocation or suspension of the license does not affect all the organization's licensed programs, a modified license will be issued.

Other circumstances under which the license must be surrendered include transfer of ownership and discontinuation of services. The organization must notify the Office of Licensure, in writing, 30 days before discontinuing services.

VR 470-02-13. Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental



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Retardation and Substance Abuse Services.

## 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:

"Abuse" means:

1. Physical acts such as hitting, kicking, scratching, pinching, striking, hair pulling, choking or slapping;
2. Sexual activity or any type of inappropriate touching;
3. Coercion, threats or intimidation which are statements or actions that would evoke fear in a reasonable person or that could reasonably be expected to evoke fear in the client;
4. Neglect in care which is failure to provide treatment, care, goods or services necessary to the health, safety or welfare of a client;
5. Statements or actions which humiliate, demean or exploit a client; or
6. Condoning or permitting the abuse of a client which includes client to client conflict which may result in physical, emotional, or psychological harm.

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient by (i) a practitioner or by his authorized agent and under his direction, or (ii) the patient or research subject at the direction and in the presence of the practitioner.

"Admission" means the process of acceptance into a program or service that includes orientation to program goals, rules and requirements, and assignment to appropriate staff.

"Allegation" means an accusation that an organization is operating without a license.

"Allowable variance" means the waiver granted by the department when enforcement of one or more of the standards creates an undue hardship. Organizations applying for a variance from standards demonstrate that client health, safety, and welfare are not jeopardized by the variance. Variances are in writing and may be time limited.

"Assessment" means the process of evaluating a client for the purpose of developing a profile on which to base service planning and referral. Assessment includes

information gathering both initially and on an on-going basis and designed to assist the professional staff in determining a client's need for treatment.

"Behavior management" means use of a planned, systematic sequence of therapeutic interventions designed to decrease maladaptive, destructive behavior while encouraging more adaptive, constructive behavior.

"Behavior modification" means an approach to changing behavior that involves a wide variety of techniques based on learning principles such as conditioning and reinforcement.

"Care or treatment" means individually planned interventions which are intended to help a person in the reduction or amelioration of disability, discomfort, symptoms, disorders or undesirable changes or conditions specific to physical, mental, behavioral or social functioning. The term "care or treatment" includes psychiatric or substance abuse inpatient services provided in a hospital as defined in subdivision 1 of § 32.1-123 of the Code of Virginia or in a unit of such a hospital; outpatient services; day support services; day hospital, partial hospital or day treatment services; residential services; supportive residential services; sponsored placements; prison based treatment services; and any other similar or related services.

"Case management" means services to assist individuals and their family members in accessing needed services that are responsive to individual needs. Such services include, but are not limited to, identifying and reaching out to potential clients; assessing needs and planning services; linking the individual to services and supports; assisting the person directly to locate, develop or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; and advocating for individuals in response to their changing needs.

"Client" means the primary service recipient whether that person is referred to as a patient, resident, and consumer or another term.

"Complaint" means an accusation against a licensed facility or provider regarding an alleged violation of regulations or law.

"Continuity of service" means the process of a smooth transition from one service to another program or independence without a significant disruption in the client's course of recovery. Follow-up occurs to make certain the transition has occurred successfully.

"Corporal punishment" means the deliberate act of causing pain or injury directly to a client. Corporal punishment includes, but is not limited to, striking or hitting with any part of the body or with an implement, pinching, pulling, shaking, or any similar action that

normally inflicts pain or discomfort. Corporal punishment does not include medical diagnostic or treatment procedures performed by a licensed health practitioner operating within the scope of his license.

"Crisis intervention services" means a face-to-face or telephone response to a crisis or emergency situation experienced by an individual, significant other, or community system. A short-term service to individuals experiencing severe reduction in psychiatric, adaptive, or behavioral functioning for individuals seeking such services for themselves or their significant others.

"Day support services" means a structured program of mental health, mental retardation or substance abuse treatment, activity or training services, generally in clusters of two or more continuous hours per day, to groups or individuals in a nonresidential setting. The term "day support services" includes, but is not limited to, psychosocial rehabilitation, day treatment, partial hospitalization, and developmental day services. The term "day support services" does not include services whose primary function is to provide:

1. Extended sheltered or competitive employment;
2. Supported or transitional employment services;
3. General education services;
4. General recreational services; or
5. Outpatient services licensed pursuant to the provisions of Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia.

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

"Developmental disability" means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. Is manifested before the person reaches age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity, that is:
  - a. Self-care,
  - b. Receptive and expressive language,
  - c. Mobility,
  - d. Self-direction, and

e. Capacity for independent living or economic self-sufficiency; and

5. Reflects the need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

"Developmental disability" includes but is not limited to severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.

"Discharge" means the process by which the client's active involvement with an organization or program is terminated.

"Dispense" means the preparation, administration or delivery of a drug pursuant to the lawful order of a practitioner as established by the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"Distribute" means to deliver, other than by administering or dispensing, a controlled substance.

"Facility license" means a license issued to an organization to operate a building wherein 24-hour residential services are provided for five or more persons with mental illness, mental retardation, developmental disability, or problems with substance abuse, including halfway houses, residential treatment centers, substance abuse treatment and rehabilitation facilities, domiciliary facilities, shelter care facilities, group homes and any other similar or related facility, except a private family home. A facility license is a building or structure license.

"Follow-up services" means those services or supports designed to help the client maintain and improve the level of functioning achieved during treatment. Follow-up services and plans ensure that individuals receive the support necessary to successfully reintegrate into the family or community, sustain recovery or obtain additional intensive services, and facilitate timely re-entry to service, if needed, after discharge from the program.

"Health and safety management" means functions designed to identify, evaluate, and reduce the risk of injury and loss. They encompass a broad range of activities intended to reduce loss associated with personal injury, property damage or loss, and other sources of potential liability.

"Individual service plan" or "ISP" means a written plan that identifies the needs and desires of and for the client and the strategies and treatment interventions to be used to meet those needs and desires.

"Inpatient services" means 24-hour intensive medical and nursing care and treatment provided for persons with mental illness or problems with substance abuse in a

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hospital as defined in subdivision 1 of § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

“Intensive in-home services” means time-limited (usually between two and six months) family preservation interventions for children and adolescents. In-home services are provided typically but not solely in the residence of an individual who is at risk of being moved into out-of-home placement or who is being transitioned to home from out-of-home placement. These services include, but are not limited to, crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other services; and 24-hour per day emergency response.

“Intrusive aversive therapy” means a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent or self-injurious behavior. The techniques may be unpleasant, noxious, or may otherwise cause discomfort to alter the occurrence of a specific behavior or to protect a client from self-injury or injury to others.

“Investigation” means a detailed inquiry or systematic examination of the conditions at a facility or of the operations of a provider regarding an alleged violation of regulations or law.

“Jail based treatment services” means care or treatment for persons with mental illness, mental retardation, developmental disability, or problems with substance abuse provided in jails.

“Licensable organization” means any organization not operated by an agency of the federal government by whatever name or designation which provides care or treatment for persons with mental illness, mental retardation, developmental disability, or problems with substance abuse. The term “licensable organization” does not include:

1. A private family home, except wherein five or more unrelated persons with mental illness, mental retardation, developmental disability, or problems with substance abuse are receiving residential services;
2. An organization operated by the Department of Mental Health, Mental Retardation and Substance Services;
3. An organization operated by the Department of Rehabilitative Services;
4. An organization licensed by the Department of Health, except an organization providing inpatient psychiatric or substance abuse services in a special unit in a hospital as defined in subdivision 1 of § 32.1-123 of the Code of Virginia;
5. An organization licensed by the Department of Social Services;

6. An organization providing residential care or treatment for children;

7. An organization operated or licensed by the Department of Education or operated by a local school division;

8. An individual practitioner of the healing arts licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia;

9. An individual practitioner of the professions licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1 of the Code of Virginia; or

10. A private practice group as defined in these regulations.

“Medical evaluation” means the process of assessing a client’s health status that includes a medical history and a physical examination of the client conducted by a licensed medical practitioner operating within the scope of his license.

“Medical management services” means medical evaluations, pharmacy and medication management, and diagnostic laboratory. These services may be offered as part of other services.

“Mental illness” means mental disorder or functioning classifiable under the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association that affects the well-being or behavior of an individual to such an extent that for his own welfare or the welfare of others, he requires care and treatment.

“Mental retardation” means substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18.

“Opioid replacement therapy” means an intervention strategy for chronic opioid drug users. A daily individual-specific, physician-ordered dose of medication is administered either for detoxification or maintenance treatment in a rehabilitative context. The goals of treatment are stabilization, strengthening coping skills, developing a new peer group and changing lifestyles, habits and behaviors.

“Organization” means the entity to whom a license is issued. The organization is legally responsible for compliance with the regulations and statutory requirements and may be a person, corporation, partnership, association, or public agency.

"Outpatient services" means a variety of treatment interventions generally provided to individuals, groups or families on an hourly schedule in a clinic or similar facility or in another location. The term "outpatient services" includes, but is not limited to, emergency services, crisis intervention, diagnosis and evaluation, intake and screening, counseling, psychotherapy, behavior management, psychological testing and assessment, chemotherapy and medication management services, and jail based services. The term "outpatient services" specifically includes:

1. A program of such services operated by a community mental health, mental retardation and substance abuse services board established pursuant to Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia;
2. A program of such services funded wholly or in part, directly or indirectly, by a community mental health, mental retardation and substance abuse services board established pursuant to Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia; or
3. A program of such services that is owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Practitioner" means a physician, dentist, podiatrist, licensed nurse practitioner, licensed physician's assistant, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to, a controlled substance in the course of professional practice or research in this Commonwealth.

"Prison based treatment services" means care or treatment for persons with mental illness, mental retardation, developmental disability, or problems with substance abuse provided in organizations operating under the management and control of the Department of Corrections.

"Private practice group" means one or more practitioners of the healing arts or practitioners of the behavioral science professions who are individually licensed under the provisions of Title 54.1 of the Code of Virginia and their employees who are individually licensed under the provisions of Title 54.1 of the Code of Virginia or who are otherwise legally authorized to render professional services within this Commonwealth, who have for purposes of convenience or efficiency associated or grouped themselves through the use of shared office space or administrative support in order to provide professional services within the scope and limits of their individual and respective professional licenses, whether the association is informal or has been formalized through a legally established organization such as a professional corporation

organized pursuant to the provisions of Chapter 7 (§ 13.1-542 et seq.) of Title 13.1 of the Code of Virginia, or a general partnership organized under the provisions of Chapter 1 (§ 50-1 et seq.) of Title 50 of the Code of Virginia.

"Program" means an organized plan of services designed to address the needs of a defined population. A program may be an identified administrative unit within a larger organization. It may also consist of more than one component or element.

"Protective device" means a mechanical device used either for a specific protective or supportive purpose to maintain body position, balance or support for a client with a neurological disorder or to assist the movement of a client whose mobility is impaired by a physical disorder; or for a medical or surgical purpose, to prevent removal of dressings, catheters, intravenous tubes, nasogastric intubations, or otherwise interrupt acute medical or surgical treatment.

"Provider license" means a license issued to an organization or entity authorizing it to provide services in any one or a combination of services for the care or treatment of persons with mental illness, mental retardation, developmental disability, or problems with substance abuse, e.g., outpatient services, respite care services, day support services, supportive residential services, sponsored placements, residential community, residential services, inpatient, prison based treatment services, intensive in-home services, opioid replacement therapy, sobering up services, or other similar or related services. A provider license is intended to cover all services offered irrespective of the number and types of services offered.

"Referral" means the process of directing a client to an organization, program or service that is designed to provide the assistance needed.

"Residential community" means an alternative life-sharing program in which:

1. The residential community employs a live-in staffing pattern, wherein the staff person's primary domicile is with the person who has a mental disability;
2. The residential community provides an integrated setting with an environment of shared lives and mutual interdependence among all residential community members with and without mental disabilities; and
3. The majority of staff directly or indirectly caring for the persons with mental disabilities are unsalaried.

"Residential services" means 24-hour care in conjunction with a treatment or training program in a setting other than a hospital or 24-hour care provided in conjunction with supervised living or other supportive residential



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services. Residential services provide a range of living arrangements ranging from highly structured, intensively supervised, and programmatically intensive service with 24-hour staff coverage to relatively independent lifestyles requiring only a modest amount of staff support and monitoring. Residential services include, but are not limited to, those provided in intensive residential treatment programs, group homes, halfway houses, supervised apartments, residential communities, residential respite care programs, emergency shelter programs, and sponsored placements.

"Respite care services" means a support service that provides or arranges for the temporary care of a client for the purpose of giving relief to the client's family, guardian, or regular care giver. Individual persons providing respite care are recruited, trained, supervised and registered with a licensed organization. Respite care service options include:

1. "Center-based respite" means the client receives respite care services at a licensed facility;
2. "In-home respite" means the client receives respite care services in his own home; and
3. "Out-of-home respite" means the client receives respite care services in the home of an individual respite care provider. No more than three clients at a time are placed in an individual respite care provider home. Individual providers of respite care services offering to serve five or more clients concurrently must obtain a facility license.

"Restraint" means the use of planned, systematic, agency-sanctioned physical force or any mechanical device (handcuffs, wristlets, muffs, camisoles or other such devices) that restricts the physical movements of an individual for behavior management purposes. Restraint does not include protective devices.

"Screening" means the preliminary assessment of a client's appropriateness for admission or readmission to a program or service.

"Seclusion" means the placing of a client in an enclosed area secured in any manner that will not permit the client to gain egress.

"Sobering up services" means a program for the placement of public inebriates for the purpose of detoxification as an alternative to jail.

"Sponsored placements" means placing people in residential settings and providing substantial amounts of financial, programmatic or service support. Sponsored placements include, but are not limited to, individualized therapeutic or community teaching homes, specialized foster care, family sponsored homes, and residential services contracts for specified individuals. The focus is on individual client residential placements with an expected

stay exceeding 30 days rather than on residential services in facilities.

"Substance abuse" means the use, without compelling medical reason, of any substance which results in psychological dependency as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior. The term "substance abuse" includes the intemperate use of narcotic drugs, alcohol or other stimulants as well as such substances as cannabis, cocaine, hallucinogens, inhalants, PCP, and sedatives.

"Supportive residential services" means unstructured services that support individuals in their own housing arrangements. Supportive residential services include, but are not limited to, drop-in or friendly-visitor support and counseling, in-home respite care and family support services. These services normally do not involve overnight care delivered by the organization; however, due to the flexible nature of these services, overnight care may be provided on an hourly basis.

"Time out" means the practice of removing a client from a source of reinforcement to an unlocked setting pursuant to an approved behavior modification plan.

"Volunteer" means a person who, without financial remuneration, provides services to the program or organization.

## PART II. ADMINISTRATIVE SERVICES.

### Article I. Management and Administration.

§ 2.1. An organization that serves clients with mental illness, mental retardation, developmental disability, or problems with substance abuse must be licensed as defined in § 37.1-179 of the Code of Virginia.

§ 2.2. The organization must comply with:

1. The regulations for licensed programs;
2. Terms of the license;
3. Other applicable federal, state or local laws and regulations;
4. Applicable human rights regulations; and
5. The organization's own policies.

§ 2.3. The organization shall submit, or make available, reports and information that the Office of Licensure requires to establish compliance with these regulations and applicable statutes.

§ 2.4. The organization shall submit, in a timely manner,

and implement a written plan of action to correct any noncompliance with these regulations identified during a licensing review. The plan shall include a:

1. Description of the corrective action(s) to be taken;
2. Date of completion for each action; and
3. Signature of the person responsible for the program.

§ 2.5. The organization shall permit representatives from the Office of Licensure to conduct inspections to:

1. Verify application information;
2. Assure compliance with these regulations;
3. Review client, personnel, and financial records; and
4. Investigate complaints.

§ 2.6. The organization shall consent to all reasonable requests from the Office of Licensure to obtain information from staff and clients.

§ 2.7. The organization shall notify the Office of Licensure of the implementation of changes that affect:

1. Geographic location;
2. Milieu or settings where services are performed;
3. Services provided;
4. Staff qualifications;
5. Organizational structure; and
6. Population being served.

§ 2.8. The current license from the department shall be available for public inspection.

§ 2.9. Service providers or community affiliates under contract with the organization must comply with the organization's policies and these regulations.

§ 2.10. The organization shall have evidence of its operating authority. A public organization shall have documents describing the administrative framework of the governmental department of which it is a component. A private organization shall have its charter or articles of incorporation and bylaws.

§ 2.11. The organization's governing body shall be clearly identified.

§ 2.12. The organization shall document the role and actions of the governing body, including the methods for discharging its duties and frequency of meetings.

§ 2.13. The provider's written mission statement shall clearly identify its philosophy, purpose, and goals.

§ 2.14. The provider shall identify its operating elements and programs, the internal relationship among these elements and programs, and the management or leadership structure.

§ 2.15. The organization shall appoint a qualified individual to whom it delegates, in writing, the authority and responsibility for the administrative direction and day-to-day operation of the organization.

§ 2.16. The organization shall document financial resources to operate its programs or facilities or shall have a line of credit sufficient to cover 90 days of operating expense.

§ 2.17. All financial records shall be kept according to generally accepted accounting principles (GAAP) or those standards promulgated by the Governmental Accounting Standards Board (GASB) and the State Auditor of Public Accounts.

§ 2.18. Prior to the expiration of an organization's license, all financial records shall be audited by an independent Certified Public Accountant (CPA) or audited as otherwise provided by law.

§ 2.19. To protect the interests of clients, staff, and the organization from risks of liability, there shall be indemnity coverage to include:

1. General liability;
2. Professional liability;
3. Vehicular liability; and
4. Property damage.

§ 2.20. The provider shall have documented financial controls to minimize risk of theft or embezzlement of client or organizational funds.

§ 2.21. At a minimum, the individual who has the authority and responsibility for the fiscal management of the provider organization shall be bonded or otherwise indemnified.

§ 2.22. If the provider charges for services, the written schedule of rates and charges shall be available upon request.

§ 2.23. If the provider handles client funds, financial record keeping shall provide for separate accounting of client funds.

§ 2.24. The provider shall ensure that clients employed by the organization are paid in compliance with all applicable laws governing labor and employment.

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§ 2.25. All money earned by a client shall accrue to the sole benefit of that individual.

§ 2.26. The provider shall not use any advertising that contains false, misleading or deceptive statements or claims, or false or misleading disclosure of fees and payment for services.

§ 2.27. The provider's name and subprogram names shall not imply the provider is offering services for which it is not licensed.

§ 2.28. The provider shall not offer or pay any remuneration, directly or indirectly, to encourage a licensed practitioner to refer a client to the organization.

§ 2.29. The provider shall comply with the applicable regulations to assure the protection of participants in human research or shall have a written policy prohibiting participation in human research.

§ 2.30. The provider shall monitor and evaluate service quality and effectiveness and make program improvements, when indicated.

§ 2.31. All employees shall be kept informed of policy changes that affect performance of duties.

## Article 2. Program Description.

§ 2.32. The provider shall develop, implement, review and revise its program of services according to the organization's mission.

§ 2.33. Each program shall have a written description that accurately describes its services. Program description elements shall include:

1. Program goals;
2. Services provided;
3. Characteristics and needs of the population served;
4. Contract services, if any;
5. Admission and exclusion criteria;
6. Termination of treatment and discharge or transition criteria; and
7. Type and role of staff.

§ 2.34. Opportunities shall be provided for clients to utilize community resources.

§ 2.35. If the provider offers substance abuse treatment services, the program description shall address the timely and appropriate treatment of substance abusing pregnant women.

## Article 3. Physical Environment.

§ 2.36. All buildings shall be inspected and approved as required by the appropriate building regulatory entity. Approval shall be a Certificate of Use and Occupancy indicating the building is classified for its proposed licensed purpose.

§ 2.37. The physical environment shall be appropriate to the population served, the services provided, and shall be safe and sanitary for clients and staff.

§ 2.38. If the building is not on city or county water and sewage systems, then documentation of the local health department inspection and correction of any deficiencies shall be kept on file for a minimum of three years.

§ 2.39. An interim plan addressing safety and continued service delivery shall be required for new construction or for conversion, structural modifications or additions to existing buildings.

§ 2.40. Weapons shall be prohibited.

§ 2.41. If smoking is permitted, the organization shall make provisions for smoke free areas for clients, staff, and visitors.

§ 2.42. The provider shall not operate more client beds than the number for which it is licensed except in an emergency when temporary permission is granted in writing by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. A request for an increase in client bed capacity shall be made in writing to the department.

§ 2.43. Rooms shall be dry and well ventilated. Bedrooms below ground level shall meet the requirements of the Uniform Statewide Building Code.

§ 2.44. Within 30 days of direct client contact, each new staff member shall obtain an evaluation indicating the absence of tuberculosis in a communicable form. A statement signed by a qualified, licensed practitioner documenting absence of tuberculosis in a communicable form includes the type(s) of test(s) administered, dates of the tests, and the result(s) of those tests.

§ 2.45. Staff aged 55 years or older shall receive a second test within 10 days of the initial test.

§ 2.46. All staff members shall be tested for tuberculosis using the tuberculin skin test annually.

§ 2.47. All staff members shall be reevaluated for tuberculosis if TB-like symptoms arise or if exposed to a known case of communicable tuberculosis. Staff must submit documentation of a completed evaluation within one week.

§ 2.48. All staff members shall be educated regarding the symptoms of tuberculosis and infection risk reduction behavior.

§ 2.49. There shall be at least one staff member on duty who holds a current certificate, issued by a recognized authority, in standard first aid, cardiopulmonary resuscitation, or emergency medical training.

§ 2.50. Single occupancy bedrooms shall have no less than 80 square feet of floor space.

§ 2.51. Multiple occupancy bedrooms shall have no less than 60 square feet of floor space per client.

§ 2.52. No more than four clients shall share a bedroom.

§ 2.53. Each client shall be assigned adequate storage space accessible to the bedroom for clothing and personal belongings.

§ 2.54. Bedroom and bathroom windows shall provide privacy.

§ 2.55. Bathrooms not intended for individual use shall provide privacy for showers and toilets.

§ 2.56. Soiled linen and clothing shall be kept separate from clean linen and clothing.

§ 2.57. In facilities housing over eight clients, results of fire safety and building maintenance inspections shall be on file for a minimum of three years and available for public inspection.

§ 2.58. Recycling, composting, and garbage disposal shall not create a nuisance, permit transmission of disease, or create a breeding place for insects or rodents.

§ 2.59. Beds shall be clean, comfortable and equipped with a mattress, pillow, blanket(s), and bed linens.

§ 2.60. There shall be at least one toilet, one hand basin and a shower or bath for every four clients.

§ 2.61. Adequate hot and cold running water shall be available.

§ 2.62. Door locking devices and door locking arrangements shall allow for prompt release, in case of emergency.

§ 2.63. All doors to client's bathrooms and bedrooms shall be equipped to permit emergency access.

#### Article 4. Food and Nutrition.

§ 2.64. An organization providing food service and preparing and serving food shall:

1. Comply with applicable Department of Health regulations regarding food service and sanitation;

2. Have a written plan for the provision of food services which ensures access to nourishing, well-balanced, healthful meals; and

3. Prepare meals that accommodate cultural background, personal preferences, food habits and dietary needs of the clients served.

§ 2.65. A provider subsidizing food or housing shall monitor each client's patterns of food consumption and food preparation skills and provide advice and support as needed.

#### Article 5. Human Resources.

§ 2.66. Personnel management and employment practices shall comply with applicable federal and state statutes and regulations.

§ 2.67. The provider shall maintain an organized system to manage and protect the confidentiality of personnel files and records.

§ 2.68. Physical and data security controls shall exist for electronic records.

§ 2.69. Employee health-related information shall be retained in a file separate from personnel files.

§ 2.70. The provider shall design and implement a staffing plan that reflects the:

1. Needs of the population served;
2. Types of services offered; and
3. The program description.

§ 2.71. Any person who is employed or contracted to provide health care, behavioral science services, or consultation shall be licensed or certified as required by the Department of Health Professions.

§ 2.72. The organization shall design and implement a mechanism to verify professional credentials.

§ 2.73. Each employee position shall have a written job description that includes:

1. Job title;
2. Duties and responsibilities required of the position;
3. Job title of the immediate supervisor; and
4. Minimum knowledge, skills, and abilities or professional qualifications required for entry level.

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§ 2.74. Employees shall have access to their current position description. There shall be a mechanism for advising employees of changes to their job responsibilities.

§ 2.75. Employee personnel record, whether hardcopy or electronic, shall include:

1. Identifying information;
2. Education and training history;
3. Employment history;
4. Results of the provider credentialing process including methods of verification of applicable professional licenses or certificates;
5. Results of reasonable efforts to secure job-related references and reasonable verification of employment history;
6. Results of criminal background checks, if any;
7. Results of performance evaluations;
8. A record of disciplinary action taken by the organization, if any;
9. A record of adverse action by any licensing bodies and organizations and state human rights regulations, if any; and
10. A record of participation in staff development activities, including orientation.

§ 2.76. Each employee personnel record shall be retained in its entirety for a minimum of three years after termination of employment.

§ 2.77. New employees, volunteers, contract individuals, and students shall be oriented commensurate with their function or job-specific responsibilities. Orientation shall include:

1. Objectives and philosophy of the organization;
2. Practices of confidentiality;
3. Practices that assure client rights including orientation to human rights regulations;
4. Applicable personnel policies;
5. Emergency preparedness procedures;
6. Infection control practices and measures; and
7. Other policies and procedures that apply to specific positions and specific duties and responsibilities.

§ 2.78. The provider organization shall provide

opportunities for and record participation in staff development activities designed to enable staff to perform the responsibilities of their positions.

§ 2.79. The provider shall develop and implement a policy for evaluating employee performance.

§ 2.80. Individual staff development needs and plans shall be a part of the performance evaluation.

§ 2.81. The provider shall have a written grievance policy and a mechanism to inform employees of grievance procedures.

§ 2.82. Any person who assumes the responsibilities of any staff position(s) shall meet the minimum qualifications of that position(s).

§ 2.83. The provider shall develop and implement a policy that addresses the selection, orientation, scheduling, supervision and evaluation of students and volunteers.

§ 2.84. The provider shall have and implement a written policy that clearly defines and communicates the requirements for the use and responsibilities of students and volunteers.

§ 2.85. The provider shall not rely solely on students or volunteers for the provision of direct care services.

§ 2.86. All students and volunteers shall have qualifications appropriate to the services they render. Copies of credentials, if applicable, shall be kept on file.

## Article 6. Health and Safety Management.

§ 2.87. The organization shall document and implement a plan or a policy to identify, monitor, reduce and eliminate health and safety risks, including infection control and emergency preparedness.

§ 2.88. The organization shall designate an individual responsible for health and safety management.

§ 2.89. The provider shall document significant client, staff and visitor injuries. Documentation shall be kept on file for three years.

§ 2.90. The provider shall develop and implement procedures regarding missing clients.

§ 2.91. The provider shall not admit individuals for whom services are not available and planned or for which staffing levels and types are not adequate.

§ 2.92. Any incident relating to the operation of the provider organization which results in serious injury or death shall be investigated by the organization, appropriately reported to local authorities, and reported to the Office of Licensure. A written report of the incident

shall be kept on file for three years.

§ 2.93. Access to telephones shall be available for emergency purposes. Emergency telephone numbers shall be prominently posted near the telephones.

§ 2.94. The provider shall have a documented plan for access to emergency health care for clients and employees. The plan shall include transportation to and from a health care provider.

§ 2.95. A well-stocked first aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

§ 2.96. The first aid kit shall include activated charcoal and Syrup of Ipecac for use at the direction of a poison control authority or physician.

§ 2.97. If a swimming pool is used, a plan shall be developed and implemented to ensure the safety of clients.

§ 2.98. Safety inspections of all locations owned, rented or leased shall be conducted at least annually. Recommendations for safety improvement shall be documented and implemented.

§ 2.99. The provider shall develop, document and implement infection control measures, including the use of universal precautions.

§ 2.100. The provider shall document in-service and client education in infection control and prevention for staff and clients, including training in universal precautions.

§ 2.101. All staff members are educated regarding infection risk-reduction behavior.

§ 2.102. A written emergency preparedness plan shall be developed, reviewed, and implemented when needed. The plan shall address response to natural disasters, as well as fire or other emergency which disrupts the normal course of service delivery. The plan shall also address staff responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation procedures including the evacuation of clients with special needs (e.g., deaf, blind, multihandicapped);
3. Using, maintaining and operating emergency equipment;
4. Accessing client emergency medical information; and
5. Utilizing community support services.

§ 2.103. All staff shall participate in periodic emergency preparedness training.

§ 2.104. Staff shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

§ 2.105. Operable flashlights or battery lanterns shall be readily accessible in programs that operate between dusk and dawn.

§ 2.106. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety and well-being of clients, the organization shall notify the Office of Licensure of the conditions and status of the clients and the licensed service site as soon as possible.

## PART III. SERVICES AND SUPPORTS.

### Article 1. Screening and Admission.

§ 3.1. The provider shall serve only those individuals whose service needs are consistent with the program description.

§ 3.2. Policies on screening, admission and referral services are written and implemented to include:

1. Procedures on referral, admission, and orientation to service;
2. Staff designated to provide screening and admission services; and
3. Protocol for crisis triage and intervention.

§ 3.3. All staff performing screening and referral activities shall have immediate access to written service descriptions for all offered programs, as well as resource documents or a resource directory that describes other community services available.

§ 3.4. If screening staff are not clinicians, trained staff shall be available for emergency consultation.

§ 3.5. Screening and referral services shall be documented and retained for at least three years. Written documentation shall include:

1. Date and time of initial contact;
2. Name, age, and gender of the individual;
3. Address and phone number, if applicable;
4. Presenting needs or situation;
5. Name of screening staff;
6. Type and location of each contact; and
7. Outcome.

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§ 3.6. Identifying information on a standardized admission form(s) includes the following:

1. Identification number unique for the client;
2. Name of client;
3. Current residence, if known;
4. Social security number;
5. Gender;
6. Marital status;
7. Date of birth;
8. Name of legal guardian;
9. Name, address, and telephone number for emergency contact;
10. Legal status (e.g., relevant criminal charges or convictions, probation or parole status, or adjudicated legal incompetency or legal incapacity);
11. Date of admission to program; and
12. Date services initiated.

§ 3.7. Clients shall be given orientation to the organization's services, programs, and facility, unless clinically contraindicated. When orientation is not provided the clinical record is noted with the reason and the expected date of orientation.

§ 3.8. The orientation shall include the following elements as appropriate to the scope and level of service offered:

1. The mission of the provider organization;
2. Individual confidentiality practices;
3. Consent to treatment;
4. Informed consent;
5. Individual rights and how to report violations;
6. Fire safety and emergency preparedness procedures;
7. The grievance procedure;
8. Program guidelines;
9. Infection control;
10. Physical plant or building lay-out;
11. Hours and days of operation; and

12. Availability of after hours service, if appropriate.

§ 3.9. Orientation shall be documented in the client's record.

## Article 2.

### Crisis Intervention and Clinical Emergencies.

§ 3.10. The provider shall develop and implement a crisis intervention policy that includes the provision for obtaining physician services if on-call physician back up is not available.

§ 3.11. The provider shall develop a method for documenting the provision of crisis intervention services. Documentation should include the following if available:

1. Identification of the individual in crisis;
2. Precipitating factors; and
3. Outcome.

§ 3.12. If an individual is admitted to service, the crisis intervention documentation shall become part of the client's record.

§ 3.13. The provider shall develop and implement written policies and procedures for prompt intervention in the event of client medical and psychiatric emergencies that include:

1. A definition of medical or psychiatric emergency;
2. Procedures for immediate access to appropriate internal and external resources;
3. Staff responsibilities;
4. Location of client emergency medical information; and
5. The telephone number and location of the nearest hospital, ambulance service, rescue squad or other trained medical personnel, the nearest poison control center and the police.

§ 3.14. Emergency medical information about the client shall be readily accessible in an emergency. The information shall include:

1. The name, address, and telephone number of:
  - a. The client's physician, and
  - b. A relative or other person to be notified;
2. Medical insurance company name and policy or Medicaid, Medicare or CHAMPUS number, if any;
3. Information concerning (i) medications used, (ii)

medication allergies, (iii) history of substance abuse, and (iv) significant medical problems; and

4. Written permission for emergency medical care.

§ 3.15. Medical or psychiatric emergencies which occur at the licensed organization or during the course of service provision shall be documented in the client's record and include:

1. Events precipitating the emergency;
2. Treatment received; and
3. Outcome.

### Article 3. Assessments and Service Planning.

§ 3.16. Assessments shall be conducted to identify a client's physical, emotional, behavioral, and social strengths, preferences and needs, as applicable.

§ 3.17. The assessment process shall be documented by written policy and shall designate the individuals authorized to perform assessments.

§ 3.18. Assessments shall be performed prior to development of the individualized service plan.

§ 3.19. An individualized plan for service shall define and describe the goals, objectives and expected outcomes of service(s).

§ 3.20. The client's needs and preferences shall be considered when the service plan is developed and revised.

§ 3.21. The client and principle service provider or service team are documented participants in service planning.

§ 3.22. Involvement of the family, guardian, or others in developing the service plan shall be consistent with laws protecting confidentiality, privacy, and the rights of minors.

§ 3.23. The individualized service plan shall include, at a minimum:

1. A description of the client's strengths, needs, preferences, and relevant accomplishments;
2. Goals and measurable objectives for addressing each identified need;
3. The services and supports and frequency of service to accomplish the goals and objectives;
4. Target dates for accomplishment of goals and objectives;

5. Estimated duration of service;

6. The role of other agencies if the plan is a shared responsibility; and

7. The staff responsible for coordination and integration of services, including the persons of other agencies if the plan is a shared responsibility.

§ 3.24. Signed and dated progress notes or other documentation shall be used to document the services provided, and the implementation and outcomes of service plans.

§ 3.25. Service plans shall be reviewed at least quarterly, with goals and objectives updated, if indicated. Reviews shall be conducted with the client and in consultation with other service providers and shall be signed and dated by the person responsible for the coordination and integration of services.

### Article 4. Continuity of Service and Discharge.

§ 3.26. The provider shall have written procedures to define the process for the movement of a client between and among programs or to facilitate discharge from the program or service.

§ 3.27. Discharge planning and discharge shall be consistent with the client's service plan or the program's criteria for discharge.

§ 3.28. A written discharge summary shall be completed within 30 days and shall include, at a minimum, the:

1. Reason for discharge;
2. Client's participation in discharge planning;
3. Client's level of functioning or functional limitation(s), if applicable;
4. Recommendations on procedures, activities, or referrals to assist the client in maintaining or improving functioning and increased independence;
5. Progress made achieving the goals and objectives identified in service plan;
6. Discharge date;
7. Discharge medications, if applicable;
8. Status, location and arrangements for future services that have been made;
9. Date the discharge summary was actually written or documented; and
10. Signature of person doing summary.



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## Article 5. Records management.

§ 3.29. A primary record shall contain, at a minimum:

1. The admission form;
2. Screening, referral and assessment information;
3. Documentation of orientation;
4. Medical evaluation, as applicable to the program;
5. Service plan(s) and service plan reviews;
6. Progress notes; and
7. A discharge summary, if applicable.

§ 3.30. The program shall define, by policy, a system of documentation which supports appropriate service planning, coordination, and accountability. At a minimum this policy shall outline:

1. The location of the "primary" record;
2. Methods of access to the primary record by service providers who are located at satellite locations; and
3. Methods of updating the primary record with information recorded at satellite locations.

§ 3.31. A written records management policy shall describe confidentiality, accessibility, security, and retention, including:

1. Disclosure of information;
2. Storage, processing and handling of active and closed records;
3. Storage, processing and handling of electronic records;
4. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information and transportation of records between service sites;
5. Designation of person responsible for records management; and
6. Disposition of records in event the program ceases operation.

§ 3.32. When not in use, active and closed records shall be stored in a locked cabinet or room.

§ 3.33. Physical and data security controls shall exist for electronic records.

§ 3.34. Information contained in a client's record shall be available only to persons legally authorized according to federal and state laws.

§ 3.35. There shall be a mechanism to inform staff of confidentiality procedures regarding access, duplication, and dissemination of any portion of a record.

§ 3.36. There shall be a single, separate primary record for each individual or family admitted for service. A separate record shall be maintained for each family member who is receiving individual treatment.

§ 3.37. Entries in the client record shall be current, dated and authenticated by the staff member making the entry. Errors shall be corrected by striking through and initialing.

§ 3.38. Client records shall be kept for minimum of three years after discharge or date of last contact unless otherwise specified by state or federal requirements.

§ 3.39. Permanent information kept on each client shall include:

1. Client's name;
2. Social security number;
3. Date of client's birth;
5. Dates of admission and discharge; and
6. Name and address of legal guardian, if any.

§ 3.40. A review process shall evaluate records for completeness, accuracy, and timeliness of entries.

## PART IV. SPECIALIZED SERVICES.

### Article I. Medical Management, Pharmacy and Medication Management Services.

§ 4.1. The provider shall develop and implement a written policy, appropriate to the scope and level of service, that addresses provision of adequate health care. This policy shall include:

1. The level of physical assessment necessary;
2. How the physical examinations will be provided and who will perform them;
3. How abnormal findings will be managed or corrected;
4. How the appropriate and safe use of medication will be ensured, including:

- a. What medications patients may bring into the program,
  - b. How medication is safely and securely stored,
  - c. How compliance with medication policies are monitored, and
  - d. What training is required for medication management staff; and
5. How diagnostic laboratory and other medical assessment results are communicated to clients.

§ 4.2. The provider shall develop a medical evaluation that consists of, at a minimum, a client (or other) reported health history and, if required for admission to the services offered, a physical examination. The provider organization's policy on physical examinations shall be developed in consultation with a qualified practitioner.

§ 4.3. A client (or other) reported health history shall include:

1. Immunizations;
2. Allergies;
3. Recent physical complaints;
4. Chronic conditions;
5. Communicable diseases;
6. Handicaps or restriction on physical activities, if any;
7. Past serious illnesses, serious injuries and hospitalizations;
8. Serious illnesses and chronic conditions of the individual's parents; and
9. Current drug history including alcohol, prescription and nonprescription medications, and illicit drugs.

§ 4.4. A physical examination shall include, at a minimum:

1. General physical condition;
2. Recommendations for further treatment, if appropriate;
3. Other examinations indicated, if appropriate; and
4. The date of examination and signature of a qualified practitioner.

§ 4.5. Locations designated for physical examinations shall ensure individual privacy.

§ 4.6. The provider shall have written policies addressing:

1. The safe administration, handling, storage, and disposal of medications;
2. The use of medication orders;
3. The handling of packaged medications brought by clients from home or other residences; and
4. A definition of medication errors and procedures for reporting.

§ 4.7. Medications shall be administered only by persons authorized by state law.

§ 4.8. Medications shall be given only to the clients for whom they are prescribed.

§ 4.9. Medication errors and drug reactions shall be reported immediately to the client's or program's physician.

§ 4.10. Medications given, medication errors, and drug reactions shall be recorded in the client's record.

§ 4.11. If the provider administers medications or supervises self-administration of medication in a program, a current prescription order for all medications the client receives shall be maintained in the client's record.

§ 4.12. Discontinued drugs, outdated drugs, and drug containers with worn, illegible, or missing labels shall be promptly disposed of according to the applicable regulations of the Virginia Board of Pharmacy.

§ 4.13. The provider operating a pharmacy or maintaining a drug storage and administration service shall comply with:

1. The Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia);
2. The Virginia Board of Pharmacy regulations relating to pharmacies; and
3. Applicable federal laws and regulations relating to controlled substances.

§ 4.14. If the provider operates a pharmacy or maintains a drug storage and administration service, in-service training to staff and consultation to clients shall be provided on issues of basic pharmacology including medication side effects.

## Article 2. Special Interventions.

§ 4.15. The provider shall develop and implement policies and procedures that describe the use of behavior management techniques, including seclusion, locked time

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out, restraint, and time out. The policies and procedures shall be consistent with applicable human rights regulations, emphasize positive approaches to behavior management, and:

1. List and define behavior management techniques in the order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used in each program;
2. Protect the safety and well-being of the client at all times, including during fire and other emergencies;
3. Specify the mechanism for monitoring the use of behavior management techniques; and
4. Specify the methods for documenting the use of behavior management techniques.

§ 4.16. The behavior management program shall be developed, implemented and monitored by staff trained in behavior management programming.

§ 4.17. A behavior management plan that proposes intrusive aversive therapy shall be implemented only with the approval of the local human rights committee.

§ 4.18. Policies and procedures related to behavior management shall be available to clients, their families, guardians and advocates.

§ 4.19. The following actions shall be prohibited:

1. Prohibition of contacts and visits with attorney, probation officer, placing agency representative, minister or chaplain;
2. Any action that is humiliating, degrading, harsh, or abusive;
3. Corporal punishment as defined by regulation;
4. Subjection to unclean and unsanitary living conditions;
5. Deprivation of opportunities for bathing and access to toilet facilities;
6. Deprivation of health care including counseling;
7. Administration of laxatives, enemas, or emetics for effecting behavior change; and
8. Prohibition of contacts and visits with family or legal guardian.

§ 4.20. The following actions shall be prohibited, unless clinically indicated and documented:

1. Deprivation of drinking water or nutritionally balanced snacks, or meals;

2. Limitations of contacts and visits with family or legal guardian; and

3. Delay or withholding of incoming or outgoing mail.

§ 4.21. Injuries resulting from or occurring during the implementation of behavior management techniques shall be recorded in the clinical record and reported to the staff person responsible for the overall coordination of services.

§ 4.22. Clients shall not be involved in the discipline, restraint, seclusion or implementation of behavior management plans of other clients.

§ 4.23. The use of seclusion, locked time out and restraint shall comply with applicable human rights regulations promulgated pursuant to § 37.1-84.1 of the Code of Virginia.

§ 4.24. The use of seclusion, locked time out and restraint shall be consistent with the provider organization's policies and procedures.

§ 4.25. The facility, part or section of the building used for seclusion or locked time out shall meet the design requirements for buildings used for detention, seclusion, or locked time out of persons.

§ 4.26. The seclusion or locked time out room shall be at least six feet wide and six feet long with a minimum ceiling height of eight feet.

§ 4.27. The seclusion or locked time out room shall be free of all protrusions, sharp corners, hardware, fixtures or other devices which may cause injury to the occupant.

§ 4.28. Windows in the seclusion or locked time out room shall be so constructed as to minimize breakage and otherwise prevent the occupant from harming himself.

§ 4.29. Light fixtures and other electrical receptacles in the seclusion or locked time out room shall be recessed or so constructed as to prevent the occupant from harming himself. Light controls shall be located outside the seclusion or locked time out room.

§ 4.30. Doors to the seclusion or locked time out room shall be at least 32 inches wide, shall open outward and shall contain observation view panels of transparent wire glass or its approved equivalent, not exceeding 120 square inches but of sufficient size for staff outside the door to see into all corners of the room.

§ 4.31. Locks on seclusion or locked time out room doors shall be so arranged on the outside to permit exit from the room by simple operation without the use of a key.

§ 4.32. The seclusion or locked time out room shall contain only a mattress with a washable mattress covering designed to avoid damage by tearing.

§ 4.33. The seclusion or locked time out room shall maintain temperatures appropriate for the season.

§ 4.34. Devices used for mechanical restraint shall be designed specifically for behavior management of human beings in clinical or therapeutic programs.

§ 4.35. Application of seclusion, locked time out, restraint, and time out shall be documented in the client's record and, at a minimum, include:

1. Date and time;
2. Staff involved;
3. Circumstances and reasons for use, including other behavior management techniques attempted;
4. Duration;
5. Type of technique used; and
6. Outcomes.

§ 4.36. Rooms used for time out procedures shall not be locked or secured in any manner.

§ 4.37. Clients in time out shall be able to communicate with staff.

### Article 3. Opioid Replacement Therapy.

§ 4.38. The opioid replacement program shall maintain current registration with:

1. The Federal Drug Enforcement Administration;
2. The Food and Drug Administration; and
3. The Virginia Board of Pharmacy.

§ 4.39. The program shall establish criteria for involuntary termination from treatment that describe the rights of the client and the responsibilities and rights of the program. On admission, clients shall be given a copy of the criteria and sign a statement acknowledging receipt of same.

§ 4.40. The program shall operate seven days a week, 12 months a year, except for official state holidays. Prior approval from the Department of Mental Health, Mental Retardation and Substance Abuse Services Opioid Replacement Authority shall be required for additional closed days.

§ 4.41. Medication dispensing hours shall include at least two hours each day outside normal working hours, i.e., before 9 a.m. and after 5 p.m.

§ 4.42. Physical examinations shall be completed not more than 30 days prior to admission.

§ 4.43. Face-to-face counseling sessions shall be conducted at least every two weeks for the first year of treatment and every month thereafter.

§ 4.44. Random drug screens shall be performed:

1. Weekly, during the first three months of treatment;
2. Weekly, whenever a client's urine sample indicates continued drug use; and
3. Monthly, after the first three months of treatment, when urine samples indicate no drug use.

§ 4.45. Drug screens for other drugs with potential for addiction shall be performed when clinically and environmentally indicated.

§ 4.46. Prior to dispensing regularly scheduled take-home medication, the program shall ensure the client demonstrates a level of stability as evidenced by the following:

1. Employment or school attendance (if not retired, disabled or a homemaker);
2. Regular clinic attendance;
3. Absence of alcohol and other drug use;
4. Absence of significant behavior problems; and
5. Absence of criminal activities, charges or convictions.

§ 4.47. The program shall educate the client on the safe transportation and storage of take-home medication.

§ 4.48. To prevent duplication of opioid medication services to a client, the program shall contact every Virginia Opioid Replacement Therapy programs within a 100 mile radius. No medications shall be dispensed to guest clients without prior contact with the home clinic.

§ 4.49. Guest clients may be provided with up to a 28-day supply of medication. To continue receiving medication after 28 days, the client must be admitted to the program. Clients receiving guest medications as part of a residential treatment program may exceed the 28-day maximum time limit.

§ 4.50. Guest take-home medication shall not exceed six days unless prior approval is given by the Department of Mental Health, Mental Retardation and Substance Abuse Services Opioid Replacement Authority.

§ 4.51. Clients shall be given an opportunity to detoxify from opioid medication prior to discharge from the program.

§ 4.52. Physician orders for opioid replacement medication

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shall be renewed at least annually.

§ 4.53. Dosages initially exceeding 100 milligrams shall be documented in the client's record by the physician and reported to the Department of Mental Health, Mental Retardation and Substance Abuse Services Opioid Replacement Authority.

§ 4.54. All dosages exceeding 100 milligrams shall be reported to the Department of Mental Health, Mental Retardation and Substance Abuse Services Opioid Replacement Authority annually.

§ 4.55. At a minimum, opioid replacement medication supplies shall be secured as follows:

1. Admittance to the pharmacy shall be restricted to licensed medical or pharmacy personnel;
2. Supplies shall be reconciled monthly; and
3. Inventory records, including the monthly reconciliations, shall be kept for three years.

§ 4.56. The program's emergency preparedness plan shall address continued opioid replacement treatment in the event of an emergency or natural disaster.

## Article 4. Sobering Up Centers.

§ 4.57. Policies and procedures for accepting criminal justice referrals shall be developed and implemented in conjunction with the chief law-enforcement officer and the chief general district court judge of the locality served by the sobering up center.

§ 4.58. The sobering up center shall establish cooperative agreements with other community agencies to accept referrals for treatment, including provisions for emergency medical care.

§ 4.59. Rest, holding, or admission areas shall provide for:

1. Adequate space for individuals to sleep and sober up;
2. Unobstructed observation by staff;
3. Nearby bathrooms;
4. Available drinking water; and
5. Access to showers.

§ 4.60. Designated staff areas shall allow for unobstructed observation of clients.

§ 4.61. Direct-care staff training and certification shall include Department of Mental Health, Mental Retardation and Substance Abuse Services Managed Withdrawal

Training and:

1. First responder training; or
2. First aid and CPR training.

§ 4.62. In freestanding sobering up centers, there shall be at least two on-duty staff members at all times. If the center is located within or contiguous to another service site, one staff member shall be on duty in the center with backup staff support immediately available.

§ 4.63. Staff members on each shift shall document significant events to ensure service continuity between shifts.

§ 4.64. Admission assessments shall identify:

1. Individuals with a high-risk profile;
2. Substances used and time of last use;
3. Time of last meal;
4. Blood alcohol content; and
5. Vital signs.

§ 4.65. Unless the individual refuses, vital signs shall be taken:

1. At admission and discharge;
2. Every four hours for the first 24 hours and every eight hours thereafter; and
3. As frequently as necessary, until signs and symptoms stabilize for individuals with a high-risk profile.

§ 4.66. First aid equipment shall be easily accessible in a well-marked location and include a blood pressure cuff and thermometer.

§ 4.67. Light snacks and fluids shall be offered to individuals who are not in danger of aspirating.

## Article 5. Treatment Services in Correctional Facilities.

§ 4.68. The provider shall have formal and informal methods of resolving procedural and programmatic issues regarding individual care arising between the clinical and security staff.

§ 4.69. The provider shall demonstrate ongoing communication between clinical and security staff to ensure individual care.

§ 4.70. The provider shall provide cross-training for the clinical and security staff that includes:

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1. Mental health and substance abuse education;
2. Use of clinical and security restraints; and
3. Channels of communication.

§ 4.71. Staff receive periodic in-service training and have knowledge of and can demonstrate the appropriate use of clinical and security restraint.

§ 4.72 The physical environment shall enhance clinical services while supporting the security mission of the facility.

§ 4.73. The locations designated for clinical services, activities, and recreation shall be sufficient to provide program services.

§ 4.74. Security and behavioral assessments shall be completed at the time of admission to determine program eligibility and at least weekly for the safety of clients, other individuals, staff, and visitors.

§ 4.75. Within five days of admission, clients shall receive orientation that is appropriate to their education level and clinical condition. Orientation shall include:

1. Individual rights and responsibilities;
2. Program services; and
3. Security restrictions, if any.

§ 4.76. Living quarters shall be assigned on the basis of the individual's security level and clinical needs.

§ 4.77. Group bathroom facilities shall be partitioned between toilets and urinals to provide privacy.

§ 4.78. If uniform clothing is required, the clothing shall be properly fitted, climatically suitable, durable, and presentable.

§ 4.79. Personal grooming and care services for recalcitrant individuals shall be a cooperative effort between the clinical and security staff.

§ 4.80. Clinical needs and security level shall be considered when arrangements are made regarding privacy for individual contact with family and attorneys.

§ 4.81. Financial compensation for work performed shall be determined by the Department of Corrections. Personal housecleaning tasks may be assigned without compensation to the individual.

§ 4.82. The use of audio equipment, such as televisions, radios, and record players, shall not interfere with other therapeutic activities.

§ 4.83. An assessment of the individual's clinical condition

and needs is made when disciplinary action or restrictions are required for infractions of security measures.

§ 4.84. Clinical services consistent with the individual's condition and plan of treatment shall be provided when security detention or isolation is imposed.

§ 4.85. Aftercare planning for clients nearing the end of incarceration shall include provision for continuing medication and follow-up services with area community services to facilitate successful reintegration into the community.

VA.R. Doc. No. R94-911; Filed April 27, 1994, 9:19 a.m.

## REAL ESTATE APPRAISER BOARD

**Title of Regulation:** VR 583-01-03. Real Estate Appraiser Board Rules and Regulations.

**Statutory Authority:** §§ 54.1-2013, 54.1-2014 and 54.1-2016 of the Code of Virginia.

**Public Hearing Date:** June 21, 1994 - 10 a.m.

Written comments may be submitted until July 18, 1994.

(See Calendar of Events section for additional information)

**Basis:** Sections 54.1-2009 through 54.1-2019 of the Code of Virginia provide that the Real Estate Appraiser Board shall develop and administer a regulatory system to license persons in Virginia who appraise real property. The federal "Financial Institutions Reform, Recovery and Enforcement Act of 1989" established the Appraiser Subcommittee to oversee state implementation of this federal law. This subcommittee created the Appraisal Standards Board of the Appraisal Foundation which has produced the "Uniform Standards of Professional Appraisal Practice" (USPAP) which is incorporated by reference in the board's regulations. The subcommittee also created the Appraisal Qualifications Board which establishes standards for qualification for licensure which are reflected in the proposed regulations.

**Purpose:** The Real Estate Appraiser Board is proposing to amend their existing regulations governing the licensure of appraisers to achieve consistency with current federal standards and guidelines, to allow for a renewal grace period, to permit reinstatement of licensure, to reflect current board policy, to improve current continuing education requirements, and to eliminate redundancy in existing regulatory language.

Also, the proposed regulations will adjust fees to correct a current inequity which exists for licensed appraisers who wish to upgrade their classification of licensure, and to assure that the variance between revenues and expenditures for the Appraiser Board does not exceed 10% in any biennium as required by § 54.1-113 of the Code of

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Virginia.

**Substance:** These amendments will reduce the number of classroom hours required for certified residential appraisers from 165 to 120 hours. This reduction is consistent with the federal minimum standards.

A trainee licensure classification is being created in accordance with federal guidelines to afford individuals the opportunity to satisfy the precensure requirement of 2,000 hours of appraisal work experience.

The proposed regulations will allow a 30-day grace period within which appraisers may renew their license without penalty and will create a three-month reinstatement period within which appraisers may renew their licensure without requalification. Such grace and reinstatement periods are consistent with other licensing programs in Virginia.

The proposed amendments will incorporate existing board policy into the regulations (such as the required documentation of work experience and acceptable precensure and continuing educational courses).

The proposed regulations will require that prior to licensure renewal, individuals must complete a four-hour (which is an increase of one hour) course on recent developments in appraisal law and regulation, and every six years, must complete the 15-hour USPAP course required for original licensure.

**Issues:** Issues considered by the board include:

1. The specific needs and consideration of all regulated persons/entities who appraise real property in this state.
2. Requirements of state and federal law that affect the administration and enforcement of this regulation.

There are no potential disadvantages to the regulants or the public. No localities are affected by the proposed changes.

**Estimated impact:** There are approximately 2,000 individuals and 500 businesses who will be affected by these proposed regulatory changes. The economic and regulatory impact of the proposed changes on these regulants is estimated to be minimal. Costs of implementation of the revisions are estimated to be limited to the cost of printing and mailing the proposed and the final regulations to those holding licenses and certifications and those on the public participation guidelines list. That total is \$4,900. The proposed changes to the appraisers' licensing fee structure are recommended to ensure sufficient revenues are available to cover administrative costs, to address a fee inequity for licensed appraisers upgrading current licensure classification, and to establish some new fees (indicated by \*\* in the proposed fee schedule).

Under the new fee structure, a copy of USPAP will be provided to every individual licensee at renewal or when originally licensed. The fees for temporary appraisal licensure are being reduced to reflect the project-specific nature of these licenses. There are fees proposed for bad checks and duplicate wall certificates. These costs are absorbed currently by the board and the department.

## Proposed Changes in Appraiser Fee Schedule

<u>Fee Type</u>	<u>Existing Fee</u>	<u>Proposed Fee</u>	<u>Change in Fee</u>
<u>Original Application</u>			
Business	\$ 75	\$100	+ \$25
Individual	\$170=-	\$191/=	+ \$21
Temporary	\$120	\$ 50	- \$70
Trainee**	n/a	\$ 96/	new
Upgrade of Licensure	\$120	\$ 70	- \$50
Instructor	\$200	\$135	- \$65
Course Approval	\$200	\$135	- \$65
<u>Renewal*</u>			
Business	\$ 75	\$ 70	- \$ 5
Individual	\$165=-	\$121/=	- \$44
Trainee**	n/a	\$ 71/	new
Instructor	\$200	\$135	- \$65
<u>Reinstatement*</u>			
Business**	n/a	\$100	new
Individual**	n/a	\$171/=	new
Trainee**	n/a	\$121/	new
Instructor**	n/a	\$270	new
<u>Miscellaneous Charges</u>			
Duplicate Wall Certificate	\$ 0	\$25	+ \$25
Bad Check	\$ 0	\$25	+ \$25
Certification of Licensure	\$25	\$ 0	none***

\*Licensees will be required to pay a renewal fee or reinstatement fee

\*\*Is not permitted under existing regulations

\*\*\*This fee will continue to be charged but will not be included in regulation

/Individuals will receive a copy of USPAP when the proposed fee is paid

=Includes a National Registry fee of \$50

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Projected Expenditures, 1992-94 Biennium	\$287,115
Projected Revenues, 1992-94 Biennium	<u>\$400,100</u>
Projected revenue balance @ 6/30/94 (carryforward)	\$112,985
<u>Under New Fee Structure</u>	
Projected Expenditures, 1994-96 Biennium	\$396,558
Projected Revenues, 1994-96 Biennium	<u>\$314,959</u>
Biennium Surplus/(Shortfall)	(\$ 81,599)
Cumulative Projected Revenue Balance @ 6/30/96	\$ 31,386
Projected % Revenue Balance @ 6/30/96	9.96%

## Summary:

*The Virginia Real Estate Appraiser Board is proposing to amend their existing regulations to reflect current board policies and prevailing federal guidelines and standards, as well as to permit a renewal grace period and reinstatement period for previous licensees. The fees charged to regulants are also being modified in accordance with § 54.1-113 of the Code of Virginia. Most of the fees currently being charged will be reduced with some new fees being added to reflect the proposed changes to the regulations.*

*The proposed regulations will reduce the number of classroom hours required for certified residential appraisers from 165 to 120 hours. This reduction is consistent with the federal minimum standards.*

*A trainee licensure classification is being created in accordance with federal guidelines to afford individuals the opportunity to satisfy the prelicensure requirement of 2,000 hours of appraisal work experience.*

*The proposed regulations will allow a 30-day grace period within which appraisers may renew their license without penalty and will create a three-month reinstatement period within which appraisers may renew their licensure without requalification. Such grace and reinstatement periods are consistent with other licensing programs in Virginia.*

*Existing board policy will be incorporated into the regulations, such as the required documentation of work experience and acceptable prelicensure and continuing educational courses.*

*The proposed regulations will require that prior to license renewal, individuals must complete a four-hour (which is an increase of one hour) course on recent developments in appraisal law and regulation and, every six years, must complete the 15-hour USPAP course required for original licensure.*

VR 583-01-03. Real Estate Appraiser Board Rules and Regulations.

## PART I. GENERAL.

### § 1.1. Definitions.

The following words and terms, when used in these regulations, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

*"Accredited colleges, universities, junior and community colleges"* means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers.

*"Adult distributive or marketing education programs"* means those programs offered at schools approved by the Virginia Department of Education or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

*"Analysis"* means a study of real estate or real property other than the estimation of value.

*"Appraisal Foundation"* means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing and promoting such standards.

*"Appraisal subcommittee"* means the designees of the heads of the federal financing institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended.

*"Appraiser"* means any person who, for valuable consideration or with the intent or expectation of receiving the same from another, engages in real estate appraisal activity on any type of property.

*"Appraiser classification"* means any category of appraiser which the board creates by designing criteria for qualification for such category and by designing the scope of practice permitted for such category.

*"Appraiser Qualification Board"* means the board created by the Appraisal Foundation to establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

*"Appraiser trainee"* means an individual who is licensed as an appraiser trainee to appraise those properties which the supervising appraiser is permitted to appraise.



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*"Business entity"* means for the purpose of these regulations any corporation, partnership, association or other organization business entity under which appraisal services are performed.

*"Certified general real estate appraiser"* means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser.

*"Certified instructor"* means an individual holding an instructor certificate issued by the Real Estate Appraiser Board to act as an instructor.

*"Certified residential real estate appraiser"* means an individual who meets the requirements for licensure for the appraisal of any residential real estate or real property of one to four residential units regardless of transaction value or complexity. Certified residential real estate appraisers may also appraise nonresidential properties with a transaction value up to \$250,000.

*"Classroom hour"* means 50 minutes out of each 60-minute segment. The prescribed number of classroom hours includes time devoted to tests which are considered to be part of the course.

*"Experience"* as used in these regulations includes but is not limited to experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate counseling, highest and best use analysis, feasibility analysis/study, and teaching of appraisal courses.

For the purpose of these regulations experience has been divided into five major categories: (i) fee and staff appraisal, (ii) ad valorem appraisal, (iii) review appraisal, (iv) real estate consulting, and (v) teaching of real estate courses.

1. *"Fee/staff appraiser experience"*: *"Fee/staff appraiser experience"* means experience acquired as either a sole appraiser or as a cosigner.

Sole appraiser experience is experience obtained by an individual who makes personal inspections of real estate, assembles and analyzes the relevant facts, and by the use of reason and the exercise of judgment, forms objective opinions and prepares reports as to the market value or other properly defined value of identified interests in said real estate.

Cosigner appraiser experience is experience obtained by an individual who signs an appraisal report prepared by another, thereby accepting full responsibility for the content and conclusions of the appraisal.

To qualify for fee/staff appraiser experience, an

individual must have prepared written appraisal reports which meet minimum standards. For appraisal reports dated prior to July 1, 1991, these minimum standards include the following ; where applicable (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions) :

- a. An adequate identification of the real estate and the interests being appraised;
- b. The purpose of the report, date of value, and date of report;
- c. A definition of the value being appraised;
- d. A determination of highest and best use;
- e. An estimate of land value;
- f. The usual valuation approaches for the property type being appraised or the reason for excluding any of these approaches;
- g. A reconciliation and conclusion as to the property's value;
- h. Disclosure of assumptions or limiting conditions, if any; and
- i. Signature of appraiser.

For appraisal reports dated subsequent to July 1, 1991, the minimum standards for written appraisal reports are those as prescribed in Standard 2 of the Uniform Standards of Professional Appraisal Practice in the 1990 edition or the edition in effect at the time of the reports' preparation.

2. *"Ad valorem tax appraisal experience"* means experience obtained by an individual who assembles and analyzes the relevant facts, and who correctly employs those recognized methods and techniques that are necessary to produce and communicate credible appraisals within the context of the real property tax laws. Ad valorem tax appraisal experience may be obtained either through individual property appraisals or through mass appraisals as long as applicants under this category of experience can demonstrate that they are using techniques to value real property similar to those being used by fee/staff appraisers and that they are effectively utilizing the appraisal process.

To qualify for ad valorem tax appraisal experience for individual property appraisals, an individual must have prepared written appraisal reports which meet minimum standards. For appraisal reports dated prior to July 1, 1991, these minimum standards include the following ; where applicable (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions) :

- a. An adequate identification of the real estate and the interests being appraised;
- b. The effective date of value;
- c. A definition of the value being appraised if other than fee simple;
- d. A determination of highest and best use;
- e. An estimate of land value;
- f. The usual valuation approaches for the property type being appraised or the reason for excluding any of these approaches;
- g. A reconciliation and conclusion as to the property's value;
- h. Disclosure of assumptions or limiting conditions, if any.

For appraisal reports dated subsequent to July 1, 1991, the minimum standards for written appraisal reports are those as prescribed in the Uniform Standards of Professional Appraisal Practice in the 1990 edition or the edition in effect at the time of the reports' preparation.

To qualify for ad valorem tax appraisal experience for mass appraisals, an individual must have prepared mass appraisals or have documented mass appraisal files which meet minimum standards. For mass appraisals dated prior to July 1, 1991, these minimum standards include the following ; *where applicable (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions) :*

- a. An adequate identification of the real estate and the interests being appraised;
- b. The effective date of value;
- c. A definition of the value being appraised if other than fee simple;
- d. A determination of highest and best use;
- e. An estimate of land value;
- f. Those recognized methods and techniques that are necessary to produce a credible appraisal.

For mass appraisal reports dated subsequent to July 1, 1991, the minimum standards for these appraisal reports are those as prescribed in Standard 6 of the Uniform Standards of Professional Appraisal Practice in the 1990 edition or the edition in effect at the time of the reports' preparation.

In addition to the preceding, to qualify for ad valorem

appraisal experience, the applicant's experience log must be attested to by the applicant's supervisor.

3. "Reviewer experience" means experience obtained by an individual who examines the reports of appraisers to determine whether their conclusions are consistent with the data reported and other generally known information. An individual acting in the capacity of a reviewer does not necessarily make personal inspection of real estate, but does review and analyze relevant facts assembled by fee/staff appraisers, and by the use of reason and exercise of judgment, forms objective conclusions as to the validity of fee/staff appraisers' opinions. ~~In cases where~~ Reviewer experience is the sole category of experience being claimed by an individual, ~~shall not constitute more than 1,000 hours of total experience claimed and at least 25% 50% of the required 2,000 hours (500 hours) review experience claimed must be~~ in field review wherein the individual has personally inspected the real estate property which is the subject of the review.

To qualify for reviewer experience, an individual must have prepared written reports recommending the acceptance, revision, or rejection of the fee/staff appraiser's opinions, which written reports must meet minimum standards. For appraisal reviews dated prior to July 1, 1991, these minimum standards include the following ; *where applicable (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions) :*

- a. An identification of the report under review, the real estate and real property interest being appraised, the effective date of the opinion in the report under review, and the date of the review;
- b. A description of the review process undertaken;
- c. An opinion as to the adequacy and appropriateness of the report being reviewed, and the reasons for any disagreement;
- d. An opinion as to whether the analyses, opinions, and conclusions in the report under review are appropriate and reasonable, and the development of any reasons for any disagreement;
- e. Signature of reviewer.

For appraisal review reports dated subsequent to July 1, 1991, the minimum standards for these appraisal reports are those as prescribed in Standard 3 of the Uniform Standards of Professional Appraisal Practice in the 1990 edition or the edition in effect at the time of the reports' preparation.

Signing as "Review Appraiser" on an appraisal report prepared by another will not qualify an individual for experience in the reviewer category. Experience

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gained in this capacity will be considered under the Cosigner subcategory of Fee/staff appraiser experience.

4. "Real estate counseling experience" means experience obtained by an individual who assembles and analyzes the relevant facts and by the use of reason and the exercise of judgment, forms objective opinions concerning matters other than value estimates relating to real estate *property*. Real estate counseling experience includes, but is not necessarily limited to, the following:

Absorption Study	Ad Valorem Tax Study
Annexation Study	Assemblage Study
Assessment Study	Condominium Conversion Study
Cost-Benefit Study	Cross Impact Study
Depreciation/Cost Study	Distressed Property Study
Economic Base Analysis	Economic Impact Study
Economic Structure Analysis	Eminent Domain Study
Feasibility Study	Highest and Best Use Study
Impact Zone Study	Investment Analysis Study
Investment Strategy Study	Land Development Study
Land Suitability Study	Land Use Study
Location Analysis Study	Market Analysis Study
Market Strategy Study	Market Turning Point Analysis
Marketability Study	Portfolio Study
Rehabilitation Study	Remodeling Study
Rental Market Study	Right of Way Study
Site Analysis Study	Utilization Study
Urban Renewal Study	Zoning Study

To qualify for real estate counseling experience, an individual must have prepared written reports which meet minimum standards. For real estate counseling reports dated prior to July 1, 1991, these minimum standards include the following; ~~where applicable (if any item is not applicable, the applicant shall so state the reasons for the exclusions)~~ :

- a. A definition of the problem;
- b. An identification of the real estate under consideration (if any);
- c. Disclosure of the client's objective;
- d. The effective date of the consulting assignment and date of report;
- e. The information considered, and the reasoning that supports the analyses, opinions, and conclusions;
- f. Any assumptions and limiting conditions that affect the analyses, opinions, and conclusions;
- g. Signature of real estate counselor.

For real estate counseling reports dated subsequent to July 1, 1991, the minimum standards for these appraisal reports are those as prescribed in Standard 4 of the Uniform Standards of Professional Appraisal Practice in the 1990 edition ~~or the edition in effect at the time of the reports' preparation~~. Real estate counseling shall not constitute more than ~~1,000~~ 500

hours of experience for any type of appraisal license.

5. "Teaching experience" means experience obtained by an individual in the instruction of real estate appraisal or real estate related seminars/courses as well as in the authorship of real estate appraisal and analysis publications. Experience in these areas will be considered on the following basis:

a. Seminar and course instructions: The number of approved hours is based on the published number of classroom hours stated in the official college catalog or similar publication of other educational bodies or professional organizations.

b. Authorship: Authorship of published books, journal articles and theses may count toward an applicant's experience credit as follows:

(1) Topic must relate to real estate valuation or analysis;

(2) A book will be credited 150 hours, a journal article will be credited 20 hours, and a thesis will be credited 50 hours.

Credit may be earned only once for instruction of courses having substantially equivalent content. In cases where there is more than one instructor, credit will be pro-rated based on each instructor's participation.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of any noncomplex, residential real estate or real property of one to four residential units, including federally related transactions, where the transaction value is less than \$1 million. Licensed residential real estate appraisers may also appraise noncomplex, nonresidential properties with a transaction value up to \$250,000.

"Licensee" means any individual holding a license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, ~~or~~ licensed residential real estate appraiser, ~~or~~ appraiser trainee as defined, respectively, in § 54.1-2009 of the Code of Virginia and in these regulations.

"Local, state or federal government agency, board or commission" means an entity established by any local, federal or state government to protect or promote the health, safety and welfare of its citizens.

"Proprietary school" means a privately owned school offering appraisal or appraisal related courses approved by the board.

"Provider" means accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government

agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

*"Real estate appraisal activity"* means the act or process of valuation of real property or preparing an appraisal report.

*"Real estate appraisal"* or *"real estate related organization"* means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States.

*"Reciprocity agreement"* means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

*"Registrant"* means any corporation, partnership, association or other ~~organization~~ business entity which provides appraisal services and which is registered with the Real Estate Appraiser Board in accordance with § 54.1-2011 E of the Code of Virginia.

*"Reinstatement"* means having a license or registration restored to effectiveness after the expiration date has passed.

*"Renewal"* means continuing the effectiveness of a license or registration for another period of time.

*"Sole proprietor"* means any individual, but not a corporation, partnership or association, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 56.1-69 through 59.1-76 of the Code of Virginia.

*"Substantially equivalent"* is a ~~description~~ for any educational course or seminar, experience, or examination taken in this or another jurisdiction which is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in these regulations and Chapter 20.1 of Title 54.1 of the Code of Virginia for licensure and renewal.

*"Supervising appraiser"* means any individual holding a license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, or licensed residential real estate appraiser who supervises any unlicensed person acting as a real estate appraiser or an appraiser trainee as specified in these regulations.

*"Transaction value"* means the monetary amount of a transaction which may require the services of a certified or licensed appraiser for completion. The transaction value is not always equal to the market value of the real property interest involved. For loans or other extensions of credit, the transaction value equals the amount of the loan or other extensions of credit. For sales, leases, purchases and investments in or exchanges of real property, the

transaction value is the market value of the real property interest involved. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of the loan or the market value of real property calculated with respect to each such loan or interest in real property.

*"Uniform Standards of Professional Appraisal Practice"* means those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

*"Valuation"* means an estimate of the value of real property.

*"Valuation assignment"* means an engagement for which an appraiser is employed or retained to give an analysis, opinion or conclusion that results in an estimate of the value of an identified parcel of real property as of a specified date.

*"Waiver"* means the voluntary, intentional relinquishment of a known right.

## PART II. ENTRY.

### § 2.1. Requirement for registration.

A business entity seeking to provide appraisal services shall register with the board by completing an application furnished by the board describing the location, nature and operation of its practice, and the name and address of the registered agent, an associate, or a partner of the business entity. Along with a completed application form, domestic corporations shall provide a copy of the Certificate of Incorporation as issued by the State Corporation Commission, foreign (out-of-state) corporations shall provide a copy of the Certificate of Authority from the State Corporation Commission, partnerships shall provide a copy of the certified Partnership Certificate, and other business entities trading under a fictitious name shall provide a copy of the certificate filed with the clerk of the court where business is to be conducted.

### § 2.2. General qualifications for licensure.

Every applicant to the Real Estate Appraiser Board for a certified general, certified residential, or licensed residential real estate appraiser license shall meet the following qualifications:

1. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a licensed real estate appraiser in such a manner as to safeguard the interests of the public.
2. The applicant shall meet the current educational and experience requirements and submit a license application to the Department of Commerce Professional and Occupational Regulation or its agent

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prior to the time the applicant is approved to take the licensing examination. Applications received by the department or its agent must be complete within 12 months of the date of the receipt of the license application and fee by the Department of Commerce Professional and Occupational Regulation or its agent.

3. The applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

4. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

5. The applicant shall be at least 18 years old.

6. *The applicant shall have successfully completed 75 hours for the licensed residential classification, 120 hours for the certified residential classification, and 165 hours for the certified general classification, of approved real estate appraisal courses, including a course of at least 15 hours on the Uniform Standards of Professional Appraisal Practice, from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The classroom hours required for the licensed residential real estate appraiser may include the classroom hours required for the appraiser trainee. The classroom hours required for the certified residential real estate appraiser may include the classroom hours required for the appraiser trainee or the licensed real estate appraiser. The classroom hours required for the certified general real estate appraiser may include the classroom hours required for the appraiser trainee, the licensed residential real estate appraiser, or the certified residential real estate appraiser.*

*All applicants for licensure as a certified general real estate appraiser must complete an advanced level appraisal course of at least 30 classroom hours in the appraisal of nonresidential properties.*

7. *The applicant shall have a minimum of 24 months and 2,000 hours experience as a real estate appraiser. The maximum number of appraisal credit hours which may be awarded in a 12-month period is 1,000*

*hours. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience. The applicant shall execute an affidavit as part of the application for licensure attesting to his experience in the field of real estate appraisal. All applicants must submit, upon application, sample appraisal reports as specified by the board. In addition, all experience must be supported by adequate written reports or file memoranda which shall be made available to the board upon request.*

*For all applicants for a certified general real estate appraiser license, at least 50% of the appraisal experience required (1,000 hours) must be in nonresidential appraisal assignments and include assignments which demonstrate the use and understanding of the income approach. An applicant whose nonresidential appraisal experience is predominately in such properties which do not require the use of the income approach may satisfy this requirement by performing two or more appraisals on properties in association with a certified general appraiser which include the use of the income approach.*

8. *Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board.*

6. 9. Applicants for licensure who do not meet the requirements set forth in subdivisions 3 and 4 of this section may be approved for licensure following consideration of their application by the board.

## § 2-3. Additional qualifications for licensure of licensed residential real estate appraisers.

An applicant for a license as a licensed residential real estate appraiser shall meet the following educational, experience and examination requirements in addition to those set forth in § 2-2 of these regulations:

1. The applicant shall have successfully completed 75 classroom hours of approved real estate appraisal courses from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

2. The applicant shall have a minimum of two calendar years and 2,000 hours experience as an appraiser. The maximum number of appraisal credit hours which may be awarded in one calendar year is 1,000 hours. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience. The applicant shall execute an affidavit as a part of the application for licensure

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attesting to his experience in the field of real estate appraisal. This experience must be supported by adequate written reports or file memoranda which shall be made available to the board upon request.

3. Within 12 months after being approved by the board to take the licensed residential real estate appraiser examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board.

## § 2.4. Additional qualifications for licensure for certified residential real estate appraisers.

An applicant for a license as a certified residential real estate appraiser shall meet the following educational, experience and examination requirements in addition to those set forth in § 2.2 of these regulations:

1. The applicant shall have successfully completed 105 classroom hours of approved real estate appraisal courses from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies; boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations or other providers approved by the board. The 105 classroom hours may include the 75 classroom hours required for the licensed residential real estate appraiser.

After January 1, 1994, applicants must complete 165 classroom hours of real estate appraisal courses which shall include coverage of required subjects.

2. The applicant shall have a minimum of two calendar years and 2,000 hours experience as a real estate appraiser. The maximum number of appraisal credit hours which may be awarded in one calendar year is 1,000 hours. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience. The applicant shall execute an affidavit as a part of the application for licensure attesting to his experience in the field of real estate appraisal. This experience must be supported by adequate written reports or file memoranda which shall be made available to the board upon request.

3. Within 12 months after being approved by the board to take the certified residential real estate appraiser examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board.

## § 2.5. Additional qualifications for licensure for certified general real estate appraisers.

An applicant for a license as a certified general real

estate appraiser shall meet the following educational, experience, and examination requirements in addition to those set forth in § 2.2 of these regulations:

1. The applicant shall have successfully completed 165 classroom hours of approved real estate appraisal courses from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies; boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The 165 classroom hours may include the 75 classroom hours required for the licensed residential real estate appraiser, or the 105 classroom hours required for the certified residential real estate appraiser.

All applicants for licensure as a certified general real estate appraiser must complete an advanced level appraisal course of at least 30 classroom hours in the appraisal of nonresidential properties.

2. The applicant shall have a minimum of two calendar years and 2,000 hours experience as a real estate appraiser. The maximum number of appraisal credit hours which may be awarded in one calendar year is 1,000 hours. Hours may be treated as cumulative in order to achieve the necessary 2,000 hours of appraisal experience. For all applicants for a certified general real estate appraiser license, at least 50% of the appraisal experience required (1,000 hours) must be in nonresidential appraisal assignments.

The applicant shall execute an affidavit as a part of the application for licensure attesting to his experience in the field of real estate appraisal. This experience must be supported by adequate written reports or file memoranda which shall be made available to the board upon request.

3. Within 12 months after being approved by the board to take the certified general real estate appraiser examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board.

## § 2.6. 2.3. Qualifications for licensure by reciprocity.

Every applicant to the Real Estate Appraiser Board for a license by reciprocity shall have met the following qualifications:

1. An individual who is currently licensed or certified as a real estate appraiser in another jurisdiction may obtain a Virginia real estate appraiser license by providing documentation that the applicant has met educational, experience and examination requirements that are substantially equivalent to those required in Virginia for the appropriate level of licensure. All

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reciprocal applicants shall be required to pass the Virginia appraiser law and regulation section of the licensing examination prior to licensure.

2. The applicant shall be at least 18 years of age.

3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.

4. The applicant shall be in good standing as a licensed or certified real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

5. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a licensed real estate appraiser in such a manner as to safeguard the interests of the public.

6. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

7. Applicants for licensure who do not meet the requirements set forth in subdivisions 4 and 6 of this section may be approved for licensure following consideration by the board.

§ 2.7. ~~2.4. Qualifications for temporary licensure as a certified general real estate appraiser, certified residential real estate appraiser or licensed residential real estate appraiser .~~

An individual who is currently licensed or certified as a real estate appraiser in another jurisdiction may obtain a temporary Virginia real estate appraiser's license as required by Section 1121 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

The appraiser's *permanent* certification or license issued by another state shall be recognized as equivalent to a Virginia license provided that:

1. The appraiser's business is of a temporary nature, and is limited to one specific assignment *not* to exceed 12 months. The temporary assignment must be

*complete prior to the expiration date of the permanent certification or license issued by another state .*

2. The education, experience and general examination completed in the jurisdiction of original licensure is deemed to be substantially equivalent to those required for the appropriate level of licensure in Virginia.

3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.

4. The applicant shall be in good standing as a licensed or certified real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

5. The applicant shall be of good moral character, honest, truthful, and competent to transact the business of a real estate appraiser in such a manner as to safeguard the interest of the public.

6. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

7. Applicants for licensure who do not meet the requirements set forth in subdivisions 4 and 6 of this section may be approved for licensure following consideration by the board.

8. The applicant shall be at least 18 years of age.

Applicants for temporary licensure shall verify the above information on an application form provided by the board. A temporary license cannot be renewed.

§ 2.5. *Qualifications for licensure as an appraiser trainee.*

*An applicant for licensure as an appraiser trainee shall meet the following educational, experience, and examination requirements in addition to those set forth in §§ 2.2 1 through 2.2 5 and 2.2 9.*

*1. There is no examination requirement for the appraiser trainee classification.*

2. The applicant shall have successfully completed 75 hours of approved real estate appraisal courses from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The classroom hours shall include 15 hours relative to the Uniform Standards of Professional Appraisal Practice.

3. There is no experience requirement for the appraiser trainee classification.

4. Responsibilities of supervising appraisers include:

a. The appraiser trainee shall be subject to direct supervision by a supervising appraiser who shall be state licensed or certified in good standing.

b. The supervising appraiser shall be responsible for the training and direct supervision of the appraiser trainee by:

(1) Accepting responsibility for the appraisal report by signing and certifying the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(2) Reviewing the appraiser trainee appraisal report(s); and

(3) Personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of the Uniform Standards of Professional Appraisal Practice for the property type.

c. The appraiser trainee is permitted to have more than one supervising appraiser.

§ 2-8. 2.6. Requirement for the certification of appraisal education instructors.

Pursuant to the mandate of Title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, and § 54.1-2013 of the Code of Virginia, ~~instructing appraisal educational offerings to satisfy the prelicensure education qualifications for licensure of real estate appraisers shall be certified by the board. Instructors employed or contracted by accredited colleges, universities, junior and community colleges, or adult distributive or marketing education programs are not required to be certified by the board. Instructors teaching prelicense educational offerings who are not employed or contracted by accredited colleges, universities, junior and community colleges, adult distributive or marketing education programs are required to be certified by the board. Instructors teaching the required continuing education course on recent developments in federal, state~~

~~and local real estate appraisal law and regulation shall also be certified by the board and, at the board's discretion, may be required to attend training sessions sponsored by the board.~~

§ ~~2-9~~ 2.7. Qualifications for the certification of instructors.

Qualifications for certification:

The applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia, and:

1. Baccalaureate degree in real estate, economics, finance or business, and have satisfied the state appraisal licensing educational requirements for the level being instructed; or

2. Baccalaureate degree, an appraisal license which has been in good standing for at least two years, and a current certified residential or certified general appraisal license appropriate for the level being instructed; or

3. Seven years of ~~discipline-free~~ active experience acquired in the appraisal field in the past 10 years, an appraisal license which has been in good standing for at least two years, and a current certified residential or certified general appraisal license appropriate for the level being instructed.

§ ~~2-10~~ 2.8. Application and registration fees.

There will be no pro rata refund of these fees to licensees who resign or upgrade to a higher license or to licensees whose licenses are revoked or surrendered for other causes. All application fees for licenses and registrations are nonrefundable.

1. Application fees for registrations, certificates and licenses are as follows:

Registration of business entity .....	<del>\$ 75</del> \$100
Certified General Real Estate Appraiser ...	\$120 \$141
Temporary Certified General Real Estate Appraiser .....	\$120 \$ 50
Certified Residential Real Estate Appraiser	\$120 \$141
Temporary Certified Residential Real Estate Appraiser .....	\$120 \$ 50
Licensed Residential Real Estate Appraiser	\$120 \$141
Temporary Licensed Residential	



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Real Estate Appraiser .....	<del>\$120</del> \$ 50
Appraiser Trainee .....	\$ 96
Upgrade of license .....	\$ 70
Certification of licensure .....	<del>\$ 26</del>
Instructor Certification .....	<del>\$200</del> \$135
Bad check penalty .....	\$ 25
Duplicate wall certificate .....	\$ 25

*Application fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a \$21 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.*

**2. Examination fees. Examination fees are identical for all appraiser licensing examinations.**

Entire examination .....	\$95
General or Residential Section only .....	\$85
Rules and Regulations Section only .....	\$50

*These examination fees are subject to fees charged to the department by an outside vendor competitively negotiated and contracted for in compliance with the Virginia Public Procurement Act. Fees may be adjusted and charged to the candidate in accordance with this contract.*

**Examination fee to take the General or Residential section, and the State Laws and Regulations section .-**  
\$95

**Examination fee to take the General or Residential section only .....**  
\$85

**Examination fee to take the State Rules and Regulations section only .....**  
\$50

**3. National Registry Fee Assessment for all permanent license applicants .....** \$50

To be assessed of each applicant in accordance with Section 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. *This fee may be adjusted and charged to the applicant in accordance with the Act. If the applicant fails to qualify for licensure, then this assessment fee will be refunded.*

**PART III.  
RENEWAL OF  
LICENSE/REGISTRATION/CERTIFICATION.**

§ 3.1. Renewal required.

Licenses issued under these regulations for certified general real estate appraisers, certified residential real estate appraisers and licensed residential real estate appraisers and registrations issued for business entities shall expire two years from the last day of the month in which they were issued, as indicated on the license or registration. Certifications issued under these regulations for instructors shall expire two years from the last day of the month in which they were issued, as indicated on the certification.

§ 3.2. Qualifications for renewal.

**A. Continuing education requirements.** As a condition of renewal, and under § 54.1-2014 of the Code of Virginia, all certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers, resident or nonresident, shall be required to complete continuing education courses satisfactorily within each licensing term : *as follows:*

**1. Continuing education requirements for certified general real estate appraisers.**

**a. 1. Certified general** All real estate appraisers must satisfactorily complete continuing education courses or seminars offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations of not less than 20 classroom hours during each licensing term.

**b. Certified general 2.** All real estate appraisers may also satisfy continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes including, but not limited to teaching, program development, or authorship of textbooks.

**e. 3. Three Four** of the classroom hours completed to satisfy the continuing education requirements shall be a course approved by the board on recent developments in federal, state and local real estate appraisal law and regulation *and the Uniform Standards of Professional Appraisal Practice .*

*B. In addition to the continuing education requirements specified in subsection A of this section all applicants for renewal shall complete a 15-hour course in the Uniform Standards of Professional Appraisal Practice once every six years.*

## 2. Continuing education requirements for certified residential real estate appraisers:

a. Certified residential real estate appraisers must satisfactorily complete continuing education courses or seminars offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies; boards of commissions; proprietary schools; or real estate appraisal or real estate related organizations of not less than 20 classroom hours during each licensing term.

b. Certified residential real estate appraisers may also satisfy continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes including but not limited to teaching, program development, or authorship of textbooks.

c. Three of the classroom hours completed to satisfy the continuing education requirements shall be a course approved by the board on recent developments in federal, state and local real estate appraisal law and regulation.

## 3. Continuing education requirements for licensed residential real estate appraisers:

a. Licensed residential real estate appraisers must satisfactorily complete continuing education courses or seminars offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies; boards of commissions; proprietary schools; or real estate appraisal or real estate related organization of not less than 20 classroom hours during each licensing term.

b. Licensed residential real estate appraisers may also satisfy continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes including, but not limited to teaching, program development, or authorship of textbooks.

c. Licensed residential real estate appraisers must satisfactorily complete a three classroom hour continuing education course approved by the board on recent developments in federal, state and local real estate appraisal law and regulation.

B. C. Applicants for renewal of a license shall meet the standards for entry as set forth in subdivisions 1, 3 and 4 of § 2.2 of these regulations.

C. D. Applicants for the renewal of a registration shall

meet the requirement for registration as set forth in § 2.1.

D. E. Applicants for the renewal of a certificate *as an instructor* shall meet the standards for entry as set forth in § 2.9 2.7.

## § 3.3. Procedures for renewal.

A. The board will mail a renewal application form to the licensee and certificate holder at the last known home address and to the registered firm or at the last known business address. This form shall outline the procedures for renewal. Failure to receive the renewal application form shall not relieve the licensee, certificate holder or the registrant of the obligation to renew.

B. Prior to the expiration date shown on the license or registration, each licensee, certificate holder or registrant desiring to renew the license or registration shall return to the board the completed renewal application form and the appropriate renewal and registry fees as outlined in § 3.4 of these regulations.

C. The date on which the renewal application form and the appropriate fees are received by the Department of Commerce Professional and Occupational Regulation or its agent will determine whether the licensee, certificate holder or registrant is eligible for renewal. If either the renewal application form or renewal fee, including the registry fee, is *not* received by the Department of Commerce Professional and Occupational Regulation or its agent *after within 30 days* of the expiration date, the license, certification or registration *cannot be renewed and the licensee, certificate holder or registrant must reinstate his license by meeting all requirements listed in § 3.2 of these regulations and pay a reinstatement fee as specified in § 3.4 of these regulations. Three months after the expiration date on the license, certificate or registration, reinstatement is no longer possible. To resume practice, the former licensee, certificate holder, or registrant shall reapply for licensure as a new applicant, meeting current education, examination and experience requirements.*

## § 3.4. Fees for renewal and reinstatement .

A. All fees are nonrefundable.

A. B. National registry fee assessment.

In accordance with the requirements of Section 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, \$50 of the biennial renewal or reinstatement fee assessed for all certified general real estate appraisers, certified residential and licensed residential real estate appraisers shall be submitted to the Appraisal Subcommittee. **All remaining fees for renewal are nonrefundable. The registry fee may be adjusted in accordance with the Act and charged to the licensee.**

*Renewal and reinstatement fees for a certified general real estate appraiser, a certified residential real estate*

# Proposed Regulations

appraiser, a licensed residential real estate appraiser and an appraiser trainee include a \$21 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

**B. C. Renewal fees are as follows:**

Certified general real estate appraiser	.....	\$165	\$121
Certified residential real estate appraiser	..	\$165	\$121
Licensed residential real estate appraiser	..	\$165	\$121
Appraiser trainee	.....	\$	71
Registered business entity	.....	\$ 75	\$ 70
Certified instructor	.....	\$200	\$135

**D. Reinstatement fees are as follows:**

Certified general real estate appraiser	.....	\$171
Certified residential real estate appraiser	.....	\$171
Licensed residential real estate appraiser	.....	\$171
Appraiser Trainee	.....	\$121
Registered business entity	.....	\$100
Certified instructor	.....	\$270

**§ 3.5. Status of licensee during the period prior to reinstatement.**

A. When a license is reinstated, the licensee shall continue to have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

B. A licensee or certificate holder who is reinstated shall be regarded as having been continuously licensed without interruption. Therefore, the licensee or certificate holder shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period. A licensee or certificate holder who is not reinstated shall be regarded as unlicensed from the expiration date of the license forward. Nothing in these regulations shall divest the board of its authority to discipline a licensee or certificate holder for a violation of the law or regulations during the period of time for which the appraiser was licensed.

**§ 3.6. Board discretion to deny renewal or reinstatement .**

The board may deny renewal or reinstatement of a

license, certification or registration for the same reasons as it may refuse initial licensure or registration or discipline a current licensee or registrant.

**PART IV.  
STANDARDS.**

**§ 4.1. Grounds for disciplinary action.**

The board has the power to fine any licensee, registrant or certificate holder, to place any licensee, registrant or certificate holder on probation, and to suspend or revoke any license, registration or certification issued under the provisions of Chapter 20.1 of Title 54.1 of the Code of Virginia and the regulations of the board, in accordance with §§ 54.1-201(7), 54.1-202 and the provisions of the Administrative Process Act, Chapter 1.1:1 of Title 9 of the Code of Virginia, when any licensee, registrant or certificate holder has been found to have violated or cooperated with others in violating any provision of Chapter 20.1 of Title 54.1 of the Code of Virginia, any relevant provision of the Uniform Standards of Professional Appraisal Practice as developed by the Appraisal Standards Board of the Appraisal Foundation, or any regulation of the board. An appraiser trainee shall be subject to disciplinary action for his actions even if acting under the supervision of a supervising appraiser.

**§ 4.2. Standards of ethical conduct.**

In obtaining a real estate appraiser license and performing a real estate appraisal, a licensee shall comply with the Ethics Provisions of the Uniform Standards of Professional Appraisal Practice and the following standards of ethical conduct:

1. All applicants for licensure shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instruction communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board or a testing service acting on behalf of the board with regard to conduct at the examination shall be grounds for denial of a license.
2. A licensee, certificate holder or registrant shall not obtain or attempt to obtain a license, certification or registration by false or fraudulent representation.
3. A licensee, registrant or certificate holder shall not make any misrepresentation.

**§ 4.3. Standards of professional practice.**

A. The provisions of subsections C through J of this section shall not apply to local, state and federal employees performing in their official capacity.

**A. B. Maintenance of licenses.**

# Proposed Regulations

The board shall not be responsible for the failure of a licensee, registrant, or certificate holder to receive notices, communications and correspondence.

## 1. Change of address.

a. ~~Certified general All licensed~~ real estate appraisers, ~~certified residential real estate appraisers and licensed residential real estate appraisers~~ appraiser trainees, and certified instructors shall at all times keep the board informed in writing of their current home address and shall report any change of address to the board within 30 days of such change .

b. Registered real estate appraisal business entities shall at all times keep the board informed in writing of their current business address and shall report any change of address to the board within 30 days of such change .

c. ~~Certified instructors as defined in §§ 2.8 and 2.9 of these regulations, shall at all times keep the board informed in writing of their current home address.~~

## 2. Change of name.

a. ~~Certified general All~~ real estate appraisers, ~~certified residential real estate appraisers, licensed residential real estate appraisers~~ appraiser trainees, and certified instructors shall promptly notify the board in writing and provide appropriate written legal verification of any change of name.

b. Registered real estate appraisal business entities shall promptly notify the board of any change of name or change of business structure in writing. In addition to written notification, corporations shall provide a copy of the Certificate of Amendment from the State Corporation Commission, partnerships shall provide a copy of a certified Partnership Certificate, and other business entities trading under a fictitious name shall provide a copy of the certificate filed with the clerk of the court where business is to be conducted.

3. Upon the the change of name or address of the registered agent, associate, or partner, or sole proprietor designated by a real estate appraisal business entity, the business entity shall notify the board in writing of the change within 30 days of such event.

4. No license, certification or registration issued by the board shall be assigned or otherwise transferred.

5. All licensees, certificate holders and registrants shall operate under the name in which the license or registration is issued.

6. All certificates of licensure, registration or certification in any form are the property of the Real Estate Appraiser Board. Upon death of a licensee, dissolution or restructure of a registered business entity, or change of a licensee's, registrant's, or certificate holder's name or address, such licenses, registrations, or certificates must be returned with proper instructions and supplemental material to the board within 30 days of such event.

7. All appraiser licenses issued by the board shall be visibly displayed.

## B. C. Use of seal.

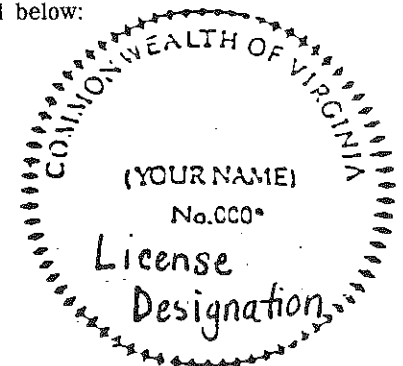
1. The authorized application of a licensed appraiser's seal shall indicate that the licensee has exercised complete direction and control over the appraisal. Therefore, no licensee shall affix his seal to any appraisal which has been prepared by an unlicensed person unless such work was performed under the direction and supervision of the licensee in accordance with § 54.1-2011 C of the Code of Virginia.

2. All original appraisal reports shall be issued under seal and signed by the licensed appraiser. For narrative and letter appraisals, the signature, seal, and final value conclusion shall appear on the letter of transmittal and certification page. For form appraisals, the signature and seal shall appear on the page designated for the appraiser's signature and final estimate of value. All temporary licensed real estate appraisers shall sign and affix their temporary license to the appraisal report or letter for which they obtained the license to authenticate such report or letter.

a. An appraiser may provide ~~written reports, market analysis studies or valuations~~ counseling reports , which do not constitute appraisals of market value , provided, that such reports, studies or evaluations shall contain a conspicuous statement that such reports, studies or valuations are not an appraisal as defined in § 54.1-2009 of the Code of Virginia.

b. Application of the seal and signature indicates acceptance of responsibility for work shown thereon.

c. The seal shall conform in detail and size to the design illustrated below:



# Proposed Regulations

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\*The number on the seal shall be the 10-digit number or the last 6 digits, or the last significant digits on the license issued by the board.

## C. D. Development of appraisal.

In developing a real property appraisal, ~~an appraiser~~ *all licensees* shall comply with the provisions of Standard I of the Uniform Standards of Professional Appraisal Practice (USPAP) in ~~the 1990 edition or~~ the edition in effect at the time of the reports' preparation. *If the required definition of value uses the word "market," licensees must use the definition of market value set forth in USPAP "DEFINITIONS."*

## D. E. Appraisal report requirements.

In reporting a real property appraisal, ~~an appraiser~~ *a licensee* shall meet the requirements of Standard II of the Uniform Standards of Professional Appraisal Practice in ~~the 1990 edition or~~ the edition in effect at the time of the reports' preparation.

## E. F. Reviewing an appraisal.

In performing a review appraisal, a licensee shall comply with the requirements of Standard III of the Uniform Standards of Professional Appraisal Practice in ~~the 1990 edition or~~ the edition in effect at the time of the reports' preparation. The reviewer's signature and seal shall appear on the certification page of the report.

## F. G. Mass appraisals.

In developing and reporting a mass appraisal for ad valorem tax purposes, a licensee shall comply with the requirements of Standard VI of the Uniform Standards of Professional Appraisal Practice in ~~the 1990 edition or~~ the edition in effect at the time of the reports' preparation.

## G. H. Record keeping requirements.

1. A licensee or registrant of the Real Estate Appraiser Board shall, upon request or demand, promptly produce to the board or any of its agents any document, book, or record in a licensee's possession concerning any appraisal which the licensee performed, or for which the licensee is required to maintain records for inspection and copying by the board or its agents. These records shall be made available at the licensee's place of business during regular business hours.

2. Upon the completion of an assignment, a licensee or registrant shall return to the rightful owner, upon demand, any document or instrument which the licensee possesses.

3. *Supervising appraisers shall make appraisal reports prepared by appraiser trainees available to the board, at the appraiser trainee's expense, upon request of*

*the appraiser trainee for the purpose of documenting experience when applying to the board for licensure.*

## H. I. Disclosure requirements.

A licensee appraising property in which he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, has any interest shall disclose, in writing, to any client such interest in the property and his status as a real estate appraiser licensed in the Commonwealth of Virginia. As used in the context of this regulation, "any interest" includes but is not limited to an ownership interest in the property to be appraised or in an adjacent property or involvement in the transaction, such as deciding whether to extend credit to be secured by such property.

## I. J. Competency.

A licensee shall abide by the Competency Provision as stated in the Ethics Provision of the Uniform Standards of Professional Appraisal Practice in ~~the 1990 edition or~~ the edition in effect at the time of the reports' preparation.

## J. K. Unworthiness.

1. A licensee shall act as a certified general real estate appraiser, certified residential real estate appraiser or licensed residential real estate appraiser in such a manner as to safeguard the interests of the public, and shall not engage in improper, fraudulent, or dishonest conduct.

2. A licensee may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or of any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

3. A licensee shall inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony or of a misdemeanor involving moral turpitude.

4. A licensee may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction.

5. A licensee shall inform the board in writing within 30 days of the suspension, revocation or surrender of an appraiser license or certification in connection with

a disciplinary action in any other jurisdiction, and a licensee shall inform the board in writing within 30 days of any appraiser license or certification which has been the subject of discipline in any jurisdiction.

6. A licensee shall perform all appraisals in accordance with Virginia Fair Housing Law, §§ 36-96.1 et seq. of the Code of Virginia.

§ 4.4. Standards of conduct for certified appraiser education instructors.

A. Instructors shall develop a record for each student which shall include the student's name and address, the course name, the course hours and dates given, and the date the course was passed. This record shall be retained by the course provider.

B. The instructor shall not solicit information from any person for the purpose of discovering past licensing examination questions or questions which may be used in future licensing examinations.

C. The instructor shall not distribute to any person copies of license examination questions, or otherwise communicate to any person license examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.

D. The instructor shall not, through an agent or otherwise, advertise its services in a fraudulent, deceptive or misrepresentative manner.

E. Instructors shall not take any appraiser licensing examination for any purpose other than to obtain a license as a real estate appraiser.

## PART V. EDUCATIONAL OFFERINGS.

§ 5.1. Requirement for the approval of appraisal educational offerings.

Pursuant to the mandate of Title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, § 54.1-2013 of the Code of Virginia, and the qualifications criteria set forth by the Appraisal Qualifications Board of the Appraisal Foundation, all educational offerings submitted for prelicensure and continuing education credit shall be approved by the board. Although educational offerings which have been approved by the Appraisal Foundation's Educational Offering Review Panel may be considered to have met the standards for approval set forth in these regulations, all educational offerings must be approved by the board.

§ 5.2. Standards for the approval of appraisal educational offerings for prelicensure credit.

A. Content.

1. Prior to licensure, the applicant shall have successfully completed coverage of the Uniform Standards of Professional Appraisal Practice either as a portion of a qualified course of at least 15 classroom hours, or in a single, qualified course of at least 15 classroom hours. After July 1, 1992, applicants shall have successfully completed a 15 classroom hour course in the Uniform Standards of Professional Appraisal Practice.

2. While various appraisal courses may be credited toward the classroom requirement specified for each level classification of licensure, all applicants for licensure as an appraiser trainee, a licensed residential or a certified residential, or certified general real estate appraiser must demonstrate that their course work included coverage of all the topics listed below.

- Appraisal standards and ethics
- Influences on real estate value
- Legal considerations in appraisal
- Types of value
- Land economic principles
- Real estate markets and analysis
- Valuation process
- Property description and analysis
- Highest and best use analysis
- Appraisal statistical concepts
- Sales comparison approach
- Site valuation
- Cost approach
- Income approach
- Valuation of partial interests

3. All appraisal and appraisal-related offerings presented for prelicensure credit must have a final, written examination.

4. Credit toward the classroom hour requirement to satisfy the educational requirement prior to licensure shall be granted only where the length of the educational offering is at least 15 classroom hours.

B. Instruction.

With the exception of courses taught at accredited colleges, universities, junior and community colleges, or adult distributive or marketing education programs, all other prelicensure educational offerings given after April 1, 1992 January 1, 1993, must be taught by instructors certified by the board.

§ 5.3. Standards for the approval of appraisal educational offerings for continuing education credit.

A. Content.

1. The content of courses, seminars, workshops or conferences which may be accepted for continuing education credit includes, but is not limited to those

# Proposed Regulations

topics listed in § 5.2 A 2 and below.

- Ad valorem taxation
- Arbitrations
- Business courses related to the practice of real estate appraisal
- Construction estimating
- Ethics and Uniform Standards of Professional Appraisal Practice
- Land use planning, zoning, and taxation
- Property development
- Real estate appraisal (valuations/evaluations)
- Real estate financing and investment
- Real estate law
- Real estate related computer applications
- Real estate securities and syndication
- Real property exchange

2. Courses, seminars, workshops or conferences submitted for continuing education credit must indicate that the licensee participated in an educational program that maintained and increased his knowledge, skill and competency in real estate appraisal.

3. Credit toward the classroom hour requirement to satisfy the continuing education requirements shall be granted only where the length of the educational offering is at least two hours and the licensee participated in the full length of the program.

4. As outlined in Part III of these regulations all certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers shall complete 20 classroom hours prior to the renewal of any license. Three classroom hours shall cover recent developments in federal, state and local real estate appraisal law and regulation.

## B. Instruction.

Although continuing education offerings, *except the four-hour required course on recent developments in federal, state and local real estate appraisal law and regulation and the Uniform Standards of Professional Appraisal Practice*, are not required to be taught by board certified instructors, these offerings must meet the standards set forth in § 5.3 subsection A of these regulations *this section*.

§ 5.4. Procedures for awarding prelicense and continuing education credits.

A. Course credits shall be awarded only once for courses having substantially equivalent content.

B. Proof of completion of such course, seminar, workshop or conference may be in the form of a transcript, certificate, letter of completion or in any such written form as may be required by the board. All courses, seminars and workshops submitted for

prelicense and continuing education credit must indicate the number of classroom hours.

C. Information which may be requested by the board in order to further evaluate course content includes, but is not limited to, course descriptions, syllabi or textbook references.

D. All transcripts, certificates, letters of completion or similar documents submitted to verify completion of seminars, workshops or conferences for continuing education credit must indicate successful completion of the course, seminar, workshop or conference. Applicants must furnish written proof of having received a passing grade in all ~~prelicense and continuing prelicense~~ education courses submitted.

E. Credit may be awarded for prelicense courses completed by challenge examination without classroom attendance, if such credit was granted by the course provider prior to July 1, 1990, and provided that the board is satisfied with the quality of the challenge examination that was administered by the course provider.

F. All courses seminars, workshops, or conferences, submitted for satisfaction of continuing education requirements must be satisfactory to the board.

G. Correspondence courses, video and remote TV educational offerings may be acceptable to meet the classroom hour requirements for ~~prelicense and continuing education prelicense~~ courses provided each course or offering is approved by the board and has been presented by an accredited college, university, junior or community college; the student passes a written examination administered at a location by an official approved by the college or university; the subject matter was appraisal related; and that the course or offering is a minimum of 15 classroom hours in length.

H. A teacher of appraisal courses may receive either education credit for the classroom hour(s) taught or experience credit for the classroom hour(s) taught, but not both. These credits shall be awarded only once for courses having substantially equivalent content.

§ 5.5. Course approval fees.

Course Approval Fee ..... \$200 \$135

§ 5.6. Re-approval of courses required.

Approval letters issued under these regulations for educational offerings shall expire two years from the last day of the month in which they were issued, as indicated in the approval letter.

## Footnotes

<sup>1</sup> The Uniform Standards of Professional Appraisal Practice ("USPAP") Copyright (c) 1987, 1990 are published by the

# Proposed Regulations

Appraisal Foundation. All rights reserved. Copies of the Uniform Standards of Professional Appraisal Practice are available from the Appraisal Foundation, 1020 Vermont Avenue, NW, Suite 900, Washington D.C. 20005. The cost is \$25.

Some of the provisions contained in the Uniform Standards of Professional Appraisal Practice are inapplicable to real estate appraisals, and therefore are not applicable to Virginia Appraiser Board licensees. For example, the USPAP includes standards for the performance of personal property appraisals and a license is not required to perform such appraisals.

<sup>2</sup> The board shall not be responsible for the licensee's/registrant's failure to receive notices, communications and correspondence

caused by the licensee's/registrant's failure to promptly notify the board of any change of address.

<sup>3</sup> The board shall not be responsible for the licensee's/registrant's failure to receive notices, communications and correspondence caused by the licensee's/registrant's failure to promptly notify the board of any change of name.

<sup>4</sup> Application of the Departure Provision of USPAP is not allowed for all federally related transactions requiring the services of an appraiser.

VA.R. Doc. No. R94-894; Filed April 26, 1994, 12:03 p.m.

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5. Social Security No. (not required)	6. Date of Birth
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**Real Estate Appraiser  
License Application Form**  
 Form No. REA1 (12-27-91)

Lic. No. \_\_\_\_\_  
 Date \_\_\_\_\_  
 Code \_\_\_\_\_  
 Initials \_\_\_\_\_

**IMPORTANT**  
 • USE #2 PENCIL  
 • MAKE DARK MARKS

**INSTRUCTIONS:**  
 Print your last name on the top column of boxes. For each letter, mark the bubble containing the appropriate letter.

LAST NAME	S	M	I	T	H
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# Proposed Regulations

18. Have you ever been issued a real estate appraiser license or certification in any other jurisdiction(s)?  
 Yes  No  
 If yes, please name those jurisdictions below: \_\_\_\_\_

19. Have you ever been issued a real estate appraiser license in Virginia?  
 Yes  No  
 If yes, please give date(s) and license number(s) below: \_\_\_\_\_

20. All applicants must complete this section:  
 I hereby certify that I have attained the number of years and hours of experience as a real estate appraiser as defined in the regulations of the Real Estate Appraiser Board for the type of license for which I am applying. I understand that the Real Estate Appraiser Board may request proof of this experience in the form of written reports or file memoranda which shall be made available to the Board upon request.  
 I also hereby certify that I have met the educational requirements as set forth in the Real Estate Appraiser Board regulations for the type of license for which I am applying. I understand that in order to receive credit for this education, I must present official transcripts, certificates of completion or certified true copies of such as set forth in regulation.  
 Further, if my address listed on this application or at any time in the future is not within the state of Virginia, I do hereby irrevocably consent that suits and legal actions may be commenced against me in the proper courts of the state of Virginia in accordance with the provisions of Chapter 20, Title 54.1, Section 54.1-2019 of the Code of Virginia.  
 I hereby certify by my signature that the statements contained in this application are true, that I have not suppressed any information that might affect this application, and that I have read and I understand the Real Estate Appraiser Board Regulations, the Uniform Standards of Professional Appraisal Practice, and Virginia license laws and this statement.

Signature of applicant \_\_\_\_\_ Date \_\_\_\_\_

9. ADDRESS - P.O. BOX NUMBER ONLY  
 \_\_\_\_\_

10. City \_\_\_\_\_

11. State \_\_\_\_\_

12. Zip Code + 4 \_\_\_\_\_

13. Application Type  
 Original  
 Reciprocal

14. License Type  
 Certified General  
 Certified Residential  
 Licensed Residential  
 Temporary Certified General  
 Temporary Certified Residential Licensed Reciprocal

15. If you are applying for a temporary license, identify the specific assignment below by type and location.  
 \_\_\_\_\_

15a. Project Termination Date  
 \_\_\_\_\_

16. Have you had a real estate appraiser license or certification which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction? If yes, see page two of the instructions accompanying this application.  
 Yes  No

17. Have you ever been convicted, found guilty or plead guilty or plead guilty or moral turpitude or of any felony? If yes, see page two of the instructions accompanying this application.  
 Yes  No

11406

11406

8. State

7. CITY

9. Zip Code = 4

10. Telephone

5. BUSINESS ADDRESS - Street Name

6. BUSINESS ADDRESS - P.O. BOX NUMBER ONLY



Real Estate Appraiser Business Registration Application Form No. REA2 (12-27-91)

IMPORTANT USE #2 PENCIL MAKE DARK MARKS INSTRUCTIONS: Print your business name on the top column of boxes. For each letter, mark the bubble containing the appropriate letter.

3. Tax ID Number (not required) 4. Business Type

1. Business Name

2. Trading-as-Name

13160



# Proposed Regulations

11. Registered Agent, Partner, Associate, or Sole Proprietor  
 Last Name First Name M.I.

12. Generation  
 I  
 II  
 III  
 IV  
 V

13. ADDRESS - Street Name

14. ADDRESS - P.O. BOX NUMBER ONLY

15. CITY

17. Zip Code + 4

18. Has the above named corporation, partnership, or other business entity qualified to do business in Virginia in accordance with the laws of this state?  
 Yes  
 No

19. I hereby certify that the above information is correct and that no information has been suppressed that might affect this application.

Title

Date

Typewritten name and signature of President, General Partner, Associate, or Owner.

13160

Address Continued on the Next Page.

### Real Estate Appraiser Board Experience Log

Name: \_\_\_\_\_  
 Social Security Number (not required): \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_

**TYPE OF LICENSE**  
(Mark one)  
 Certified General  
 Licensed Residential  
 Certified Residential

YEAR	ASSIGNMENT IDENTIFICATION	TYPE OF PROPERTY	RANGE OF VALUE	TYPE OF INVOLVEMENT	HOURS ON ASSIGNMENT	FOR REAB USE ONLY
1		1-10 11-20 21-30 31-40 41-50	1-10 11-20 21-30 31-40 41-50	Fee/Staff Appraiser	100 200 300 400 500 600 700 800 900 10 20 30 40 50 60 70 80 90 1 2 3 4 5 6 7 8 9	
				Sole appraiser		
				Co-signer		
				Ad valorem		
				Reviewer		
19		11-20 21-30 31-40 41-50 51-60	11-20 21-30 31-40 41-50 51-60	Real Estate counseling		
				Teaching		
				Fee/Staff Appraiser		
				Sole appraiser		
				Co-signer		
2		1-10 11-20 21-30 31-40 41-50	1-10 11-20 21-30 31-40 41-50	Fee/Staff Appraiser	100 200 300 400 500 600 700 800 900 10 20 30 40 50 60 70 80 90 1 2 3 4 5 6 7 8 9	
				Sole appraiser		
				Co-signer		
				Ad valorem		
				Reviewer		
19		11-20 21-30 31-40 41-50 51-60	11-20 21-30 31-40 41-50 51-60	Real Estate counseling		
				Teaching		
				Fee/Staff Appraiser		
				Sole appraiser		
				Co-signer		
3		1-10 11-20 21-30 31-40 41-50	1-10 11-20 21-30 31-40 41-50	Fee/Staff Appraiser	100 200 300 400 500 600 700 800 900 10 20 30 40 50 60 70 80 90 1 2 3 4 5 6 7 8 9	
				Sole appraiser		
				Co-signer		
				Ad valorem		
				Reviewer		
19		11-20 21-30 31-40 41-50 51-60	11-20 21-30 31-40 41-50 51-60	Real Estate counseling		
				Teaching		
				Fee/Staff Appraiser		
				Sole appraiser		
				Co-signer		
4		1-10 11-20 21-30 31-40 41-50	1-10 11-20 21-30 31-40 41-50	Fee/Staff Appraiser	100 200 300 400 500 600 700 800 900 10 20 30 40 50 60 70 80 90 1 2 3 4 5 6 7 8 9	
				Sole appraiser		
				Co-signer		
				Ad valorem		
				Reviewer		
19		11-20 21-30 31-40 41-50 51-60	11-20 21-30 31-40 41-50 51-60	Real Estate counseling		
				Teaching		
				Fee/Staff Appraiser		
				Sole appraiser		
				Co-signer		
5		1-10 11-20 21-30 31-40 41-50	1-10 11-20 21-30 31-40 41-50	Fee/Staff Appraiser	100 200 300 400 500 600 700 800 900 10 20 30 40 50 60 70 80 90 1 2 3 4 5 6 7 8 9	
				Sole appraiser		
				Co-signer		
				Ad valorem		
				Reviewer		
19		11-20 21-30 31-40 41-50 51-60	11-20 21-30 31-40 41-50 51-60	Real Estate counseling		
				Teaching		
				Fee/Staff Appraiser		
				Sole appraiser		
				Co-signer		
6		1-10 11-20 21-30 31-40 41-50	1-10 11-20 21-30 31-40 41-50	Fee/Staff Appraiser	100 200 300 400 500 600 700 800 900 10 20 30 40 50 60 70 80 90 1 2 3 4 5 6 7 8 9	
				Sole appraiser		
				Co-signer		
				Ad valorem		
				Reviewer		
19		11-20 21-30 31-40 41-50 51-60	11-20 21-30 31-40 41-50 51-60	Real Estate counseling		
				Teaching		
				Fee/Staff Appraiser		
				Sole appraiser		
				Co-signer		
7		1-10 11-20 21-30 31-40 41-50	1-10 11-20 21-30 31-40 41-50	Fee/Staff Appraiser	100 200 300 400 500 600 700 800 900 10 20 30 40 50 60 70 80 90 1 2 3 4 5 6 7 8 9	
				Sole appraiser		
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19		11-20 21-30 31-40 41-50 51-60	11-20 21-30 31-40 41-50 51-60	Real Estate counseling		
				Teaching		
				Fee/Staff Appraiser		
				Sole appraiser		
				Co-signer		
8		1-10 11-20 21-30 31-40 41-50	1-10 11-20 21-30 31-40 41-50	Fee/Staff Appraiser	100 200 300 400 500 600 700 800 900 10 20 30 40 50 60 70 80 90 1 2 3 4 5 6 7 8 9	
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9		1-10 11-20 21-30 31-40 41-50	1-10 11-20 21-30 31-40 41-50	Fee/Staff Appraiser	100 200 300 400 500 600 700 800 900 10 20 30 40 50 60 70 80 90 1 2 3 4 5 6 7 8 9	
				Sole appraiser		
				Co-signer		
				Ad valorem		
				Reviewer		
19		11-20 21-30 31-40 41-50 51-60	11-20 21-30 31-40 41-50 51-60	Real Estate counseling		
				Teaching		
				Fee/Staff Appraiser		
				Sole appraiser		
				Co-signer		
10		1-10 11-20 21-30 31-40 41-50	1-10 11-20 21-30 31-40 41-50	Fee/Staff Appraiser	100 200 300 400 500 600 700 800 900 10 20 30 40 50 60 70 80 90 1 2 3 4 5 6 7 8 9	
				Sole appraiser		
				Co-signer		
				Ad valorem		
				Reviewer		
19		11-20 21-30 31-40 41-50 51-60	11-20 21-30 31-40 41-50 51-60	Real Estate counseling		
				Teaching		
				Fee/Staff Appraiser		
				Sole appraiser		
				Co-signer		

**TYPE OF PROPERTY**

- Single family residential
- Multifamily, 2-3 units
- Vacant lots, 1-4
- Farms (non income producing)
- Multifamily, more than 5 units
- Commercial
- Industrial
- Hotel, motel
- Office
- Subdivision projects
- Land
- Other

**VALUE RANGE**

- \$0 - \$100,000
- \$100,001 - \$250,000
- \$250,001 - \$1,000,000
- \$1,000,001 - \$5,000,000
- Over \$5,000,000

**MARKING INSTRUCTIONS**

- Use a NO. 2 PENCIL only.
- Darken the oval completely.
- Erase clearly any marks you wish to change.
- Do not make any stray marks on this form.

PROPER MARK:

IMPROPER MARKS:

# Proposed Regulations

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COURSE IDENTIFICATION FORM

EDUCATION COMPETITIVE COURSE VERIFICATION FORMS

COURSE IDENTIFICATION FORM

Course Title/Number	
Name of Provider	
Address of Provider	
Classification of Provider	
Location of Course	
Beginning Date	
Completion Date	
Classroom Hours	

COURSE IDENTIFICATION FORM

Course Title/Number	
Name of Provider	
Address of Provider	
Classification of Provider	
Location of Course	
Beginning Date	
Completion Date	
Classroom Hours	

COURSE IDENTIFICATION FORM

Course Title/Number	
Name of Provider	
Address of Provider	
Classification of Provider	
Location of Course	
Beginning Date	
Completion Date	
Classroom Hours	

COURSE IDENTIFICATION FORM

Course Title/Number	
Name of Provider	
Address of Provider	
Classification of Provider	
Location of Course	
Beginning Date	
Completion Date	
Classroom Hours	

APPLICATION FOR APPROVAL OF APPRAISAL COURSE OFFERING

COMMONWEALTH OF VIRGINIA  
 Department of Commerce  
 Real Estate Appraiser Board  
 Post Office Box 11066  
 Richmond, Virginia 23220-1066

Application Fee \$200 (per course submitted)

Section I

1. Course title \_\_\_\_\_  
 (Attach comprehensive course outline; syllabus; list of books, pamphlets, articles to be used by students and instructor in course)
2. Sponsor Organization Name \_\_\_\_\_
3. Street Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_
4. Individual responsible for the Administration of the Course \_\_\_\_\_
5. Course Credit for Licensing/Certification \_\_\_\_\_ Continuing Education \_\_\_\_\_ Both \_\_\_\_\_
6. Grading \_\_\_\_\_  
 (State minimum requirements, provide sample examination)
7. Attendance Policy \_\_\_\_\_  
 (State minimum requirements)
8. Course Length: Number of Meetings \_\_\_\_\_ Hours Per Meeting \_\_\_\_\_ Meetings Per Week \_\_\_\_\_ Total Hours \_\_\_\_\_
9. Course Prerequisites, if any \_\_\_\_\_
10. Type of Institution: Proprietary School \_\_\_\_\_ Real Estate or Real Estate Appraisal Organization \_\_\_\_\_
11. Scheduling: Quarter \_\_\_\_\_ Semester \_\_\_\_\_ Other \_\_\_\_\_
12. Promotion \_\_\_\_\_

(If advertising is used, please submit copies of typical advertisements and brochures)

Section II

I hereby certify by my signature that the statements contained in this application are true, that I have not suppressed any information that might affect this application.

Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_

APPLICATION FOR CERTIFICATION AS AN APPRAISAL INSTRUCTOR

COMMONWEALTH OF VIRGINIA  
 Department of Commerce  
 Real Estate Appraiser Board  
 Post Office Box 11066  
 Richmond, Virginia 23220-1066

Application Fee \$200

Section I

1. Last Name \_\_\_\_\_
2. First Name \_\_\_\_\_
3. Middle Name \_\_\_\_\_
4. Street Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_
5. Social Security Number (not required) \_\_\_\_\_

Section II

To receive a certificate as an appraisal instructor the applicant must meet one of the three following qualifications. Please indicate preference.

- ( ) 1. Baccalaureate degree in real estate, economics, finance or business, and have satisfied the state appraisal licensing education requirements for the level being instructed; or
- ( ) 2. Baccalaureate degree, and a current appraisal license for the level being instructed; or
- ( ) 3. Seven years of discipline-free active experience acquired in the appraisal field in the past 10 years and a current appraisal license for the level being instructed.

If qualifying under item 1, please provide a copy of transcript, and proof of completion of either 75 classroom hours of appraisal education for licensed residential designation, 105 hours classroom of appraisal education for certified residential designation, or 165 classroom hours of appraisal education for certified general designation. Evidence of coursework may be provided in the form of a transcript, certificate or letter of completion.

If qualifying under item 2, please provide a copy of transcript and current appraisal license.

If qualifying under item 3, please provide affidavit of experience, and proof of completion of either 75 classroom hours of appraisal education for licensed residential designation, 105 hours classroom of appraisal education for certified residential designation, or 165 classroom hours of appraisal education for certified general designation. Evidence of coursework may be provided in the form of a transcript, certificate or letter of completion.

Section III

I hereby certify by my signature that the statements contained in this application are true, that I have not suppressed any information that might affect this application.

Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_

# 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.

## BOARD FOR ACCOUNTANCY

**Title of Regulation:** VR 105-01-1. Public Participation Guidelines (REPEALED).

**Title of Regulation:** VR 105-01-1:1. Public Participation Guidelines.

**Statutory Authority:** §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

**Effective Date:** June 15, 1994.

### Summary:

Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines not only shall be utilized prior to the formation and drafting of the proposed regulation, but shall be utilized during the formation, promulgation and final adoption of all regulations.

The purpose of these regulations is to ensure that interested persons are able to comment on regulatory actions in a meaningful fashion within an established procedure during all phases of the regulatory process.

There were several substantive changes made to the definitions section after the regulation was published in the proposed version. Specifically the definition of "Administrative Process Act" has been deleted as specific code citations are set out in the regulations. The definition of "agency" or "department" was redefined as "agency" means any authority, instrumentality, officer, board, or other unit of state government empowered by the basic laws to make regulations or decide cases. The definition of "person" was redefined more concisely to mean one or more individuals and "organization" was added to mean any one or more association, advisory council, committee, corporation, partnership, governmental body or legal entity.

**Summary of Public Comment and Agency Response:** No public comment was received by the promulgating agency.

**Agency Contact:** Copies of the regulation may be obtained from Nancy T. Feldman, Assistant Director, Board for Accountancy, 3600 West Broad Street, Richmond, VA

23230-4917, telephone (804) 367-8590. There may be a charge for copies.

VR 105-01-1:1. Public Participation Guidelines.

### § 1. Definitions.

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

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

"Agency" or "board" means the Board for Accountancy.

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

"Agency" means any authority, instrumentality, officer, board, or other unit of state government empowered by the basic laws to make regulations or decide cases.

"Organization" means any one or more association, advisory council, committee, corporation, partnership, governmental body or legal entity.

"Person" means one or more individuals. ]

### § 2. Mailing list.

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

1. "Notice of Intended Regulatory Action" to promulgate [ , amend ] or repeal regulations.

2. "Notice of Comment Period" and public hearings [ ; the subject of which is proposed or existing regulations ] .

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act [ , § 9-6.14:7.1 of the Code of Virginia ] .

### § 3. Placement on the mailing list; deletion.

Any person wishing to be placed on the mailing list may

do so by writing the agency. In addition, the agency, at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 2. Individuals and organizations [ periodically ] may be [ periodically ] requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

#### § 4. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

#### § 5. Notice of intent.

At least 30 days prior to [ the ] filing [ of ] the "Notice of Comment Period" and [ the ] proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether [ or not they intend the agency intends ] to hold a public hearing. The agency is required to hold a hearing on [ the ] proposed regulation upon request by [ (i) ] the Governor or [ from (ii) ] 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register [ of Regulations ] .

#### § 6. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding [ , ] which may take the form of a public hearing [ , ] to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

#### § 7. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of a regulation will occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final

regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency [ received receives ] requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

#### § 8. Advisory committees.

The [ board agency ] intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession,
2. Industry, professional and trade [ association associations' ] mailing lists, and
3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

#### § 9. Applicability.

Sections 2 [ through , 3, ] 4, 6, and [ 8 7 ] shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

V.A.R. Doc. Nos. R94-929 and R94-937; Filed April 27, 1994, 11:38 a.m.

### BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Title of Regulation: VR 155-01-3. Public Participation Guidelines.



# Final Regulations

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Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-2602 of the Code of Virginia.

Effective Date: June 15, 1994.

Summary:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations and establishes the definitions of terms used in the regulations. Part II establishes the composition of the mailing list and the process for adding or deleting names from that list. It also lists the documents to be sent to persons on the mailing list. Part III sets forth the requirements and procedures for a petition for rulemaking, for the issuance of notices, and for the conduct of a public hearing and biennial review of regulations. Part IV establishes the requirements and criteria for the appointment of advisory committees in the development of regulations and for the terms and conditions of service.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Meredyth P. Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9111. There may be a charge for copies.

VR 155-01-3. Public Participation Guidelines.

## PART I. GENERAL PROVISIONS.

### § 1.1. Purpose.

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

### § 1.2. Definitions.

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

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

“Board” means the Board of Audiology and Speech-Language Pathology.

“Person” means an individual, a corporation, a partnership, an association, a governmental body, a

municipal corporation, or any other legal entity.

## PART II. MAILING LIST.

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

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

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

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

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

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

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

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

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Petition for rulemaking.

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

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

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be

addressed.

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

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

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

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

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

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

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

### § 3.3. Notice of Comment Period.

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

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

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

### § 3.4. Notice of meeting.

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

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

available to the public attending such meeting.

### § 3.5. Public hearings on regulations.

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

### § 3.6. Biennial review of regulations.

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

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

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

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

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

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

### § 4.2. Limitation of service.

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

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

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

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

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

# Final Regulations

additional months.

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

V.A.R. Doc. No. R94-884; Filed April 22, 1994, 4:48 p.m.

## BOARD FOR BARBERS

Title of Regulation: VR 170-01-00. Public Participation Guidelines (REPEALED).

Title of Regulation: VR 170-01-00:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Effective Date: June 15, 1994.

### Summary:

Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines not only shall be utilized prior to the formation and drafting of the proposed regulation, but shall be utilized during the formation, promulgation and final adoption of all regulations.

The purpose of these regulations is to ensure that interested persons are able to comment on regulatory actions in a meaningful fashion within an established procedure during all phases of the regulatory process.

There were several substantive changes made to the definitions section after the regulation was published in the proposed version. Specifically, the definition of "Administrative Process Act" has been deleted as specific code citations are set out in the regulations. The definition of "agency" or "department" was redefined as "agency" means any authority, instrumentality, officer, board, or other unit of state government empowered by the basic laws to make regulations or decide cases. The definition of "person" was redefined more concisely to mean one or more individuals and "organization" was added to mean any one or more association, advisory council, committee, corporation, partnership, governmental body or legal entity.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Nancy T. Feldman, Assistant Director, Board for

Barbers, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590. There may be a charge for copies.

VR 170-01-00:1. Public Participation Guidelines.

### § 1. Definitions.

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

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

"Agency" or "board" means the Board for Barbers.

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

"Agency" means any authority, instrumentality, officer, board, or other unit of state government empowered by the basic laws to make regulations or decide cases.

"Organization" means any one or more association, advisory council, committee, corporation, partnership, governmental body or legal entity.

"Person" means one or more individuals. ]

### § 2. Mailing list.

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

1. "Notice of Intended Regulatory Action" to promulgate [ , amend ] or repeal regulations.
2. "Notice of Comment Period" and public hearings [ ; the subject of which is proposed or existing regulations ] .
3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act [ , § 9-6.14:7.1 of the Code of Virginia ] .

### § 3. Placement on the mailing list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency, at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 2. Individuals and organizations [

periodically ] may be [ periodically ] requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

## § 4. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

## § 5. Notice of intent.

At least 30 days prior to [ the ] filing [ of ] the "Notice of Comment Period" and [ the ] proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether [ or not they intend the agency intends ] to hold a public hearing. The agency is required to hold a hearing on [ the ] proposed regulation upon request by [ (i) ] the Governor or [ from (ii) ] 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register [ of Regulations ] .

## § 6. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding [ , ] which may take the form of a public hearing [ , ] to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

## § 7. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency [ received receives ] requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency

determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

## § [ 7. 8. ] Advisory committees.

The [ board agency ] intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession,
2. Industry, professional and trade associations' mailing lists, and
3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

## § 9. Applicability.

Sections 2 [ through , 3, ] 4, 6, and [ 8 7 ] shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. Nos. R94-928 and R94-935; Filed April 27, 1994, 11:39 a.m.

## BOARD FOR BRANCH PILOTS

Title of Regulation: VR 535-01-00. Public Participation Guidelines (REPEALED).

Title of Regulation: VR 535-01-00:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201 and 54.1-902 of the Code of Virginia.

Effective Date: June 17, 1994.

# Final Regulations

## Summary:

The Board for Branch Pilots Public Participation Guidelines (PPG's) mandate public participation in the formulation, adoption and amendments to new and existing regulations governing the licensure of branch pilots. The Department of Professional and Occupational Regulation (the agency) will maintain a mailing list of persons and organizations to notify of any intended regulatory action by the board. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period," and a notice that final regulations have been adopted. The PPG's outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days and will state whether or not the agency will hold a public hearing. Specific instances are given as to when the agency must hold a public hearing and when the agency must reevaluate the effectiveness and continued need of the regulations. The PPG's also establish the procedures for the formulation and adoption of regulations and the guidelines for when substantial changes are made prior to final adoption of regulations, and include the formation of an appointed advisory committee for input regarding board regulations. Finally, the PPG's specify what meetings and notices will be published in The Virginia Register.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Willie Fobbs, III, Assistant Director, Board for Branch Pilots, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8514. There may be a charge for copies.

VR 535-01-00:1. Public Participation Guidelines.

### § 1. Definitions.

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

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

"Agency" or "board" means the Board for Branch Pilots.

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

"Agency" means any authority, instrumentality, officer, board, or other unit of state government empowered by the basic laws to make regulations or decide cases.

"Organization" means any one or more association, advisory council, committee, corporation, partnership, governmental body or legal entity.

"Person" means one or more individuals. ]

### § 2. Mailing list.

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

1. "Notice of Intended Regulatory Action" to promulgate [ , amend ] or repeal regulations.
2. "Notice of Comment Period" and public hearings [ ; the subject of which is proposed or existing regulations ] .
3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

### § 3. Placement on the mailing list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency, at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 2. Individuals and organizations [ periodically ] may be [ periodically ] requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

### § 4. Petition for rulemaking.

Any person may petition the agency to [ adopt or amend consider or review ] any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

### § 5. Notice of intent.

At least 30 days prior to [ the ] filing [ of ] the "Notice of Comment Period" and [ the ] proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether [ or not they intend the agency intends ] to hold a public hearing. The agency is required to hold a hearing on [ the ] proposed regulation upon request by [ (i) ] the Governor or [ from (ii) ] 25 or more

persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register [ of Regulations ] .

## § 6. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding [ , ] which may take the form of a public hearing [ , ] to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

## § 7. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submissions on the changes to the regulations. If the agency [ received receives ] requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

## § 8. Advisory committees.

The [ board agency ] intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession,
2. Industry, professional and trade associations' mailing lists, and
3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

## § 9. Applicability.

Sections 2 [ through , 3 , ] 4, 6, and [ 8 7 ] shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. Nos. R94-926 and R94-938; Filed April 27, 1994, 11:36 a.m.

### CHILD DAY-CARE COUNCIL

Title of Regulation: VR 175-01-01. Public Participation Guidelines (REPEALED).

Statutory Authority: §§ 9-6.14:7.1, 63.1-202 and 63.1-202.1 of the Code of Virginia.

Effective Date: July 1, 1994.

#### Summary:

This regulation describes the way the Child Day-Care Council will obtain public input when developing, revising or repealing a regulation. The regulations have been repealed.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Peggy Friedenber, Regulatory Coordinator, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

VA.R. Doc. No. R94-892; Filed April 25, 1994, 3:59 p.m.

\* \* \* \* \*

Title of Regulation: VR 175-01-01:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 63.1-202 and 63.1-202.1 of the Code of Virginia.

Effective Date: July 1, 1994.

#### Summary:

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This regulation describes the way the Child Day-Care Council will obtain public input when developing, revising or repealing a regulation. The regulation covers the following topics: petition from interested parties, solicitation of input, public hearings, and withdrawal of regulations.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Peggy Friedenber, Regulatory Coordinator, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

VR 175-01-01:1. Public Participation Guidelines.

## PART I. GENERAL PROVISIONS.

### § 1.1. Definitions.

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

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

"Agency" means Department of Social Services.

"Approving authority" means Child Day-Care Council.

"Commissioner" means the Commissioner of the Department of Social Services or his designee.

"Council" means Child Day-Care Council.

"Department" means Department of Social Services.

"Division" means organizational entity within the department, designated by the commissioner, which develops regulations subject to the Administrative Process Act.

"Governor's Executive Order" means any policy or procedure issued by the Governor under § 2.1-41.1 or § 9-6.14:9.1 A of the Code of Virginia establishing the administrative policy and procedures for gubernatorial review and regulatory actions governed by the Administrative Process Act.

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

### § 1.2. Application.

These guidelines apply to all regulations promulgated by the council.

## PART II. PUBLIC PARTICIPATION.

### § 2.1. General.

A. The procedures in § 2.3 of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1).

B. The department shall follow the policies and procedures established by the Administrative Process Act and the Governor's Executive Order in developing emergency, proposed and final adoption, amendment or repeal of regulations.

C. At the discretion of the approving authority or the agency, the public participation procedures in § 2.3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

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

### § 2.2. Petitions from interested parties.

Any person may petition the agency to develop a new regulation or to adopt, amend or repeal a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended new regulation or addition, deletion, or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The agency shall provide a written response to such petition.

### § 2.3. Solicitation of input.

A. Each division of the agency shall establish and maintain a list or lists consisting of persons expressing an

interest in the adoption, amendment or repeal of regulations under its administration, management or supervision. Persons may request the addition of their name and address to the list at any time. The lists will be updated as additional interested parties are identified. Deletions will be made when lack of interest is determined by the division as a result of periodic contact initiated by the division.

B. The department may form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting, formation or review of a proposal when expertise is necessary to address a specific regulatory interest or issue, or when persons register an interest in the subject of the regulation and in working with the agency.

C. Whenever a division identifies a need for the adoption, amendment or repeal of regulations under its administration, management or supervision, it may commence the regulation adoption process according to these procedures.

D. The agency shall issue a Notice of Intended Regulatory Action (NOIRA) which describes the subject matter and intent of the planned regulation for all regulatory proposals in accordance with the Administrative Process Act. The NOIRA shall state whether the agency intends to hold a public hearing.

E. The commissioner shall disseminate the NOIRA to the public by:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register, and
2. Distribution by mail to parties on the list established under subsection A of this section.

F. The agency shall consider public comment in drafting proposed regulations.

G. Upon approval by the council of the proposed regulations prepared by the department, the department shall solicit public comment through:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register,
2. Publication of a Notice of Comment Period in a newspaper of general circulation published at the state capital and such other newspapers as the department may deem appropriate, and
3. Distribution of a notice of comment by mail to persons on the list(s) established under subsection A of this section.

#### § 2.4. Public hearings.

A. The council shall permit public comment concerning the adoption, amendment, or repeal of a regulation

submitted for its promulgation during the council's regularly scheduled public comment period of its authorized meetings in conformity with the established rules of the council. The council may allow public comment about a proposed regulation at a committee meeting when the proposed regulation is under consideration by the committee.

B. When the NOIRA states that the agency does not plan to hold a hearing on the proposed regulation, the agency shall schedule a hearing when it determines that there is sufficient public interest in a proposed regulation through receipt of requests for a hearing from 25 people or more. The hearing(s) may be held at any time during the public comment period and at such times and locations as the department decides will best facilitate input from interested persons.

#### § 2.5. Withdrawal of regulations.

If the agency determines that the process to adopt, amend or repeal any regulation should be terminated after promulgation of the proposed regulation by the approving authority, the agency shall present a recommendation and rationale for the withdrawal of the proposed regulation to the approving authority.

V.A.R. Doc. No. R94-891; Filed April 25, 1994, 3:59 p.m.

## BOARD FOR CONTRACTORS

Title of Regulation: VR 220-01-00. Public Participation Guidelines (REPEALED).

Title of Regulation: VR 220-01-00:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201 and 54.1-1102 of the Code of Virginia.

Effective Date: June 15, 1994.

#### Summary:

The Board for Contractors Public Participation Guidelines (PPGs) mandate public participation in the promulgation process of contractor licensing. The Department of Professional and Occupational Regulation (the agency) will maintain a mailing list to notify persons and organizations of intended regulatory action. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period" and a notice that final regulations have been adopted. The PPGs outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days and will state whether or not a public hearing will be held. The PPGs give specific instances in



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which the agency must hold a public comment period or reevaluate the regulations. The PPGs establish the procedures for formulation and adoption of regulations and the procedures to be followed when substantial changes have been made prior to final adoption of the regulations. The use of and input from advisory committees to formulate regulations are established in the PPGs. The PPGs specify what meetings and notices will be published in The Virginia Register.

Since publication as proposed regulations, minor revisions have been made to language to enhance clarity and a definition section has been added at the direction of the Office of the Attorney General and the Registrar of Regulations.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Florence R. Brassier, Assistant Director, Board for Contractors, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-2785. There may be a charge for copies.

VR 220-01-00:1. Public Participation Guidelines.

## § 1. Definitions.

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

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

"Agency" or "board" means the Board for Contractors.

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

"Agency" means any authority, instrumentality, officer, board, or other unit of state government empowered by the basic laws to make regulations or decide cases.

"Organization" means any one or more association, advisory council, committee, corporation, partnership, governmental body or legal entity.

"Person" means one or more individuals. ]

## § 2. Mailing list.

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

1. "Notice of Intended Regulatory Action" to promulgate [ , amend ] or repeal regulations.

2. "Notice of Comment Period" and public hearings [ ; the subject of which is proposed or existing regulations ] .

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

## § 3. Placement on the mailing list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 2. Individuals and organizations [ periodically ] may be [ periodically ] requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

## § 4. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

## § 5. Notice of intent.

At least 30 days prior to [ the publication of filing ] the "Notice of Comment Period" and [ the filing of ] proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether [ or not they intend the agency intends ] to hold a public hearing. The agency is required to hold a hearing on [ the ] proposed regulation upon request by [ (i) ] the Governor or [ from (ii) ] 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register [ of Regulations ] .

## § 6. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding [ , ] which may take the form of a public hearing [ , ] to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The

Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

## § 7. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency [ ~~received~~ receives ] requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

## § 8. Advisory committees.

The [ ~~board~~ agency ] intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession,
2. Industry, professional and trade associations' mailing lists, and
3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

## § 9. Applicability.

Sections 2 [ ~~through~~ , 3, ] 4, 6, and [ 8 7 ] shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. Nos. R94-931 and R94-936; Filed April 27, 1994, 11:37 a.m.

## BOARD OF DENTISTRY

Title of Regulation: VR 255-01-2. Public Participation Guidelines.

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

Effective Date: June 15, 1994.

### Summary:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations and establishes the definitions of terms used in the regulations. Part II establishes the composition of the mailing list and the process for adding or deleting names from that list. It also lists the documents to be sent to persons on the mailing list. Part III sets forth the requirements and procedures for a petition for rulemaking, for the issuance of notices, and for the conduct of a public hearing and biennial review of regulations. Part IV establishes the requirements and criteria for the appointment of advisory committees in the development of regulations and for the terms and conditions of service.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Marcia J. Miller, Executive Director, Board of Dentistry, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9906. There may be a charge for copies.

VR 255-01-2. Public Participation Guidelines.

### PART I. GENERAL PROVISIONS.

#### § 1.1. Purpose.

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

#### § 1.2. Definitions.

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

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

"Board" means the Board of Dentistry.

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

## PART II. MAILING LIST.

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

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

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

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

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

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

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

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

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Petition for rulemaking.

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

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

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

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

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

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

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

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

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

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

### § 3.3. Notice of Comment Period.

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

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

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

### § 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee

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

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

### § 3.5. Public hearings on regulations.

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

### § 3.6. Biennial review of regulations.

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

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

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

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

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

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

### § 4.2. Limitation of service.

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

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

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

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

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

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

VA.R. Doc. No. R94-846; Filed April 20, 1994, 1:02 p.m.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: VR 320-01-5. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-2803 of the Code of Virginia.

Effective Date: June 15, 1994.

### Summary:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations and establishes the definitions of terms used in the regulations. Part II establishes the composition of the mailing list and the process for adding or deleting names from that list. It also lists the documents to be sent to persons on the mailing list. Part III sets forth the requirements and procedures for a petition for rulemaking, for the issuance of notices, and for the conduct of a public hearing and biennial review of regulations. Part IV establishes the requirements and criteria for the appointment of advisory committees in the development of regulations and for the terms and conditions of service.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Meredyth P. Partridge, Board of Funeral Directors and Embalmers, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9111. There may be a charge for copies.

VR 320-01-5. Public Participation Guidelines.

## PART I. GENERAL PROVISIONS.

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## § 1.1. Purpose.

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

## § 1.2. Definitions.

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

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

"Board" means the Board of Funeral Directors and Embalmers.

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

## PART II. MAILING LIST.

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

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

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

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

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

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

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

1. A Notice of Intended Regulatory Action.
2. A Notice of Comment Period.

3. A copy of any final regulation adopted by the board.

4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Petition for rulemaking.

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

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

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

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

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

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

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

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

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

### § 3.3. Notice of Comment Period.

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

B. The NOCP shall indicate that copies of the statement

of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

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

#### § 3.4. Notice of meeting.

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

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

#### § 3.5. Public hearings on regulations.

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

#### § 3.6. Biennial review of regulations.

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

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

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

### PART IV. ADVISORY COMMITTEES.

#### § 4.1. Appointment of committees.

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

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such

expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

#### § 4.2. Limitation of service.

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

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

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

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

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

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

VA.R. Doc. No. R94-883; Filed April 22, 1994, 4:46 p.m.

### DEPARTMENT OF HEALTH (STATE BOARD OF)

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

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

**Effective Date:** July 1, 1994.

#### **Summary:**

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

**Summary of Public Comment and Agency Response:** No

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public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Susan R. Rowland, Assistant to the Commissioner, Department of Health, P. O. Box 2448, Richmond, VA 23218, telephone (804) 786-3564 or FAX (804) 786-4616. There may be a charge for copies.

VR 355-01-100. Public Participation Guidelines.

## PART I. DEFINITIONS.

### § 1.1. Definitions.

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

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

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Department" means the Virginia Department of Health.

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

## PART II. GENERAL INFORMATION.

### § 2.1. General information.

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

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

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

D. Any person may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a

minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

~~If the board determines not to act upon a petition it shall provide a written response to such petition. The board shall receive, consider and respond to such petition within 180 days.~~

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Interested parties lists.

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

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

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

### § 3.2. Notice of intent.

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

1. The title of the regulation to be developed or modified;

2. A summary of the subject matter including a brief statement as to the need for regulatory action;

3. A request for comments on the intended regulatory action, to include any ideas to assist the department in the drafting and formation of any proposed regulation developed pursuant to the NOIRA;

4. *An indication of the board's intent to hold a public hearing on the proposed regulation after it is published, and the reason if a public hearing is not planned;*

4. 5. The program contact person, mailing address and telephone number; and

5. 6. The date by which comments must be received.

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

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

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

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

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

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

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

### § 3.3. Ad hoc advisory committees.

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

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

C. *The advisory committee may be dissolved when the*

*process for promulgating the specific regulation is completed.*

### § 3.4. Proposed regulations.

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

B. Upon approval of the draft proposed regulation by the board, the department shall publish a Notice of Public Comment (NOPC) ~~and the proposal for public comment together with the proposed regulation for public comment, a summary of the regulation, and a statement containing the basis, purpose, substance, issues and estimated impact as described in § 3.2 D .~~

C. The NOPC shall include at least the following:

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

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

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

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

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

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

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

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

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



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

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

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

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

f. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

g. A statement assessing in what manner the department believes the proposed regulation is the least burdensome alternative to the regulated community that fully meets the state purpose of the proposed regulation.

h. A schedule setting forth when and how the department will evaluate the regulation for effectiveness and continued need.

5- 6. The date, time and place of at least one public hearing, if needed, if indicated in the NOIRA or required as specified in § 3.2 D, held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. The public hearing(s) may be held at any time during the public comment period - ~~The hearing(s)~~ and may be held in such location(s) as the department determines will best facilitate input from interested persons.

6- 7. The public comment period shall close no fewer than 60 days after publication of the NOPC in The Virginia Register.

7- 8. The department shall disseminate the NOPC to the public via the following:

a. Distribution to the Registrar of Regulations for publication in The Virginia Register and for publication in a newspaper of general circulation published at the state capital and as the department may determine, it may similarly request publication in newspapers in localities particularly affected.

b. Distribution by mail to persons on the list(s)

established under § 3.1 of this part.

8- 9. The department shall prepare a summary of comments received in response to the NOPC and submit it or, if requested, submit the full comments to the board. Both the summary and the comments shall become a part of the department's file.

§ 3-4: § 3.5. Completing adoption process.

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

§ 3.6. Exempt regulations.

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

## PART IV: TRANSITION.

§ 4.1. Transition.

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

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

VA.R. Doc. No. R94-881; Filed April 22, 1994, 11:13 a.m.

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**Title of Regulation:** VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

**Statutory Authority:** §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

**Effective Date:** June 15, 1994.

**Summary:**

This regulatory action amends Parts I, III, V, VI and IX. The changes implement amendments to the Certificate of Public Need (COPN) Law that became effective on July 1, 1993. The regulations (i) expand the categories of medical care facility projects which require approval by the State Health Commissioner

prior to initiation; (ii) exclude from project review requirements capital expenditures of \$1 million but less than \$2 million which are registered with the State Health Commissioner and do not involve expansion of space for patient care services; (iii) provide for an increase in the maximum application fees for certificate of public need (COPN) projects to 1.0% of the capital expenditure for a project or \$10,000; (iv) allow the State Health Commissioner to develop and operate primary care services in medically underserved areas; (v) extend the moratorium on the issuance of COPNs for nursing homes from June 30, 1994, to June 30, 1995, and (vi) provide several additional exceptions to this moratorium.

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

Agency Contact: Copies of the regulation may be obtained from Wendy V. Brown, Project Review Manager, Office of Resources Development, Department of Health, 1500 East Main Street, Suite 105, Richmond, VA 23219, telephone (804) 786-7463. There may be a charge for copies.

VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

## PART I. DEFINITIONS.

### § 1.1. Definitions.

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

*"Acquisition"* means an expenditure of ~~\$700,000~~ \$600,000 or more that changes the ownership of a medical care facility. It shall also include the donation or lease of a medical care facility. 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 for a project application and application for a significant change. Fees shall not exceed the lesser of 0.5% 1.0% of the proposed capital expenditure or cost increase for the project or ~~\$5,000~~ \$10,000.

*"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 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

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decision awarding a certificate of public need.

*"Department"* means the State Department of Health.

[ *"Designated medically underserved areas" means (i) areas designated as medically underserved areas pursuant to § 32.1-122.5 of the Code of Virginia; (ii) federally designated Medically Underserved Areas (MUA); or (iii) federally designated Health Professional Shortage Areas (HPSA). ]*

*"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.

*"Gamma knife surgery" means stereotactic radiosurgery, where stereotactic radiosurgery is the noninvasive therapeutic procedure performed by directing radiant energy beams from any source at a treatment target in the head to produce tissue destruction. See definition of "project."*

*"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 facility" means any institution, place, building, or agency, at a single site, 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. General hospitals.
2. Sanitariums.
3. Nursing homes.
4. Intermediate care facilities.
5. Extended care facilities.
6. Mental hospitals.
7. Mental retardation facilities.
8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.
9. 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 photon emission computed tomography (SPECT) scanning, or such other specialty services as may be designated by the board by regulation.
10. Rehabilitation hospitals.

For purposes of the regulations, the following medical care facility classifications shall not be subject to review:

1. Any facility of the Department of Mental Health, Mental Retardation and Substance Abuse Services.
2. 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

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3. Any physician's office, except that portion of the physician's office which is described in subdivision 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."

"*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.

"*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."

"*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 who 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 5.0% 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 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.

[ "*Primary medical care services*" means first-contact, whole-person medical and health services delivered by broadly trained, generalist physicians, nurses and other professionals, intended to include, without limitation, obstetrics/gynecology, family practice, internal medicine and pediatrics. ]

"*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 § 7.3 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

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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 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, organ or tissue transplant service, radiation therapy, single photon emission computed tomography (SPECT), psychiatric, 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 conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds.*

6. 7. 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. 8. Any capital expenditure of \$1 million or more by or on behalf of a medical care facility which is not defined as reviewable under subdivisions 1 through 6-7 of this definition, *except capital expenditures registered with the commissioner of less than \$2 million that do not involve the expansion of any space in which patient care services are provided, including, but not limited to, expenditures for nurse call systems, materials handling and management information systems, parking lots and garages, child care centers, and laundry services.* 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.

"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 authorized by the commissioner on the certificate of public need issued for the project by 10% or more;
3. Changes the service(s) proposed to be offered;
4. Extends the schedule for completion of the project beyond three 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 §§ 7.2 and 7.3.

"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.

### § 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. Powers and procedures of regulations not exclusive.

The commissioner and the board reserve the right to 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.

### § 2.8. 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 § ~~3.2~~ 3.3 of these regulations shall be met.

### § 3.2. Requirements for registration of certain capital expenditures of \$1 million or more but less than \$2 million.

*At least 30 days before any person contracts to make or is otherwise legally obligated to make a capital expenditure by or on behalf of a medical care facility that is \$1 million or more but is less than \$2 million and does*

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not involve the expansion of any space in which patient care services are provided, including, but not limited to, expenditures for nurse call systems, materials handling and management information systems, parking lots and garages, child care centers, and laundry services, 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 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. [ See definition of "project." ]

## § 3.2. § 3.3. Requirement for notification of proposed acquisition of medical care facility.

At least 30 days before any person is contractually obligated to acquire an existing medical care facility, the cost of which is ~~\$700,000~~ \$600,000 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.

## § 3.3. § 3.4. 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.

## § 3.4. § 3.5. 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 § 3.2 3.3 .

## § 3.5. § 3.6. 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" means 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.

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.

### § 4.1. Required considerations.

In determining whether a public need exists for a proposed project, the following factors shall be taken into account when applicable:

1. The recommendation and the reasons therefor of the appropriate regional health planning agency.
2. 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.
3. The relationship of the project to the long-range development plan, if any, of the person applying for a certificate.
4. The need that the population served or to be served by the project has for the project.
5. The extent to which the project will be accessible to all residents of the area proposed to be served.
6. 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.
7. Less costly or more effective alternate methods of reasonably meeting identified health service needs.
8. The immediate and long-term financial feasibility of the project.
9. The relationship of the project to the existing health care system of the area in which the project is proposed.
10. The availability of resources for the project.
11. The organizational relationship of the project to necessary ancillary and support services.
12. The relationship of the project to the clinical needs of health professional training programs in the area in which the project is proposed.
13. 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.
14. 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.
15. 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.

16. 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.

17. The costs and benefits of the construction associated with the proposed project.

18. 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.

19. Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness.

20. 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.

An applicant shall file a letter of intent with the commissioner to request appropriate application forms, and submit a copy of that letter to the appropriate regional health planning agency, by the later of (i) 30 days prior to the submission of an application for a project included within a particular batch group or (ii) 10 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 for the same or similar services and facilities which are proposed for the same planning district or medical service area. The letter shall identify the owner, the type of



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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. A letter of intent filed with the department shall be considered void one year after the date of receipt of such letter. (See § 6.4 C.)

## B. Application fees.

The department shall collect application fees for applications submitted requesting that request a certificate of public need. The fee required for an application is the lesser of 0.5% 1.0% of the proposed capital expenditure for the project or \$5,000 \$10,000. No application will be deemed to be complete for review until the required application fee is paid. (See § 6.4 C.)

## 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. 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; and the application fee has been paid to the department. (See § 5.4.)

## § 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. (See § 5.4.)

## § 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/ Obstetrical Services/ Neonatal Special Care Services	Feb. 10 Aug. 10	June 10 Dec. 8
B	Open Heart Surgery/Cardiac Catheterization/Ambulatory Surgery Centers/ Operating Room Additions/Transplant Services	Mar. 10 Sep. 10	July 8 Jan. 8
C	Psychiatric Facilities/ Substance Abuse Treatment/ Mental Retardation Facilities	Apr. 10 Oct. 10	Aug. 8 Feb. 7
D	Diagnostic Imaging Facilities/ Services	May 10 Nov. 10	Sep. 7 Mar. 10
E	Medical Rehabilitation Beds/ Services	June 10 Dec. 10	Oct. 8 Apr. 9
F	Selected Therapeutic Facilities/ Services	July 10 Jan. 10	Nov. 7 May 9 10
G	Nursing Home Beds/Services	[ Jan. 10 Mar. 10 May 10 July 10 Sep. 10 Nov. 10	May 10 July 8 Sep. 7 Nov. 7 Jan. 8 Mar. 10
	Planning Districts 6, 11 & 22	Feb. 10	June 10
	Planning Districts 1, 9, 13 & 20	Apr. 10	Aug. 8
	Planning Districts 3, 8, 14 & 16	June 10	Oct. 8
	Planning Districts 5, 17, 18 & 19	Aug. 10	Dec. 8
	Planning Districts 2, 10 & 15	Oct. 10	Feb. 7
	Planning District 4, 7, 12 & 21	Dec. 10	Apr. 9 ]

## Batch Group A includes:

1. The establishment of a general hospital.
2. An increase in the total number of general acute care beds in an existing or authorized general hospital.
3. The relocation at the same site of 10 general hospital beds or 10% of the general hospital beds of a medical care facility, whichever is less, from one existing physical facility to any other in any two-year

period.

4. The introduction into an existing medical care facility of any new neonatal special care or obstetrical services which the facility has not provided in the previous 12 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 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 not provided in the previous 12 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 surgery, cardiac catheterization, open heart surgery, or organ or tissue transplant services.

#### Batch Group C includes:

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 10 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 not provided in the previous 12 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:

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 not provided in the previous 12 months.

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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 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 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 not provided in the previous 12 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 12 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 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 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" means 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 this section, 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

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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 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~~ 3.4 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 (i) on the agreement by the applicant to provide an acceptable level of free care or care at a reduced rate to indigents, or (ii) on the agreement of the applicant to provide care to persons with special needs, or (iii) upon the agreement of the applicant to facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area. 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 cycle 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.

### EXPEDITED REVIEW PROCESS.

## § 6.1. Applicability.

Projects of medical care facilities that satisfy the criteria set forth below as determined by the State Health Commissioner shall be subject to an expedited review process:

1. Relocation at the same site of 10 beds or 10% of the beds, whichever is less, from an existing physical facility to another when the cost of such relocation is

less than \$1 million.

2. The replacement at the same site by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomography (CT), lithotripsy, magnetic resonance imaging (MRI), open heart surgery, positron emission tomographic scanning (PET), radiation therapy, or single photon emission computed tomography (SPECT) when the medical care facility meets applicable standards for replacement of such medical equipment which are set forth in the State Medical Facilities Plan.

3. *The introduction into a medical care facility of any new single photon emission computed tomography (SPECT) service when the medical care facility currently provides non-SPECT nuclear medicine imaging services and meets the applicable standards for establishment of SPECT services which are set forth in the State Medical Facilities Plan.*

## § 6.2. Application forms.

### A. Obtaining application forms.

Application forms for an expedited review shall be available from the department upon the ~~written~~ request of the applicant. ~~The request shall identify the owner, the type of project for which forms are requested and the location of the proposed project. A copy of this request 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 receipt of such request.

### B. Application fees.

The department shall collect application fees for applications ~~submitted requesting that request~~ a certificate of public need under the expedited review process. The fee required for an application is the lesser of ~~0.5%~~ 1.0% of the proposed capital expenditure for the project or ~~\$5,000~~ \$10,000. No application will be reviewed until the required application fee is paid.

### C. Filing application forms.

All requests for a certificate of public need in accordance with the expedited review process shall be reviewed by the department and the regional health planning agency which shall each forward a recommendation to the commissioner within 40 days from the date the submitted application has been deemed complete. No application for expedited review shall be ~~deemed to have been submitted reviewed~~ until the application form has been received by the department and the appropriate regional health planning agency, has been deemed complete, and the application fee has been paid to the department.

## § 6.3. Participation by other persons.

Any person directly affected by the review of a project under the expedited review process may submit written opinions, data and other information to the appropriate regional health planning agency and to the commissioner prior to their final action.

## § 6.4. Action on application.

A. Decisions to approve any project under the expedited review process shall be rendered by the commissioner within 45 days of the receipt of such *completed* request. The commissioner shall approve and issue a certificate for any project which is determined to meet the criteria for expedited review set forth in § 6.1.

B. If the commissioner determines that a project does not meet the criteria for an expedited review set forth in § 6.1, the applicant will be notified in writing of such determination within 45 days of the receipt of such request. In such cases, the department will forward the appropriate forms to the project applicant for use in filing an application for review of a project in the appropriate review cycle in accordance with Part V of these regulations.

C. Any project which does not qualify for an expedited review in accordance with § 6.1, as determined by the commissioner, shall be exempted from the requirements of §§ 5.2 A and 5.2 B when such project is filed for consideration in accordance with Part V of these regulations.

## PART VII. DURATION/EXTENSION/REVOCAION OF CERTIFICATES.

### § 7.1. 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.

### § 7.2. 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 § 7.3 of the regulations. Such request shall be submitted to the commissioner in writing with a copy to the appropriate regional health planning agency at

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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 § 3.3 3.4 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 § 7.3.

## 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.

## § 7.3. 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.

## § 7.4. Revocation of certificate.

### A. Lack of progress.

Failure of any project to meet the progress requirements stated in § 7.4 shall be cause for certificate revocation, unless the commissioner determines sufficient justification exists to permit variance, considering factors enumerated in § 7.3.

### B. Failure to report progress.

Failure of an applicant to file progress reports on an approved project in accordance with § 7.3 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 § 7.2 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 § 7.2 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.

#### 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 VIII. APPEALS.

#### § 8.1. 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 this section 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 IX. SANCTIONS.

#### § 9.1. 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.

#### § 9.2. 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 X. OTHER.

#### § 10.1. 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~~ *beds in which nursing facility or extended care services are provided* from the effective date of the regulations through June 30, 1994 1995. 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



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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 facility.

2. The conversion on site of existing licensed beds of a medical care facility other than a nursing facility or 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 SNF beds are needed specifically to serve a 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 ~~an adult care residence~~ licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 of the Code of Virginia 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 ~~adult care residence~~; (ii) the home for adults facility ~~adult care residence~~ 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 ~~adult care residence~~ further commits to admit such patients once the nursing facility beds are certified and operational; and (iv) the licensed home for adults facility ~~adult care residence~~ 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 facility or 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 the Code of Virginia, 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

~~an adult care residence~~ licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 of the Code of Virginia 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 of the Code of Virginia. No application for a certificate of public need for the creation or addition of nursing facility or 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 State Social Security Act. Further, if a certificate is approved, pursuant to this section, to increase the number of nursing facility or 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 of the Code of Virginia.

5. Notwithstanding the foregoing and other provisions of Article 1.1 (§ 32.1-102.1 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 facility beds in the facility; (ii) the facility has demonstrated that the nursing home facility 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~~ the City of Staunton 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~~ and (iii) the project is proposed as part of a retirement community that is a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.

8. The issuance of a certificate of public need for 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 any continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia if (i) the total number of new or additional nursing home beds plus any existing nursing home beds operated by the provider does not exceed 20% of the continuing care provider's total existing or planned independent living and adult care residence population when the beds are to be added by new construction, or 25 beds when the beds are to be added by conversion on site of existing beds in an adult care residence licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 of the Code of Virginia; (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 meeting the requirements of § 38.2-4905 of the Code of Virginia; (iii) the 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; (iv) the provider agrees in writing to obtain, prior to admission of every resident of the continuing care facility, the resident's written acknowledgement that the provider does not serve recipients of medical assistance services and that, in the event such resident becomes a medical assistance services recipient who is eligible for nursing facility placement, such resident shall not be eligible for placement in the provider's nursing facility unit; and (v) the provider agrees in writing that only continuing care contract holders will be admitted to the nursing home beds after the first three years of operation.

Further, if a certificate is approved pursuant to this subdivision, admissions to such new or additional beds shall be restricted for the first three years of operation to patients for whose care, pursuant to an agreement between the facility and the individual financially responsible for the patient, private payment will be made or persons who have entered into an agreement with the facility for continuing care contracts meeting the requirements of § 38.2-4905 of the Code of Virginia.

9. The issuance of a certificate of public need for a nursing facility project associated with a continuing care provider which did not operate a nursing home on January 1, 1993, and was registered as of January 1, 1993, with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia if (i) the total number of new beds to be constructed does not exceed 60 beds; (ii) the facility is owned by and will be operated as a nonprofit entity; (iii) after the first three years of operation, the facility will admit only retired officers

of the United States uniformed forces and their surviving spouses; (iv) the provider agrees in writing not to seek certification for the use of such beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act; and (v) the provider agrees in writing to obtain, prior to admission of every resident of the continuing care facility, the written acknowledgement that the provider does not serve recipients of medical assistance services and that, in the event such resident becomes a medical assistance services recipient who is eligible for nursing facility placement, such resident shall not be eligible for placement in the provider's nursing facility unit. Further, if a certificate is approved, pursuant to this subdivision, admissions to such beds shall be restricted to persons for whose care, pursuant to an agreement with the facility, private payment will be made or persons who have entered into an agreement with the facility for continuing care contracts meeting the requirements of § 38.2-4905 of the Code of Virginia.

10. The issuance of a certificate of public need for a nursing facility project located in the city of Norfolk if (i) the total number of beds to be constructed does not exceed 120 beds; (ii) the facility will replace an existing facility in the City of Chesapeake; (iii) the construction of the facility has been delayed by environmental contamination caused by leaking underground storage tanks; and (iv) the total capital costs of the facility will not exceed \$4,387,000.

§ 10.2. 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 nine months upon determining that (i) substantial and continuing progress has been made toward completion of the project; (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 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

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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 of the Code of Virginia 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 closes a loan to fund the project by October 30, 1992, and (v) the facility is completed by October 31, 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 of the Code of Virginia 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.

**NOTICE:** The forms used in administering the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health, 1500 E. Main Street, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 910 Capitol Square, 2nd Floor, Room 262, Richmond, Virginia 23219.

Registration Form for Capital Expenditures of \$1,000,000 or More But Less Than \$2,000,000 Which Are Not Defined as a Project On or After July 1, 1993 Pursuant to Section 32.1-102.1 of the Code of Virginia  
Instructions For Completing Financial Worksheet  
Section C - Financial Worksheet  
Application for Expedited Review for Certificate of Public Need (6/30/93)  
Facility Organization and Identification

VA.R. Doc. No. R94-882; Filed April 22, 1994, 11:15 a.m.

## BOARD OF HEALTH PROFESSIONS

**Title of Regulation:** VR 365-01-1:1. Public Participation Guidelines.

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

**Effective Date:** June 15, 1994.

### Summary:

*Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations and establishes the definitions of terms used in the regulations. Part II establishes the composition of the mailing list and the process for adding or deleting names from that list. It also lists documents to be sent to persons on the mailing list. Part III sets forth the requirements and procedures for a petition for rulemaking, for the issuance of notices, and for the conduct of a public hearing and biennial review of regulations. Part IV establishes the requirements and criteria for the appointment of advisory committees in the development of regulations and for the terms and conditions of service.*

**Summary of Public Comment and Agency Response:** No public comment was received by the promulgating agency.

**Agency Contact:** Copies of the regulation may be obtained from Richard D. Morrison, Ph.D., Regulatory Coordinator, Board of Health Professions, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9904. There may be a charge for copies.

VR 365-01-1:1. Public Participation Guidelines.

### PART I. GENERAL PROVISIONS.

#### § 1.1. Purpose.

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

#### § 1.2. Definitions.

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

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

*"Board" means the Board of Health Professions.*

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

## PART II. MAILING LIST.

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

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

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

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

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

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

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

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

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Petition for rulemaking.

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

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

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.

2. The number and title of the regulation to be addressed.

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

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

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

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

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

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

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

### § 3.3. Notice of Comment Period.

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

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

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

### § 3.4. Notice of meeting.

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

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the

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regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

## § 3.5. Public hearings on regulations.

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

## § 3.6. Biennial review of regulations.

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

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

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

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

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

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

### § 4.2. Limitation of service.

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

1. There is no response to the Notice of Intended Regulatory Action, or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14.4.1 of the Code of Virginia).

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

1. If the board determines that the specific regulatory

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

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

V.A.R. Doc. No. R94-845; Filed April 20, 1994, 1:01 p.m.

## BOARD FOR HEARING AID SPECIALISTS

Title of Regulation: VR 375-01-1. Public Participation Guidelines (REPEALED).

Title of Regulation: VR 375-01-01:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Effective Date: June 15, 1994.

### Summary:

The Board for Hearing Aid Specialists Public Participation Guidelines (PPG's) mandate public participation in the formulation, adoption and amendments to new and existing regulations governing the licensure of hearing aid specialists. The Department of Professional and Occupational Regulation (the agency) will maintain a mailing list of persons and organizations to notify of any intended regulatory action by the board. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period," and a notice that final regulations have been adopted. The PPG's outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days and will state whether or not the agency will hold a public hearing. Specific instances are given as to when the agency must hold a public hearing and when the agency must reevaluate the effectiveness and continued need of the regulations. The PPG's also establish the procedures for the formulation and adoption of regulations and the guidelines for when substantial changes are made prior to final adoption of regulations, and include the formation of an appointed advisory committee for input regarding board regulations. Finally, the PPG's specify what meetings and notices will be published in The Virginia Register.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Peggy McCrerey, Deputy Director, Department of

Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-2194. There may be a charge for copies.

VR 375-01-01:1. Public Participation Guidelines.

## § 1. Definitions.

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

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

"Agency" or "board" means the Board for Hearing Aid Specialists.

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

"Agency" means any authority, instrumentality, officer, board, or other unit of state government empowered by the basic laws to make regulations or decide cases.

"Organization" means any one or more associations, advisory council, committee, corporation, partnership, governmental body or legal entity.

"Person" means one or more individuals. ]

## § 2. Mailing list.

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

1. "Notice of Intended Regulatory Action" to promulgate [ , amend ] or repeal regulations.
2. "Notice of Comment Period" and public hearings [ ; the subject of which is proposed or existing regulations ] .
3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

## § 3. Placement on the mailing list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency, at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be

provided all information stated in § 2. Individuals and organizations [ periodically ] may be [ ~~periodically~~ ] requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

## § 4. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

## § 5. Notice of intent.

At least 30 days prior to [ the ] filing [ of ] the "Notice of Comment Period" and [ the ] proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether [ or not they intend the agency intends ] to hold a public hearing. The agency is required to hold a hearing on [ the ] proposed regulation upon request by [ (i) ] the Governor or [ ~~from~~ (ii) ] 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register [ of Regulations ] .

## § 6. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding [ , ] which may take the form of a public hearing [ , ] to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

## § 7. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submissions on the changes to the regulations. If the agency [ ~~received~~ receives ] requests from at least 25 persons for an opportunity to make oral or written

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*comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.*

*If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.*

*A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.*

## § 8. Advisory committees.

*The [ ~~board~~ agency ] intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.*

*When identifying potential advisory committee members the agency may use the following:*

- 1. Directories of organizations related to the profession,*
- 2. Industry, professional and trade associations' mailing lists, and*
- 3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.*

## § 9. Applicability.

*Sections 2 [ ~~through~~ , 3, ] 4, 6, and [ § 7 ] shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.*

VA.R. Doc. Nos. R94-924 and R94-925; Filed April 27, 1994, 9:35 a.m.

## BOARD OF MEDICINE

**Title of Regulation:** VR 465-01-1. Public Participation Guidelines (REPEALED).

**Title of Regulation:** VR 465-01-1:1. Public Participation Guidelines.

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

**Effective Date:** June 15, 1994.

## Summary:

*The final regulations establish requirements governing Public Participation Guidelines. They include requirements for exemption from the Administrative Process Act, requirements that specify protocols for a notice and scheduling of a public hearing upon petition of 25 persons, and requirements that specify protocols for the use of ad hoc advisory boards or committees.*

*The final regulations respond to continuing review of the regulations by the board and staff. These regulations provide the basis for public participation development of all other regulations that may be adopted by the board.*

**Summary of Public Comment and Agency Response:** No public comment was received by the promulgating agency.

**Agency Contact:** Copies of the regulation may be obtained from Hilary H. Conner, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9908. There may be a charge for copies.

VR 465-01-1:1. Public Participation Guidelines.

## PART I. PURPOSE.

### § 1.1. Statement of purpose.

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

## PART II. MAILING LIST.

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

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

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

*C. The board may maintain additional mailing lists for*

Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-2194. There may be a charge for copies.

VR 375-01-01:1. Public Participation Guidelines.

## § 1. Definitions.

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

[ "~~Administrative Process Act~~" means Chapter ~~1-1-1~~ (§ ~~9-6.14.1 et seq.~~) of Title 9 of the Code of Virginia.

"Agency" or "board" means the Board for Hearing Aid Specialists.

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

"Agency" means any authority, instrumentality, officer, board, or other unit of state government empowered by the basic laws to make regulations or decide cases.

"Organization" means any one or more associations, advisory council, committee, corporation, partnership, governmental body or legal entity.

"Person" means one or more individuals. ]

## § 2. Mailing list.

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

1. "Notice of Intended Regulatory Action" to promulgate [ , amend ] or repeal regulations.
2. "Notice of Comment Period" and public hearings [ ; the subject of which is proposed or existing regulations ] .
3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

## § 3. Placement on the mailing list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency, at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be

provided all information stated in § 2. Individuals and organizations [ periodically ] may be [ periodically ] requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

## § 4. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

## § 5. Notice of intent.

At least 30 days prior to [ the ] filing [ of ] the "Notice of Comment Period" and [ the ] proposed regulations as required by § 9-6.14.7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether [ or not they intend the agency intends ] to hold a public hearing. The agency is required to hold a hearing on [ the ] proposed regulation upon request by [ (i) ] the Governor or [ from (ii) ] 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register [ of Regulations ] .

## § 6. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding [ , ] which may take the form of a public hearing [ , ] to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

## § 7. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency [ received receives ] requests from at least 25 persons for an opportunity to make oral or written



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*comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.*

*If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.*

*A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.*

## § 8. Advisory committees.

*The [ board agency ] intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.*

*When identifying potential advisory committee members the agency may use the following:*

- 1. Directories of organizations related to the profession,*
- 2. Industry, professional and trade associations' mailing lists, and*
- 3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.*

## § 9. Applicability.

*Sections 2 [ through , 3, ] 4, 6, and [ § 7 ] shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.*

VA.R. Doc. Nos. R94-924 and R94-925; Filed April 27, 1994, 9:35 a.m.

## BOARD OF MEDICINE

**Title of Regulation:** VR 465-01-1. Public Participation Guidelines (REPEALED).

**Title of Regulation:** VR 465-01-1:1. Public Participation Guidelines.

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

**Effective Date:** June 15, 1994.

## Summary:

*The final regulations establish requirements governing Public Participation Guidelines. They include requirements for exemption from the Administrative Process Act, requirements that specify protocols for a notice and scheduling of a public hearing upon petition of 25 persons, and requirements that specify protocols for the use of ad hoc advisory boards or committees.*

*The final regulations respond to continuing review of the regulations by the board and staff. These regulations provide the basis for public participation development of all other regulations that may be adopted by the board.*

**Summary of Public Comment and Agency Response:** No public comment was received by the promulgating agency.

**Agency Contact:** Copies of the regulation may be obtained from Hilary H. Conner, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9908. There may be a charge for copies.

VR 465-01-1:1. Public Participation Guidelines.

## PART I. PURPOSE.

### § 1.1. Statement of purpose.

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

## PART II. MAILING LIST.

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

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

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

*C. The board may maintain additional mailing lists for*

persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

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

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

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

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

### PART III. PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Petition for rulemaking.

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

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

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

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

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

§ 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA)

shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

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

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

§ 3.3. Notice of Comment Period.

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

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

C. The NOPC shall make provision for oral or written submittals on the proposed regulation. The impact on regulated entities, the public, as well as the cost of compliance with the proposed regulation shall be included in the submittal returns.

§ 3.4. Notice of meeting.

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

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

§ 3.5. Public hearings on regulations.

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

§ 3.6. Biennial review of regulations.

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

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

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

## PART IV. ADVISORY BOARD OR COMMITTEE.

### § 4.1. Appointment of advisory board or committee.

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

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

### § 4.2. Limitation of service.

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

- 1. There is no response to the Notice of Intended Regulatory Action, or*
- 2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).*

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

- 1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.*
- 2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.*

VA.R. Doc. Nos. R94-844 and R94-849; Filed April 20, 1994, 12:23 p.m.

## DEPARTMENT OF MOTOR VEHICLES

**Title of Regulation:** VR 485-10-9101. Public Participation Guidelines for Regulation Development and Promulgation.

**Statutory Authority:** §§ 9-6.14:7.1 and 46.2-203 of the Code of Virginia.

**Effective Date:** July 1, 1994.

### Summary:

*This regulation establishes guidelines for soliciting input from interested parties and the general public in the development and promulgation of the agency's regulations. It describes how the department will identify, notify and involve those persons whom it feels are interested or affected by a given regulation. It also outlines the steps the department will take to develop and promulgate its regulations, in accordance with the requirements of the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.*

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

**Agency Contact:** Copies of the regulation may be obtained from Bruce Gould, Director, Planning and Program Development, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-0429. There may be a charge for copies.

VR 485-10-9101. Public Participation Guidelines for Regulation Development and Promulgation.

## PART I. GENERAL PURPOSE.

### § 1. 1.1. General purpose.

In developing any regulation it proposes, the Department of Motor Vehicles ("department") is committed to soliciting input and comment from interested citizens, professional associations, and industry representatives. Such input and participation will be actively solicited by the department pursuant to the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

Any person who is interested in participating in the regulation development process should notify the department in writing. Such notification of interest should be sent to the Commissioner, Department of Motor Vehicles, P.O. Box 27412, Richmond, Virginia 23269-0001.

## PART II. IDENTIFICATION OF INTERESTED PARTIES.

### § 2. 2.1. Identification of interested parties.

Prior to the development of any regulation, the department will identify persons whom it feels would be

interested or affected by the proposal. The methods for identifying interested parties will include, but not be limited to, the following:

1. Obtain annually from the Secretary of the Commonwealth a list of all persons, groups, associations and others who have registered as lobbyists for the annual General Assembly session. This list will be used to identify groups which may be interested in the subject matter of the proposed regulation.

2. Utilize *Identify industry and professional associations* from the statewide listing of business, professional, civic and charitable associations and societies in Virginia published by the State Chamber of Commerce to identify additional industry and professional associations which might be interested in the regulation.

3. Utilize internal administration mailing lists of persons, organizations, groups, and agencies that have expressed an interest in advising and assisting in the development of regulations or. Also utilize lists of those who have previously raised questions or expressed an interest in the subject matter under consideration pursuant to § 1.1, or through requests for formal rulings or administrative appeals. At the discretion of each administration, these lists may be maintained on a program specific basis or be of a general interest group. From time to time the These lists will be updated on a regular basis to include any new interested parties.

## § 3. Notification of interested parties.

### PART III. NOTIFICATION OF INTERESTED PARTIES.

#### A. § 3.1. Generally.

The department will prepare a Notice of Intended Regulatory Action (Form RR01) ("notice") prior to the development of any regulation. The notice will identify the subject matter and purpose for the development of the new regulation(s); . The notice will state that the department plans to hold a public hearing on the proposed regulation after the proposed regulation is published. It also will state the statutory authority under which they are promulgated, and will specify a time deadline for receipt of responses from persons interested in participating in the development process. The name, address and telephone number of an agency contact will also be included in the notice.

#### B. § 3.2. Dissemination of notice.

The methods for disseminating the notice to the public will include, but not be limited to, the following:

1. Send notice to individuals or groups identified in §

2.1 as interested or potentially affected parties.

2. Publish the notice in The Virginia Register of Regulations.

3. Request that industry, professional associations, and other groups to whom the notice is sent publish such notice in newsletters or journals or use any other means available to them to disseminate the notice to their memberships.

4. Invite participation from the general public through the publication of a Notice of Intent in the *Richmond Times-Dispatch* a newspaper of general circulation published in the state capital and, if necessary, in other general circulation newspapers.

5. The notification process delineated in this section does not apply to emergency regulations, which are excluded from the operation of Article 2 (§ 9-6.14.7.1 et seq.) of the Administrative Process Act.

## § 4. Regulation development.

### PART IV. REGULATION DEVELOPMENT.

#### A. § 4.1. Response to notice.

After interested parties have responded to the notice, the department will analyze the level of interest. If sufficient interest exists, the department may schedule informal meetings prior to the development of any regulation to determine the specific areas of interest or concern and to gather factual information relative to on the subject matter of the regulation. Form RR06, Notice of Meeting, will be used for this purpose. Alternatively, the department may elect to request that persons who have responded to the notice submit written comments, concerns and suggestions relative to about or on the proposed regulation.

#### B. § 4.2. Establishment of advisory committee panel.

When necessary, appropriate, the department will utilize a ~~core~~, an ad hoc advisory committee panel comprised of appropriate department representatives, persons who have previously participated in public proceedings relative to on similar subject matters subjects, or selected individuals who responded to a Notice of Intended Regulatory Action, newsletter or special mailing. The department will consider the use of an advisory panel to be appropriate whenever individuals request, in writing, to be involved directly in the development and promulgation of regulations or whenever the department determines that the subject matter of the regulations can be better addressed by persons from outside the department who are willing and able to participate directly in the promulgation process. The committee panel will discuss the issues and make recommendations which will be considered in drafting regulations. Once the regulations

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have been developed, the ~~committee panel~~ will review them and continue to participate during the promulgation process as directed by the Administrative Process Act.

## ~~C.~~ § 4.3. Preparation of ~~working draft~~ proposed regulation

~~Subsequent to the initial public input on the development of any regulation,~~ *At its discretion,* the department will develop a ~~working draft~~ of ~~draft~~ the proposed regulation *prior to or during any opportunities it provides to the public to submit input*. In certain instances where the technical nature of the subject matter merits, the department may request that industry or professional groups develop a working draft. A copy of this draft will be furnished to all persons who responded to the notice indicating an interest in the regulation and to those persons participating in the initial comment phase of the development process. Persons to whom a copy of the working draft is furnished will be invited to submit written comments on the draft. If the response warrants, additional informal meetings may be held to discuss the working draft.

## ~~D.~~ § 4.4. Submission of proposed regulation submission package.

Upon the conclusion of the development process, *all proposed regulations will be subject to the most recent review procedures published by the Governor. After this review,* the department will prepare a proposed regulation submission package for submission to the office of the Registrar of Regulations. The package will include:

1. Notice of Comment Period (Form RR02) (3 copies);
2. Proposed Regulation Transmittal Sheet (Form RR03) (3 copies);
3. A statement of basis, purpose, substance, issues and impact (2 copies);
4. A summary of the regulation (2 copies);
5. Double-spaced text of the proposed regulation (2 copies); and
6. Reporting forms used in administering the regulation, if any (2 copies).

Once the Registrar receives all the required documents and appropriate number of copies, the proposed regulation ~~and~~, *summary and notice of opportunity for oral and written submittals on the proposed regulation* will be published in the "Proposed Regulation" section of The Virginia Register.

At the same time that the regulations are filed with the Registrar's office, the department will file Form RR09, Regulation Review Summary, and a copy of the proposed regulations to the Department of Planning and Budget and

to the Governor's office.

The notice of comment period will appear in each issue of The Virginia Register until the public hearing date or 60-day written comments deadline has elapsed, whichever occurs last. The summary, provided with the Notice of Comment Period form, will be printed in a newspaper of general circulation published in the state capital and, in addition, similarly published in newspapers in localities particularly affected by the proposed regulations.

## ~~E.~~ § 4.5. Review of proposed regulation after publication.

*The following types of review will occur after the publication of the proposed regulations:*

1. Agency review. The department will compare the published copy of the regulation with the agency copy. Corrections will be filed with the Registrar.
2. ~~Legislative and gubernatorial~~ *Gubernatorial* review. During the 60-day notice of comment period, 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 the~~. *These* comments will be published in The Virginia Register. The department will respond to the Governor's comments pursuant to § 9-6.14:9.1 of the Code of Virginia.

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 Registrar and the promulgating agency. The department will respond to the objection pursuant to § 9-6.14:9.2 of the Code of Virginia.

## ~~F.~~ § 4.6. Final regulations submission package.

When the notice of comment period has elapsed, the department may take action on the proposed regulations, and will again submit for publication the text of the regulation as adopted, explaining any substantial changes in the final regulation, along with an up-to-date basis, purpose, substance, issues and impact statement. A 30-day final adoption period will begin upon publication in The Virginia Register. The package will contain:

1. Final Regulation Transmittal Sheet (Form RR04) (3 copies);
2. Statement of final agency action (2 copies);
3. Explanation of substantial changes;
4. Summary of public comments and agency's responses (2 copies);
5. Summary of regulation;
6. Statement of basis, purpose, substance, issues and

impact (2 copies);

7. Double-spaced text of final regulation (2 copies); and

8. Reporting forms used in administering the final regulation, if any.

At the same time that the regulations are filed with the Registrar's office, the Department of Planning and Budget and the Governor's office will receive copies of the final regulations. Copies of the department's draft summary description of public comment will be sent by the department to all public commenters on the proposed regulation at least five days before the final adoption of the regulation.

§ 4.7. Petitions relating to regulatory actions.

The agency regulatory coordinator will establish a committee within the department to review, consider and respond to (i) all petitions received by the department requesting that it develop a new regulation or amend an existing one; or (ii) those petitions received by the department, within 30 days from the publication of the final regulation, that request the opportunity for oral and written submittals relating to those changes with substantial impact that have occurred from the time it is published as a proposed regulation to its publication as a final regulation. Responses to those petitions requesting new or amended regulations will be made within 180 days from the day the petition is received by the department.

When petitions requesting the opportunity for oral or written submittals are received from at least 25 persons within 30 days from the publication of the final regulation, the department will suspend the regulatory process in question for 30 days to solicit public comment, unless the department determines in the committee meetings that the changes are minor and inconsequential in their impact.

PART V. EFFECTIVE DATE.

§ 5. 5.1. Effective date.

The final regulation will become effective 30 days after it is published in The Virginia Register, or a later date, if specified. If there are gubernatorial or legislative objections, the procedures specified in the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia, will be followed.

PART VI. REGULATION AVAILABILITY.

§ 6. 6.1. Availability of final regulation.

The department will make available to the public copies of the adopted regulations, together with the summary of

the public comments and the department's responses. The Governor's comments and the department's responses also will be available to the public. Copies of the final regulations will be sent to all interested parties who have specifically requested them.

PART VII. FORMS.

§ 7. 7.1. Forms.

The forms described herein Registrar of Regulations develops the forms referenced in these guidelines and may change from time to time them. Copies of appropriate forms in current use will be attached to these guidelines and will be updated when necessary. Copies of forms in current use may be obtained from the Registrar's office or from the department by request.

VA.R. Doc. No. R94-921; Filed April 27, 1994, 10:12 a.m.

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

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

Effective Date: July 1, 1994.

Summary:

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

Changes to the regulation since its publication as a proposed regulation make the regulation less burdensome. The changes add two new documents to the existing list of acceptable documents, allow a commanding officer to certify residency for military personnel, and allow the "Residency Certification" (formerly the Affirmation of Residency) form to be signed before a DMV employee or a Notary Public.

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

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**Agency Contact:** Copies of the regulation may be obtained from Bruce Gould, Director, Planning and Program Development, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-0429. There may be a charge for copies.

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

## § 1. Purpose of regulations.

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

## § 2. Definitions.

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

"Department" means the Virginia Department of Motor Vehicles.

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

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

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

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

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

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

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

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

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

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

1. A payroll check or payroll check stub issued by an employer within two months of the application;
2. A Voter Registration Card;
3. A W-2 tax form used for reporting purposes to the United States Internal Revenue Service which is not more than 18 months old;
4. A bank statement (not checks) that is not more than two months old;
5. A United States passport;
6. A United States income tax return from the previous year;
7. A Commonwealth of Virginia income tax return for the previous year;
8. Utility bills issued to the applicant;
9. A receipt for personal property taxes or real estate taxes paid to the Commonwealth of Virginia or a city, county, town, or locality within the Commonwealth of Virginia within the last year;
10. An automobile or life insurance policy which is currently in force;
11. A transcript from a school, college or university in which the applicant is currently enrolled;
12. A Virginia driver's license or identification card or permit issued on or after July 1, 1994 [ : ;
13. A Virginia motor vehicle registration or a Virginia title for a vehicle owned by the applicant. ]

D. If the applicant does not have access to any of the documents listed in subsection C, he may obtain from the department [ an "Affirmation of Residency" a "Residency

Certification" form ] (form DL 51) and have it completed by an individual who possesses a Virginia driver's license, commercial driver's license, or photo identification card, and who is willing to certify that the applicant is also a Virginia resident. [ In the case of military personnel, the form may be completed by the applicant's commanding officer certifying that the applicant is a Virginia resident; the commanding officer is not required to possess a Virginia driver's license, commercial driver's license, or photo identification card. ] This document must be signed and sworn to before a Notary Public [ or before a department employee ] .

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

#### § 4. Unacceptable documentation.

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

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

#### § 5. False certification by another.

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

VA.R. Doc. No. R94-920; Filed April 27, 1994, 10:14 a.m.

## BOARD OF NURSING HOME ADMINISTRATORS

**Title of Regulation:** VR 500-01-2:1. Regulations of the Board of Nursing Home Administrators.

**Statutory Authority:** §§ 54.1-2400 and 54.1-3101 of the Code of Virginia.

**Effective Date:** June 15, 1994.

#### Summary:

The amendments increase fees for licensure, registration, renewal, late renewal, and reinstatement that went into effect November 4, 1992, and June, 1993, through emergency regulations; amend reporting requirements for continuing education; and require

registration of vendors of continuing education.

Substantial changes from the proposed regulations include:

§ 1.1 - Definition of classroom hour was revised from 50 minutes to 60 minutes to prevent conflict with other requirements in the regulations. Change was made in response to public comment.

§ 8.2 - Clarification in response to public comment was included to assure that credit was received for courses taken at accredited institutions.

§ 8.2.D - Requirement was added in response to public comment to allow a licensee to carry over a maximum of five excess continuing education units from one year to the next.

§ 8.5 - Regulation was relaxed in response to public comment to allow an original computerized document provided by the vendor to be accepted as documentation.

§ 8.6 - Requirement was relaxed in response to public comment to allow credit for all nursing home administrators who take continuing education courses in another state or the District of Columbia.

§ 8.7 - Requirement was added effective January 1, 1995, allowing vendors to be registered with the Board of the National Association of Boards of Examiners of Nursing Home Administrators rather than having to register with both entities. Regulation was strengthened effective January 1, 1995, in response to public comment to require all vendors, including state agencies, to be registered with one or the other entity. The board adopted January 1, 1995, as the implementation date since these regulations will not be final until June 15, 1994, and vendors have already completed registration for the calendar year.

§ 8.11 - Regulation was added in response to public comment to allow an instructor who is a licensed nursing home administrator in Virginia to receive continuing education credit for teaching the course. This regulation is a relaxation of previous requirements.

§ 9.6 - Effective January 1, 1995, fees for initial application for vendor sponsorship registration are reduced from \$275 to \$50. Annual renewal fees are reduced effective the same date from \$200 to \$25. This amendment is in response to public comment. The board adopted January 1, 1995, as the implementation date since these regulations will not be final until June 15, 1994, and vendors have already completed registration for the calendar year.

§ 9.13 B - Subsection was amended and relaxed in



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*response to public comment. Vendors will now have the discretion to approve credit for attendance for a participant who arrives late or leaves early if circumstances merit such credit. Credit shall be given only in 30-minute increments.*

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

**Agency Contact:** Copies of the regulation may be obtained from Meredyth P. Partridge, Executive Director, Board of Nursing Home Administrators, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9111. There may be a charge for copies.

VR 500-01-2:1. Regulations of the Board of Nursing Home Administrators.

## PART I. GENERAL PROVISIONS.

### [ *Article 1.* *Definitions.* ]

#### § 1.1. [ *Definitions.* ]

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

*"Accredited institution" means any degree-granting college or university accredited by the following: Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, Western Association of Schools and Colleges, and public schools accredited by the Virginia Department of Education.*

*"Applicant" means a person applying to sit for an examination or applying for licensure by the board.*

*"Administrator-in-training program (A.I.T.)" means the apprenticeship program which consists of 2,080 hours of continuous training in nursing home administration in a licensed nursing home.*

*"Administrator-of-record" means the licensed nursing home administrator designated in charge of the general administration of the facility and identified as such to the facility's licensing agency.*

*"Administrator-in-training applicant" means a person applying for approval to enter the administrator-in-training (A.I.T.) program.*

*"Classroom hour" means [ 50 60 ] minutes of*

*attendance in a group program for obtaining continuing education. [ (See Appendix III.) ]*

*"Continuing education" means the educational activities which serve to maintain, develop, or increase the knowledge, skills, and performance and competence generally recognized as relevant to the nursing home administrator's professional responsibilities.*

*"Department" means the Department of Health Professions.*

*"Direct supervision" means directing the activities and course of a subordinate's performance.*

*"Executive director" means the board administrator for the Board of Nursing Home Administrators.*

*"Formal program of learning" means a process that is designed and intended primarily as an educational activity and that complies with the applicable standards as defined by Part VIII of these regulations.*

*"Full-time employment" means employment of at least 37 1/2 hours per week.*

*"Group program" means an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants.*

*"Instructional design" means a plan that specifies the learning objectives of the program; the content of the program; the methods of presentation (case studies, lectures, work group; programmed instruction, use of audio or visual aids or group participation); and the method whereby the participant evaluates whether the learning objectives were achieved. Adequacy of technical knowledge or skills in developing instructional design shall be demonstrated by appropriate experience or education of the presenter.*

*"Learning objectives" means specifications of what participants should gain as a result of completing continuing education courses.*

*"N.A.B." means the National Association of Boards of Examiners for Nursing Home Administrators.*

*"National examination" means a test used by the board to determine competence of candidates for licensure.*

*"Nursing home administrator" means any individual licensed by the Board of Nursing Home Administrators.*

*"Nursing home" means any public or private facility required to be licensed as a nursing home under the provisions of Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 of the Code of Virginia and the regulations of the Board of Health.*

"*Practicum*" means a course of study as part of a degree or post-degree program designed especially for the preparation of candidates for licensure as nursing home administrators that involves supervision by an accredited college or university of the practical application of previously studied theory. The practicum shall be served under a preceptor registered with the board.

"*Preceptor*" means a nursing home administrator currently licensed in Virginia approved by the board to conduct an administrator-in-training (A.I.T.) program.

"*Quality instruction*" means instruction that is provided by teachers/presenters who are capable through background, training, education and experience of communicating effectively and providing an environment conducive to learning. Instructors shall be competent in the subject matter, skilled in the use of the appropriate teaching method(s) and prepared in advance.

"*Sponsor*" means an individual or business approved by the board to offer continuing education in accordance with these regulations.

"*State examination*" means a test used by the Board of Nursing Home Administrators to determine competency of a candidate relevant to regulations and laws in Virginia for purposes of licensure.

[ Article 2:  
Legal Base. ]

§ 1.2. [ *Legal base.* ]

The following legal base describes the authority of the Board of Nursing Home Administrators to prescribe regulations governing nursing home administrators in the Commonwealth of Virginia:

Title 54.1:

Chapter 1 (§ 54.1-100 through 54.1-114);

Chapter 24 (§ 54.1-2400 through 54.1-2403);

Chapter 25 (§ 54.1-2500 through 54.1-2510); and

Chapter 31 (§ 54.1-3100 through 54.1-3103)

of the Code of Virginia.

[ Article 3:  
Purpose. ]

§ 1.3. [ *Purpose.* ]

These regulations establish the standards for qualifications, training, examination, licensure, and practice of persons as administrators-in-training; nursing home administrators; and preceptors in the Commonwealth of Virginia.

[ Article 4:  
Applicability. ]

§ 1.4. [ *Applicability.* ]

Individuals subject to these regulations are (i) nursing home administrators, (ii) applicants, (iii) administrators-in-training, and (iv) preceptors, and (v) approved sponsors of continuing education courses.

Article 5:  
Public Participation Guidelines:

§ 1.5. *Mailing list.*

The executive director of the board shall 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 hearings or informational proceedings, the subject of which is proposed or existing regulations; and

3. Final regulations when adopted.

§ 1.6. *Additions and deletions to mailing list.*

A. Any person wishing to be placed on the mailing list shall have his name added by writing to the board.

B. The board may, in its discretion, add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations.

C. Those on the list may be periodically requested to indicate their desire to continue to receive documents or to be deleted from the list.

D. When mail is returned as undeliverable, persons shall be deleted from the list.

§ 1.7. *Notice of intent.*

A. At least 30 days prior to publication of the notice to conduct an informational proceeding as required by § 9-6.14:7.1 of the Code of Virginia, the board shall publish a notice of intent.

B. The notice shall contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any persons to provide written comment on the subject matter.

C. The notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

§ 1.8. *Informational proceedings or public hearings for*

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existing rules.

A. At least once each biennium, the board shall 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 cost of compliance.

B. Notice of such proceeding shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

C. The proceeding may be held separately or in conjunction with other informational proceedings.

## § 1.9. Petition for rulemaking.

A. Any person may petition the board to adopt, amend, or delete any regulation.

B. Any petition received within 10 days prior to a board meeting shall appear on the agenda of that meeting of the board.

C. The board shall have sole authority to dispose of the petition.

## § 1.10. Notice of formulation and adoption.

Prior to any meeting of the board or subcommittee of the board at which the formulation or adoption of regulations is to occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

## § 1.11. Advisory committees.

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

## PART II. OPERATIONAL RESPONSIBILITIES.

### Article 1. Posting of License and Licensure.

#### § 2.1. [ License required. ]

An individual shall have a valid nursing home administrator's license issued by the Board of Nursing Home Administrators in order to engage in the general administration of a nursing home.

#### § 2.2. [ Posting of license. ]

Each licensee shall post his license in a main entrance or place conspicuous to the public in the facility in which

the licensee is administrator-of-record.

### Article 2. Records.

#### § 2.3. Accuracy of information.

A. All changes of mailing address or name shall be furnished to the board within five days after the change occurs.

B. All notices required by law and by these regulations to be mailed by the board to any registrant or licensee shall be validly given when mailed to the latest address on file with the board and shall not relieve the licensee, trainee, or preceptor of the obligation to comply.

## PART III. FEES.

### Article 1. Initial Fees.

#### § 3.1. [ Initial fees. ]

The applicant shall submit ALL fees below which apply:

- |  |       |       |
|--|-------|-------|
| 1. Application for A.I.T. program .....                                      | \$150 | \$188 |
| 2. Preceptor application fee .....   | \$100 | \$125 |
| 3. Application fee for license to practice nursing home administration ..... | \$125 | \$156 |
| 4. Fee to sit for state examination .....                                    | \$100 | \$125 |
| 5. Fee to sit for national examination .....                                 | \$150 | \$188 |
| 6. Verification of licensure requests from other states .....                | \$ 50 | \$ 63 |

### Article 2. Renewal Fees.

#### § 3.2. [ Renewal fees. ]

Renewal fees received by the board no later than the expiration date (see § 4.1).

The following annual fees shall be paid as applicable and received by the board no later than the expiration date for license

- |   |       |       |
|---|-------|-------|
| 1. Nursing home administrator license renewal ..... | \$100 | \$125 |
| 2. Preceptor registration renewal .....             | \$ 50 | \$ 63 |

#### § 3.3. Late renewal fees.

The following late fees shall be paid as applicable and

received by the board within six months following the initial expiration date (see § 4.4):

- 1. Nursing home administrator late license renewal ..... \$150 \$175  
( \$100 \$125 renewal and \$50 penalty fee)
- 2. Preceptor late registration renewal ..... \$75 \$ 88 .  
( \$50 \$63 renewal and \$25 penalty fee)

Article 3.  
Reinstatement Fees.

§ 3.4. [ Reinstatement fees. ]

The board, in its discretion, may reinstate a license that was not renewed within six months of the initial expiration date provided certain conditions are met.

NOTE: There may be additional fees for nursing home administrator license reinstatement depending upon the conditions approved by the board for reinstatement (see § 4.7).

The board, in its discretion, may reinstate a preceptor registration that was not renewed within six months of the initial expiration date (see § 4.8).

If the board approves reinstatement the following applicable reinstatement fees shall be paid.

- 1. Nursing home administrator reinstatement  
(See NOTE under § 3.4) ..... \$200 \$225
- 2. Preceptor reinstatement ..... \$100 \$113

Article 4.  
Other Fees.

§ 3.5. Duplicates.

Duplicate licenses or wall certificates shall be issued by the board after the licensee submits to the board a signed affidavit that a document has been lost, destroyed, or the applicant has had a name change.

- 1. Duplicate license ..... \$ 25 \$ 31
- 2. Duplicate wall certificates ..... \$ 50 \$ 63

§ 3.6. Additional fee information.

- A. There shall be a fee of \$25 \$31 for returned checks.
- B. Fees shall not be refunded once submitted.

PART IV.  
RENEWALS.

Article 1.  
Expiration Dates.

§ 4.1. [ Expiration of nursing home administrator license and preceptor registration. ]

The following shall expire on March 31 of each calendar year:

- 1. Nursing home administrator license; and
- 2. Preceptor registration.

§ 4.2. [ Invalid license. ]

A licensee who fails to renew his license by the expiration date shall have an invalid license. See §§ 4.5 and 4.7.

§ 4.3. [ Invalid registration. ]

A preceptor who fails to renew his registration by the expiration date shall not serve as a preceptor. See §§ 4.6 and 4.8.

Article 2.  
Renewal and Reinstatement.

§ 4.4. Renewal received by the board no later than the expiration date.

A. A person who desires to renew his license or preceptor registration for the next year shall, not later than the expiration date:

- 1. Return the renewal notice;
- 2. Submit the applicable fee(s) prescribed in § 3.2;
- 3. Notify the board of any changes in name and address; and
- 4. Submit the continuing education documentation prescribed in §§ 8.1 through 8.8 of these regulations.

B. The requirements in subsection A above shall be received in the board office or the bank lock box no later than the expiration date. Postmarks shall not be considered.

§ 4.5. Late renewal for nursing home administrator license.

A. A person who fails to renew his license by the expiration date shall, within six months of the initial expiration date:

- 1. Return the renewal notice or request renewal in writing to the board;
- 2. Submit the applicable fee prescribed in § 3.3;
- 3. Notify the board of any changes in name and address; and

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4. Submit the continuing education documentation prescribed in §§ 8.1 through 8.8 for the previous calendar year.

The requirements in this subsection A shall be received in the board office within six months of the initial expiration date. Postmarks shall not be considered.

B. A candidate for late renewal who does not meet the requirements in subsection A above shall reinstate as prescribed in § 4.7.

## § 4.6. Late renewal for preceptor registration.

A. A person who fails to renew his preceptor registration by the expiration date shall, within six months of the initial expiration date:

1. Return the renewal notice or request renewal in writing to the board;
2. Submit the applicable fee prescribed in § 3.3; and
3. Notify the board of any changes in name and address.

The requirements of this subsection A shall be received in the board office within six months of the initial expiration date. Postmarks shall not be considered.

B. A preceptor who fails to renew within six months of the initial expiration date shall reinstate as prescribed in § 4.8.

## § 4.7. Reinstatement for nursing home administrator license.

The board, in its discretion, may reinstate a license that was not renewed as prescribed in §§ 4.4 and 4.5 as follows:

An applicant for nursing home administrator license reinstatement shall:

1. Apply as a new applicant on forms provided by the board; and
2. Submit the applicable reinstatement fee prescribed in § 3.4; and
3. Meet one or more of the following requirements as determined by the board at the time of application for reinstatement. All applications for reinstatement shall be reviewed by the Credentials Committee and the applicant shall be notified of which of the following requirements must be met:
  - a. Submit evidence of attendance at 20 classroom hours of continuing education for each year of expiration and for the year preceding expiration if continuing education requirements were not met for

that year. (NOTE: See § 8.3 B and C for possible exception to the 20 hour requirement);

b. Requalify for licensure under the requirements for initial licensure in effect at the time of application for reinstatement (see § 5.1). NOTE: Such requalification does not include retaking of the state and national examinations but may include more stringent qualifications than were in effect at the time of original application for licensure);

c. Retake and pass the state and national examinations (see fees under § 3.1).

## § 4.8. Reinstatement of preceptor registration.

The board, in its discretion, may reinstate a preceptor registration that was not renewed as prescribed in § 4.6 as follows:

An applicant for preceptor registration reinstatement shall:

1. Apply as a new applicant on forms provided by the board;
2. Meet the current requirements for preceptor approval in effect at the time of application for reinstatement (see §§ 6.8 through 6.9); and
3. Submit the applicable reinstatement fee prescribed in § 3.4.

## PART V. REQUIREMENTS FOR LICENSURE.

### Article 1. Qualifications.

#### § 5.1. [ *Qualifications.* ]

One of the following sets of qualifications is required for licensure:

1. Degree and practicum experience.
  - a. Applicant holds a baccalaureate or higher degree in nursing home administration or a health administration field from an accredited college or university; and
  - b. Applicant has completed a 400-hour practicum (see § 1.1) in nursing home administration as part of the degree program under the supervision of a preceptor registered by the board; and
  - c. Applicant has received a passing grade on the state examination and the national examination.

OR

## 2. Certificate program.

- a. Applicant holds a baccalaureate or higher degree from an accredited college or university; and
- b. Applicant has completed successfully a program with a minimum of 21 semester hours study in long-term care administration from an accredited college or university. The program shall be one that has been recognized by the board and shall include a minimum of 15 semester hours of academic courses related to long-term care administration; and
- c. Applicant has completed successfully a 400-hour practicum (see § 1.1) as part of the certificate program under the supervision of a preceptor registered by the board; and
- d. Applicant has received a passing grade on the state examination and the national examination.

OR

## 3. Administrator-in-training program.

- a. Applicant has successfully completed 2,080 hours, or the approved equivalent thereof (see § 6.3), of continuous training in an A.I.T. program; and
- b. Applicant has received a passing grade on the state examination and the national examination.

OR

## 4. Endorsement. The board may issue a Virginia license to any person by endorsement when the person:

- a. Holds a current unencumbered license from any state or the District of Columbia;
- b. Meets one of the following:
  - (1) Has practiced nursing home administration for one year; or
  - (2) Complies with all regulations of the Board of Nursing Home Administrators governing nursing home administration licensure in Virginia; or
  - (3) Has education and experience equivalent to qualifications required by these regulations and has provided written evidence of those qualifications at the time of application for licensure; and
- c. Has successfully completed the state examination.

### Article 2. Application Process.

#### § 5.2. [ *Application package.* ]

An individual seeking licensure as a nursing home administrator, approval as a preceptor, or seeking examination/reexamination shall submit simultaneously:

1. Application provided by the board;
2. Additional documentation as may be required by the board to determine eligibility of the applicant; and
3. The applicable fee(s) prescribed in § 3.1.

#### § 5.3. [ *Incomplete application package.* ]

All required parts of the application package shall be submitted at the same time. An incomplete package shall be returned.

EXCEPTION: Some schools require that certified transcripts be sent directly to the licensing authority. That policy is acceptable to the board.

National examination scores will also be accepted from the examining authority.

#### § 5.4. [ *Receipt of application package.* ]

An applicant for examination shall submit the application package not less than 45 days prior to an examination date. The application package shall be received in the board office on the examination application deadline date. Postmarks will not be considered.

#### § 5.5. Waiver of time limits.

The board may, for good cause, waive the time requirement in § 5.4 for the filing of any application. The burden of proof which demonstrates good cause rests with the applicant.

### Article 3. General Examination Requirements.

#### § 5.6. Failure to appear.

The applicant shall forfeit the examination fee if unable to sit for the examination for any reason.

#### § 5.7. Reexamination.

Any person failing an examination may reapply for a subsequent examination, and shall pay the examination fee prescribed in § 3.1 with each application filed.

#### § 5.8. Scheduling early examinations.

A. An applicant may request to take the scheduled examination most closely preceding the expected completion of the required formal education requirement or the A.I.T. program.

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B. All such requests shall be in writing.

C. Approval of the written request by the board shall be required prior to submitting the application and fee for examination (see §§ 5.2, 5.4 and 3.1).

D. Application for licensure shall be submitted after the applicant completes the qualifications for licensure.

## PART VI. ADMINISTRATOR-IN-TRAINING PROGRAM.

### Article 1. Trainee Requirements and Application Process.

#### § 6.1. [ *Administrator-in training qualifications.* ]

To be approved as an administrator-in-training, a person shall:

1. Have received a passing grade on a total of 60 semester hours of education from an accredited college or university;
2. Obtain a preceptor currently approved by and registered with the board to provide training;
3. Submit the fee prescribed in of § 3.1;
4. Submit the application provided by the board; and
5. Submit additional documentation as may be required by the board to determine eligibility of the applicant.

All required parts of the application package shall be submitted at the same time. An incomplete package shall be returned.

EXCEPTION: Some schools require that certified transcripts be sent directly to the licensing authority. That policy is acceptable to the board.

### Article 2. Training Program.

#### § 6.2. [ *Required hours of training.* ]

The A.I.T. program shall consist of 2,080 hours or its approved equivalent (see § 6.3) of continuous training to be completed within 24 months. Extension may be granted by the board on an individual case basis.

#### § 6.3. [ *Hours of credit.* ]

An A.I.T. applicant with prior health care work experience may request approval to receive a maximum 1,000 hours of credit toward the total 2,080 hours as follows:

1. Applicant shall have been employed full-time for

four of the past five consecutive years immediately prior to application as an assistant administrator or director of nursing.

2. The employment described above shall have been in a facility as prescribed in § 6.4.

3. Applicants with experience as a hospital administrator shall have been employed full-time for three of the past five years immediately prior to application as a hospital administrator-of-record or an assistant hospital administrator in a hospital setting having responsibilities in all of the following areas:

- a. Regulatory;
- b. Fiscal;
- c. Supervisory;
- d. Personnel; and
- e. Management.

#### § 6.4. [ *Training facilities.* ]

Training shall be conducted only in:

1. A nursing home, licensed by the Department of Health, Commonwealth of Virginia; or
2. An institution licensed by the Virginia Mental Health, Mental Retardation and Substance Abuse Services Board in which long-term care is provided; or
3. A certified nursing home owned or operated by an agency of any city, county, or the Commonwealth or of the United States government; or
4. A certified nursing home unit located in and operated by a general or special hospital licensed under procedures of Rules and Regulations for Licensure of General and Special Hospitals of the Virginia Department of Health.

#### § 6.5. [ *Supervision.* ]

Training shall be under the direct supervision of a certified preceptor (see §§ 6.8 and 6.9).

#### § 6.6. [ *Number of trainees.* ]

Not more than two A.I.T.'s may be supervised per approved and registered preceptor at any time.

#### § 6.7. [ *Required shifts.* ]

An A.I.T. shall be required to serve full time weekday, evening, and weekend shifts to receive training in all areas of nursing home operation.

## Article 3. Qualifications and Application Process to Train: Preceptors.

### § 6.8. [ *Board approval and registration.* ]

An individual shall be approved by and registered with the board prior to serving as a preceptor.

### § 6.9. [ *Qualifications.* ]

The board shall approve and register only preceptors to give training who:

1. Have a full, unrestricted, and current Virginia nursing home administrator license;
2. Are employed full-time in the facility where training occurs (see § 6.4);
3. Have served for a minimum of two of the past three years immediately prior to the preceptorship as a full-time administrator in accordance with § 6.4 or as an approved preceptor in another state;
4. Submitted the fee prescribed in subdivision 2 of § 3.1;
5. Submitted the application provided by the board; and
6. Submitted additional documentation as may be required by the board to determine eligibility of the applicant.

All required parts of the application package shall be submitted at the same time. An incomplete package shall be returned.

EXCEPTION: Preceptors submitting information which documents preceptorship served in another state, may have the other state send information directly to the licensing authority. That policy is acceptable to the board.

## Article 4. Administration of A.I.T. program.

### § 6.10. [ *Training plan.* ]

Prior to the beginning of the A.I.T. program, the preceptor shall develop and submit to the board for approval, a training plan which shall include and be designed around the specific training needs of the administrator-in-training. The training plan shall include the Core of Knowledge as defined by Title XVIII and Title XIX of the Social Security Act and published in the Federal Register on February 2, 1989, and the Domains of Practice as appended to these regulations. (See Appendices I and II.) The training plan developed by the board or an alternate plan may be used.

### § 6.11. [ *Progress reports.* ]

The preceptor shall maintain progress reports on forms prescribed by the board for each month of training.

### § 6.12. [ *Certificate of completion.* ]

The A.I.T.'s certificate of completion plus the accumulated original monthly reports shall be submitted by the preceptor to the board within 30 days following the completion of the A.I.T. program.

### § 6.13. [ *Failure to submit report.* ]

If the preceptor fails to submit the reports required in § 6.14, the A.I.T. shall forfeit all credit for training. The board may waive such forfeiture.

### § 6.14. [ *Termination of program.* ]

If the A.I.T. program is terminated prior to completion, the trainee and the preceptor shall submit the following information to the board within five working days:

#### 1. Preceptor.

- a. All required monthly progress reports prescribed in § 6.11; and
- b. Written explanation of the causes of program termination.

#### 2. A.I.T. The A.I.T. shall submit written explanation of the causes of program termination.

### § 6.15. [ *Inability of preceptor to serve.* ]

If the program is interrupted because the approved and registered preceptor is unable to serve, the A.I.T. shall notify the board within five working days and shall obtain a new preceptor who is registered with the board.

### § 6.16. [ *Credit for training.* ]

Credit for training shall resume when a new preceptor is obtained and approved and registered by the board.

### § 6.17. [ *Alternate training plan.* ]

If an alternate training plan or set of goals is developed, it shall be submitted to the board for approval before A.I.T. resumes training.

## PART VII. REFUSAL, SUSPENSION, REVOCATION, AND DISCIPLINARY ACTION.

### [ ~~Article 1.~~ ~~Unprofessional Conduct.~~ ]

### § 7.1. [ *Unprofessional conduct.* ]



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The board may refuse to admit a candidate to any examination; refuse to issue or renew a license or approval to any applicant; and may suspend for a stated period of time or indefinitely, or revoke any license or approval, or reprimand any person, or place his license on probation with such terms and conditions and for such time as it may designate, or impose a monetary penalty for any of the following causes:

1. Conducting the practice of nursing home administration in such a manner as to constitute a danger to the health, safety, and well-being of the residents, staff, or public;
2. Demonstrated inability or unwillingness to maintain a facility in accordance with the Virginia Department of Health Rules and Regulations for the Licensure of Nursing Homes in Virginia;
3. Failure to comply with federal, state, or local laws and regulations governing the operation of a nursing home;
4. Conviction of a felony related to the practice for which the license was granted;
5. Failure to comply with any regulations of the board;
6. Failure to comply with continuing education requirements;
7. Inability to practice with skill or safety because of physical, mental, or emotional illness, or substance abuse;
8. Failure to comply with board's regulations on preceptorship while serving as a preceptor.

## PART VIII. CONTINUING EDUCATION.

§ 8.1. [ *Prerequisite for renewal or reinstatement of license.* ]

As a prerequisite to renewal of a license or reinstatement of a license, each licensee shall be required to take continuing education related to health care administration. See § 8.2 and §§ 8.6 through [ ~~8.9~~ 8.11 ] .

§ 8.2. [ *Content of continuing education programs.* ]

Continuing education shall consist of training programs, seminars, [ ~~and~~ ] workshops [ *and courses taken at accredited institutions* ] directly related to the following:

1. Nursing home administration;
2. Long term care;
3. Resident care;

4. Physical resource management;
5. Laws, regulatory codes, and governing boards;
6. Courses to gain knowledge in departmental areas;
7. Core of Knowledge in Appendix I; and
8. Domains of Practice in Appendix II.

§ 8.3. Continuing education requirements for each calendar year.

A. An administrator who holds a license on January 1 of any calendar year shall attend 20 classroom hours of continuing education for that calendar year.

B. An administrator whose initial date of licensure is between April 1 and July 31 of any calendar year shall attend 10 classroom hours of continuing education for the calendar year in which initial licensure takes place.

C. An administrator whose initial date of licensure is between August 1 and December 31 of any calendar year shall not be required to attend continuing education for the calendar year in which initial licensure takes place.

[ *D. An administrator may carry over a maximum of five excess classroom attendance hours to the next calendar year provided that the classroom attendance hours requirements prescribed in subsections A through C of this section are met first.* ]

§ 8.4. Continuing education hours, documentation, and signed completed affidavit of completion shall be submitted as one package and received in the board office no later than January 15 of the calendar year following the year in which the courses were required to be taken. Postmarks will not be considered.

§ 8.5. Administrators shall submit evidence of having obtained continuing education credit by:

1. Forwarding copies of certificates or transcripts issued, signed, and dated by the course provider showing the classroom hours attended; and
2. Forwarding an affidavit of completion signed by the administrator on forms provided by the board.

§ 8.4. [ *Retention of continuing education documentation.* ]

*The licensee shall retain in his personal files complete documentation of continuing education as specified in subdivisions 1 and 2 of § 8.5*

§ 8.5. [ *Audit.* ]

*If contacted for an audit, the licensee shall forward to the board by the date requested the following:*

1. Completed and signed affidavit of completion on forms provided by the board;

2. Evidence of attendance provided by the approved sponsor for each course taken. Evidence of attendance [ may be a wall certificate or an original computerized document provided by the vendor and ] shall include:

- a. Date(s) the course was taken;
- b. Hours attended;
- c. Participant's name;
- d. Approved sponsor's signature.

§ 8.6. [ Effective through December 31, 1994. ]

Credit shall be considered only for courses taken under sponsors approved by the board or courses taken from an accredited institution as defined in § 1.1 or [ ~~an~~ appropriate a ] state agency.

Exception: Credit shall be considered for courses taken in another state by Virginia-licensed nursing home administrators [ ~~who reside out-of-state~~ ] when the sponsors of such courses are listed in good standing with the National Association of Boards of Examiners of Nursing Home Administrators [ ~~or the American College of Nursing Home Administrators~~ ] .

[ § 8.7. Effective January 1, 1995.

Credit shall be considered only for courses taken under sponsors approved by the board, approved by the National Association of Boards of Examiners of Nursing Home Administrators, or courses taken from an accredited institution as defined in § 1.1. ]

§ 8.6: [ ~~8.7. 8.8.~~ ] Only classroom hours shall be accepted. [ (See Appendix III.) ]

§ 8.7: [ ~~8.8. 8.9.~~ ] Credit shall only be given for 30-minute increments.

§ 8.8: [ ~~8.9. 8.10.~~ ] The continuing education hours shall be current to the calendar year in which they were required.

[ § 8.11. Credit allowance. ]

Credit shall be allowed for the licensed nursing home administrator who is the presenter of a course prescribed in § 8.2. Credit received by the presenter will be equivalent in classroom hours to the credit received by the participants. Credit shall only be given for the initial time that the course is presented in a calendar year. ]

PART IX.  
CONTINUING EDUCATION SPONSORS.

Article 1.  
Applicability.

§ 9.1. Applicability.

These regulations apply to individuals or businesses applying for approval and approved by the Board of Nursing Home Administrators to provide continuing education courses recognized for credit by the Board of Nursing Home Administrators.

Exception: Providers of courses [ ~~given in other jurisdictions than Virginia~~ ] do not have to have prior approval of the Virginia Board of Nursing Home Administrators if such courses are provided by sponsors listed in good standing with the National Association of Boards of Examiners of Nursing Home Administrators [ ~~or the American College of Nursing Home Administrators~~ ] .

Courses provided by an accredited institution as defined in § 1.1 and taken for credit do not have to have prior approval of the Virginia Board of Nursing Home Administrators.

Article 2.  
Application Process.

§ 9.2. Application requirements.

Individuals or businesses as required by § 9.1 seeking registration as an approved sponsor of continuing education courses for licensed nursing home administrators shall apply for sponsor-approval by the board as follows:

- 1. Submit a completed application on a form provided by the board;
- 2. Submit additional information as prescribed on the application to determine eligibility of the sponsor;
- 3. Submit applicable fee prescribed in § 9.5 [ effective through December 31, 1994, and prescribed in § 9.6 effective January 1, 1995 ] .

§ 9.3. Incomplete application package.

All required parts of the application package shall be submitted at the same time. An incomplete package will not be considered.

§ 9.4. Application deadline.

An applicant for approved sponsorship shall submit the application package not less than 30 days prior to presenting a course. The application package shall be received by the deadline date. Postmarks will not be considered.

Article 3.  
Fees.

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§ 9.5. Fees [ effective through December 31, 1994 ] .

A. Initial Application for Sponsorship Approval ... \$275

B. Annual Renewal of Sponsorship Approval ..... \$200

[ § 9.6. Fees effective January 1, 1995.

A. Initial Application for Sponsorship Approval .... \$50

B. Annual Renewal of Sponsorship Approval ..... \$25 ]

## Article 4. Renewal of Sponsorship Approval.

§ [ ~~9.6~~: 9.7. ] Expiration date.

Sponsorship approval shall expire on December 31 of each calendar year. A renewal notice will be sent by the board to each registered sponsor within 60 days prior to expiration. All renewal notices required by these regulations shall be validly given when mailed to the latest address on file with the board and shall not relieve the sponsor from obligation to comply.

§ [ ~~9.7~~: 9.8. ] Renewals.

A. Renewal fees received by the board no later than the expiration date shall be in the amount prescribed in subsection B of § 9.5 [ through December 31, 1994, and prescribed in subsection B of § 9.6 effective January 1, 1995 ] . Postmarks shall not be considered.

B. An individual or company who fails to renew the sponsorship approval by the expiration date shall reapply for approval as a new sponsor and pay the fee prescribed in subsection A of § 9.5 [ through December 31, 1994, and prescribed in subsection A of § 9.6 effective January 1, 1995 ] .

## Article 5. Qualifications for Approval.

§ [ ~~9.8~~: 9.9. ] Course content.

A. If audited by the board, the sponsor shall document that the content of each course provided meets at least one of the requirements prescribed in § 8.2 of these regulations.

NOTE: Self-study courses and home video courses shall not meet the requirements of these regulations. Courses designed to enhance the profitability or decorating needs of the nursing home facility shall not meet the requirements of these regulations.

B. If audited by the board, the sponsor shall document that the primary objective of the course shall be to increase the licensees' professional competence and skills and shall improve the quality of long-term care services rendered to the public as follows:

1. Sponsor shall establish learning objectives of each course as defined in § 1.1.

2. Sponsor shall establish the level of knowledge of each course. Levels of knowledge shall be described as basic, intermediate, advanced or updated.

3. Sponsor shall establish method(s) of presentation as defined under "Instructional design" in § 1.1.

4. Instructional design shall comply with §§ [ ~~9.9~~ through ~~9.14~~ 9.10 through 9.15 ] .

§ [ ~~9.9~~: 9.10. ] Prerequisites.

Sponsors shall state in writing the prerequisites for education, experience or both for all courses. Prerequisites shall be written in precise language so that potential participants can readily ascertain whether they qualify for the program or whether the program's specified level of knowledge is appropriate for them.

§ [ ~~9.10~~: 9.11. ] Presenters/Instructors.

Sponsors shall maintain a Vita on each presenter and shall be able to demonstrate to the board if audited that each presenter is qualified in the subject matter (see "Qualified Instructors" in § 1.1) and knowledgeable in instructional design as defined in § 1.1.

§ [ ~~9.11~~: 9.12. ] Program materials.

Sponsors shall be able to demonstrate to the board if audited that program materials are technically accurate, current and sufficient to meet the course's stated objectives.

§ [ ~~9.12~~: 9.13. ] Program presentation.

A. Sponsors shall inform participants in writing prior to the date of the course of the following:

1. Learning objectives;

2. Prerequisites;

3. Level of knowledge of course;

4. Program content;

5. Nature and extent of advance preparation;

6. Method of presentation to be used;

7. Amount of continuing education credit in classroom hours;

8. Date(s) of course;

9. Registration policies/procedures, fees, refunds;

10. That the sponsor is approved by the Board of Nursing Home Administrators to provide courses for which credit shall be considered by the board; and

11. A written agenda of the program's activities.

B. Sponsors shall monitor group courses and accurately record attendance including participants who arrive late or leave before a program is completed. [ ~~Such individuals shall not be presented certificates of attendance.~~ Credit for participants who arrive late or leave early shall be given at the discretion of the sponsor. Credit under such circumstances shall only be given in 30-minute increments. ] Sponsors shall be able to demonstrate to the board if audited the attendance recording procedure.

§ [ ~~9.13.~~ 9.14. ] Evaluations.

A. Sponsors shall evaluate instructors' performance at the conclusion of each program to determine continued use of such instructor. Sponsor shall be able to document the evaluation to the board if audited.

B. Sponsors shall solicit evaluations on the course and the instructor from the participants to include the following:

1. Were learning objectives met?
2. Were prerequisites necessary?
3. Did program materials contribute to the achievement of the learning objectives?
4. Did the program content comply with the stated contents in the course's advertisement?
5. Was the instructor qualified and knowledgeable in communicating effectively and competent in the subject matter?

§ [ ~~9.14.~~ 9.15. ] Certificates of attendance [ or computerized record of attendance ] .

A. Each attendee shall receive from the sponsor a certificate of attendance [ ~~when the attendee arrived on time and attended the entire course~~ or an original computer document (See subsection B of § 9.13) ] . A sample copy of the certificate of attendance [ or original computer document ] for each course shall be retained and available for inspection during an audit.

B. The certificate of attendance [ or original computer document ] shall contain the following information:

1. Date the course was taken;
2. Classroom hours of the course;
3. Participant's name;

4. Signature of authorized representative of the sponsor.

Article 6.  
Record Keeping.

§ [ ~~9.15.~~ 9.16. ] Documentation retention.

A. The sponsor shall retain for three years complete documentation of each continuing education course provided as prescribed in §§ [ ~~9.8 through 9.14~~ 9.9 through 9.15 ] .

B. If contacted for an audit, the sponsor shall forward by the date requested each item required in §§ [ ~~9.8 through 9.14~~ 9.9 through 9.15 ] which will be listed on the request for audit.

## APPENDIX I. CORE OF KNOWLEDGE.

The Core of Knowledge referred to in this program consists of the disciplines under the federal guidelines:

A. Applicable standards of environmental health and safety.

1. Knowledge of local, state and federal regulations applicable to nursing homes.

2. Resources: Local and state health departments, local state regulatory agencies, and federal regulatory agencies.

B. Local and state health and safety regulations.

C. General administration.

D. Psychology of patient care.

Resources: Staff, patient, and advisory physicians; social worker and patient's social history; principles and techniques of long term care nursing (director of nursing, nursing supervisors).

E. Principles of medical care.

1. Resources: Medical director, staff, patient, and advisory physicians/medical colleges, especially those offering degree programs in health care administration or long-term health care.

F. Personal and social care.

G. Therapeutics and supportive care and services in long term care.

1. Resources: Dietary, physical therapy, occupational therapy, clinic, social services, volunteers, family, and pharmacist.

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H. Departmental organization and management administrator, advisor physicians, director of nursing, food service manager, laundry and housekeeping supervisor, and maintenance supervisor.

I. Community Interrelationships.

1. Hospitals
2. Hospice programs
3. Other nursing homes
4. Home for adults
5. Retirement or life care communities
6. Home health care
7. Health Department
8. Social service agencies
9. Department for the Aging
10. Area Agencies on Aging
11. Clinics
12. Physicians
13. Medical societies
14. Regulatory agencies
15. Long term care professional associations
16. Advocates for the aged
17. Ombudsman
18. Volunteers
19. Educators
20. Schools
21. Religious communities

APPENDIX II.  
DOMAINS OF PRACTICE.

CODE SUBJECT CATEGORY

- 10.00 PATIENT CARE
- 10.10 Nursing Services
- 10.20 Social Services
- 10.30 Food Services

10.40 Physician Services

10.50 Social and Therapeutic  
Recreational Activities

10.60 Medical Records

10.70 Pharmaceutical Services

10.80 Rehabilitation Services

20.00 PERSONNEL MANAGEMENT

20.10 Maintaining positive  
atmosphere

20.20 Evaluation Procedures

20.30 Recruitment of Staff

20.40 Interviewing Candidates

20.50 Selecting Future Candidates

20.60 Selecting Future Employees

20.70 Providing Staff Development &  
Training Activities

20.80 Health and Safety

30.00 FINANCIAL MANAGEMENT

30.10 Budgeting

30.20 Financial Planning

30.30 Asset Management

30.40 Accounting

40.00 MARKETING AND PUBLIC RELATIONS

40.10 Public Relations Activities

40.20 Marketing Program

50.00 PHYSICAL RESOURCE MANAGEMENT

50.10 Building & Grounds Maintenance

50.20 Environmental Services

50.30 Safety Procedures and Programs

50.40 Fire and Disaster Plans

60.00 LAWS, REGULATORY CODES & GOVERNING  
BOARDS

60.10 Rules and Regulations

60.20 Governing Boards

[ APPENDIX III. CONTINUING EDUCATION CONVERSIONS.

The regulations of the Board of Nursing Home Administrators require that all licensed administrators comply with the continuing education requirements of the board. Continuing education credit is calculated in classroom hours (the actual clock hours that one attends the class). However, some courses are taken at accredited colleges and universities where credit is given in semester or quarter hours and some vendors provide credit in CEUs (continuing education units). To assist in the conversion, the examples below are provided:

1 Semester Hour = 15 classroom hours

1 Quarter Hour = 12 classroom hours

Each CEU is given in decimal percentiles (.1, for example). Each CEU is multiplied by 10 to determine classroom hours. The calculation of .1 CEUs multiplied by 10 = 1 classroom hour. Two full CEUs would equal 20 classroom hours, etc. ]

NOTICE: The forms used in administering the Regulations of the Board of Nursing Home Administrators are not being published; however, the name of each form filed by the Board of Nursing Home Administrators is listed below. The forms are available for public inspection at the Board of Nursing Home Administrators, 6606 West Broad Street, Richmond, Virginia 23220, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219.

- Application for Nursing Home Administrator
Endorsement Certification Form
Application for Administrator-in-Training
Application for Preceptor Certification
Application for Continuing Education Sponsorship Approval
Instruction Sheet - Application for Administrator-in-Training Program
Administrator-in-Training Checklist

VA.R. Doc. No. R94-932; Filed April 27, 1994, 11:10 a.m.

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Title of Regulation: VR 500-01-3. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3101 of

the Code of Virginia.

Effective Date: June 15, 1994.

Summary:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations and establishes the definitions of terms used in the regulations. Part II establishes the composition of the mailing list and the process for adding or deleting names from that list. It also lists the documents to be sent to persons on the mailing list. Part III sets forth the requirements and procedures for a petition for rulemaking, for the issuance of notices, and for the conduct of a public hearing and biennial review of regulations. Part IV establishes the requirements and criteria for the appointment of advisory committees in the development of regulations and for the terms and conditions of service.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Meredyth Partridge, Executive Director, Board of Nursing Home Administrators, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9111. There may be a charge for copies.

VR 500-01-3. Public Participation Guidelines.

PART I. GENERAL PROVISIONS.

§ 1.1. Purpose.

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

§ 1.2. Definitions.

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

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

"Board" means the Board of Nursing Home Administrators.

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

# Final Regulations

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## PART II. MAILING LIST.

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

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

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

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

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

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

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

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

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Petition for rulemaking.

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

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

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed.

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

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

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

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

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

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

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

### § 3.3. Notice of Comment Period.

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

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

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

### § 3.4. Notice of meeting.

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

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

## § 3.5. Public hearings on regulations.

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

## § 3.6. Biennial review of regulations.

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

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

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

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

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

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

### § 4.2. Limitation of service.

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

1. There is no response to the Notice of Intended Regulatory Action, or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

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

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

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

VA.R. Doc. No. R94-834; Filed April 27, 1994, 11:08 a.m.

## BOARD FOR OPTICIANS

Title of Regulation: VR 505-01-0. Public Participation Guidelines (REPEALED).

Title of Regulation: VR 505-01-0:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Effective Date: June 15, 1994.

### Summary:

The Board for Opticians Public Participation Guidelines (PPG's) mandate public participation in the formulation, adoption and amendments to new and existing regulations governing the licensure of opticians. The Department of Professional and Occupational Regulation (the agency) will maintain a mailing list of persons and organizations to notify of any intended regulatory action by the board. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period," and a notice that final regulations have been adopted. The PPG's outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days and will state whether or not the agency will hold a public hearing. Specific instances are given as to when the agency must hold a public hearing and when the agency must reevaluate the effectiveness and continued need of the regulations. The PPG's also establish the procedures for the formulation and adoption of regulations and the guidelines for when substantial changes are made prior to final adoption of regulations, and includes the formation of an appointed advisory committee for input regarding board regulations. Finally, the PPG's specify what meetings and notices will be published in the Virginia Register.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Peggy McCrerey, Deputy Director Regulatory Programs, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-2194. There may be a charge for copies.



# Final Regulations

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VR 505-01-0:1. Public Participation Guidelines.

## § 1. Definitions.

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

[ ~~“Administrative Process Act” means Chapter 1-1-1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.~~

“Agency” or “board” means the Board for Opticians.

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

“Agency” means any authority, instrumentality, officer, board, or other unit of state government empowered by the basic laws to make regulations or decide cases.

“Organization” means any one or more associations, advisory council, committee, corporation, partnership, governmental body or legal entity.

“Person” means one or more individuals. ]

## § 2. Mailing list.

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

1. “Notice of Intended Regulatory Action” to promulgate [ , amend ] or repeal regulations.
2. “Notice of Comment Period” and public hearings [ ; the subject of which is ~~proposed or existing regulations~~ ] .
3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

## § 3. Placement on the mailing list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 2. Individuals and organizations [ periodically ] may be [ periodically ] requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations

will be deleted from the list.

## § 4. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

## § 5. Notice of intent.

At least 30 days prior to [ ~~the publication of filing~~ ] the “Notice of Comment Period” and [ ~~the filing of~~ ] proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a “Notice of Intended Regulatory Action.” This notice will provide for at least a 30-day comment period and shall state whether [ ~~or not they intend~~ the agency intends ] to hold a public hearing. The agency is required to hold a hearing on [ the ] proposed regulation upon request by [ (i) ] the Governor or [ ~~from~~ (ii) ] 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register [ of Regulations ] .

## § 6. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding [ , ] which may take the form of a public hearing [ , ] to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

## § 7. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency [ ~~received~~ receives ] requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

## § 8. Advisory committees.

The [ ~~board~~ agency ] intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession,
2. Industry, professional and trade associations' mailing lists, and
3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

## § 9. Applicability.

Sections 2 [ ~~through~~ , 3, ] 4, 6 and [ § 7 ] shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. Nos. R94-922 and R94-923; Filed April 27, 1994, 9:34 a.m.

## BOARD OF OPTOMETRY

**Title of Regulation:** VR 510-01-2. Public Participation Guidelines.

**Statutory Authority:** §§ 9-6.14:7.1, 54.1-2400 and 54.1-3200 et seq. of the Code of Virginia.

**Effective Date:** June 15, 1994.

### Summary:

Part I sets forth the purpose of guidelines for public

participation in the development and promulgation of regulations and establishes the definitions of terms used in the regulations. Part II establishes the composition of the mailing list and the process for adding or deleting names from that list. It also lists the documents to be sent to persons on the mailing list. Part III sets forth the requirements and procedures for a petition for rulemaking, for the issuance of notices, and for the conduct of a public hearing and biennial review of regulations. Part IV establishes the requirements and criteria for the appointment of advisory committees in the development of regulations and for the terms and conditions of service.

**Summary of Public Comment and Agency Response:** No public comment was received by the promulgating agency.

**Agency Contact:** Copies of the regulation may be obtained from Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9910. There may be a charge for copies.

VR 510-01-2. Public Participation Guidelines.

## PART I. GENERAL PROVISIONS.

### § 1.1. Purpose.

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

### § 1.2. Definitions.

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

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

"Board" means the Board of Optometry.

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

## PART II. MAILING LIST.

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

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

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

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

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

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

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

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

## PART III. PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Petition for rulemaking.

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

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

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

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

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

§ 3.2. Notice of Intended Regulatory Action.

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

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

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

§ 3.3. Notice of Comment Period.

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

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

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

§ 3.4. Notice of meeting.

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

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

§ 3.5. Public hearings on regulations.

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

## § 3.6. Biennial review of regulations.

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

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

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

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

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

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

### § 4.2. Limitation of service.

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

1. There is no response to the Notice of Intended Regulatory Action, or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

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

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.
2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

V.A.R. Doc. No. R94-933; Filed April 27, 1994, 11:09 a.m.

## BOARD OF PHARMACY

**Title of Regulation:** VR 530-01-3. Public Participation Guidelines.

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

**Effective Date:** June 15, 1994.

### Summary:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations and establishes the definitions of terms used in the regulations. Part II establishes the composition of the mailing list and the process for adding or deleting names from that list. It also lists the documents to be sent to persons on the mailing list. Part III sets forth the requirements and procedures for a petition for rulemaking, for the issuance of notices, and for the conduct of a public hearing and biennial review of regulations. Part IV establishes the requirements and criteria for the appointment of advisory committees in the development of regulations and for the terms and conditions of service.

**Summary of Public Comment and Agency Response:** No public comment was received by the promulgating agency.

**Agency Contact:** Copies of the regulation may be obtained from Scotti W. Milley, R.Ph., Executive Director, Board of Pharmacy, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9911. There may be a charge for copies.

VR 530-01-3. Public Participation Guidelines.

## PART I. GENERAL PROVISIONS.

### § 1.1. Purpose.

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

### § 1.2. Definitions.

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

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

"Board" means the Board of Pharmacy.

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

## PART II. MAILING LIST.

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

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

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

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

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

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

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

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

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Petition for rulemaking.

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

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

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.

2. The number and title of the regulation to be addressed.

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

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

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

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

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

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

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

### § 3.3. Notice of Comment Period.

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

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

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

### § 3.4. Notice of meeting.

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

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the

regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

### § 3.5. Public hearings on regulations.

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

### § 3.6. Biennial review of regulations.

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

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

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

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

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

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

### § 4.2. Limitation of service.

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

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

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

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

1. If the board determines that the specific regulatory

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

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

VA.R. Doc. No. R94-848; Filed April 20, 1994, 12:22 p.m.

## BOARD OF PROFESSIONAL COUNSELORS

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

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

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

Effective Date: June 15, 1994.

### Summary:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations and establishes the definitions of terms used in the regulations. Part II establishes the composition of the mailing list and the process for adding or deleting names from that list. It also lists the documents to be sent to persons on the mailing list. Part III sets forth the requirements and procedures for a petition for rulemaking, for the issuance of notices, and for the conduct of a public hearing and biennial review of regulations. Part IV establishes the requirements and criteria for the appointment of advisory committees in the development of regulations and for the terms and conditions of service.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Evelyn Brown, Executive Director, Board of Professional Counselors, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9913. There may be a charge for copies.

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

## PART I. GENERAL PROVISIONS.

### § 1.1. Purpose.

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Professional

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*Counselors. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).*

## § 1.2. Definitions.

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

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

*“Board” means the Board of Professional Counselors.*

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

## PART II. MAILING LIST.

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

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

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

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

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

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

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

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

## PART III.

### PUBLIC PARTICIPATION PROCEDURES.

#### § 3.1. Petition for rulemaking.

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

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

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

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

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

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

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

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

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

#### § 3.3. Notice of Comment Period.

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

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

*C. The NOCP shall make provision for either oral or*

written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

## § 3.4. Notice of meeting.

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

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

## § 3.5. Public hearings on regulations.

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

## § 3.6. Biennial review of regulations.

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

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

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

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

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

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

### § 4.2. Limitation of service.

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

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

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

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

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

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

V.A.R. Doc. Nos. R94-887 and R94-888; Filed April 22, 1994, 4:50 p.m.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

**Title of Regulation:** VR 190-00-02. Employment Agencies Program Public Participation Guidelines.

**Statutory Authority:** §§ 9-6.14:7.1 and 54.1-1302 of the Code of Virginia.

**Effective Date:** June 15, 1994.

### Summary:

Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines not only shall be utilized prior to the formation and drafting of the proposed regulation, but shall be utilized during the formation, promulgation and final adoption of all regulations.

The purpose of these regulations is to ensure that interested persons are able to comment on regulatory actions in a meaningful fashion within an established procedure during all phases of the regulatory process.

There were several substantive changes made to the definitions section after the regulation was published in the proposed version. Specifically, the definition of "Administrative Process Act" has been deleted as specific code citations are set out in the regulations. The definition of "agency" or "department" was



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redefined as "agency" means any authority, instrumentality, officer, board, or other unit of the state government empowered by the basic laws to make regulations or decide cases. The definition of "person" was redefined more concisely to mean one or more individuals and "organization" was added to mean any one or more association, advisory council, committee, corporation, partnership, governmental body or legal entity.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Peggy McCrerey, Deputy Director, Regulatory Program Division, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-2194. There may be a charge for copies.

VR 190-00-02. Employment Agencies Program Public Participation Guidelines.

## § 1. Definitions.

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

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

"Agency" or "department" means the Department of Professional and Occupational Regulation.

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

"Agency" means any authority, instrumentality, officer, board, or other unit of state government empowered by the basic laws to make regulations or decide cases.

"Organization" means any one or more association, advisory council, committee, corporation, partnership, governmental body or legal entity.

"Person" means one or more individuals. ]

## § 2. Mailing list.

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

1. "Notice of Intended Regulatory Action" to promulgate [ , amend ] or repeal regulations.

2. "Notice of Comment Period" and public hearings [ ~~the subject of which is proposed or existing regulations~~ ] .

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act [ , § 9-6.14:7.1 of the Code of Virginia ] .

## § 3. Placement on the mailing list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency, at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 2. Individuals and organizations [ periodically ] may be [ ~~periodically~~ ] requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

## § 4. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

## § 5. Notice of intent.

At least 30 days prior to [ ~~the~~ ] filing [ ~~of~~ ] the "Notice of Comment Period" and [ ~~the~~ ] proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether [ ~~or not they intend~~ the agency intends ] to hold a public hearing. The agency is required to hold a hearing on [ the ] proposed regulation upon request by [ (i) ] the Governor or [ from (ii) ] 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register [ of Regulations ] .

## § 6. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding [ , ] which may take the form of a public hearing [ , ] to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informationa.

proceedings.

## § 7. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency [ ~~received~~ receives ] requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for 30 days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

## § 8. Advisory committees.

The [ ~~department~~ agency ] intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

1. Directories of organizations related to the profession,
2. Industry, professional and trade [ ~~association~~ associations' ] mailing lists, and
3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

## § 9. Applicability.

Sections 2 [ ~~through~~ , 3, ] 4, 6, and [ & 7 ] shall apply

to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R94-930; Filed April 27, 1994, 11:39 a.m.

## BOARD OF PSYCHOLOGY

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

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

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

**Effective Date:** June 15, 1994.

### Summary:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations and establishes the definitions of terms used in the regulations. Part II establishes the composition of the mailing list and the process for adding or deleting names from that list. It also lists the documents to be sent to persons on the mailing list. Part III sets forth the requirements and procedures for a petition for rulemaking, for the issuance of notices, and for the conduct of a public hearing and biennial review of regulations. Part IV establishes the requirements and criteria for the appointment of advisory committees in the development of regulations and for the terms and conditions of service.

**Summary of Public Comment and Agency Response:** No public comment was received by the promulgating agency.

**Agency Contact:** Copies of the regulation may be obtained from Evelyn Brown, Executive Director, Board of Psychology, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9913. There may be a charge for copies.

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

### PART I. GENERAL PROVISIONS.

#### § 1.1. Purpose.

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Psychology. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative

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*Process Act (§ 9-6.14:4.1 of the Code of Virginia).*

## § 1.2. Definitions.

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

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

*“Board” means the Board of Psychology.*

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

## PART II. MAILING LIST.

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

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

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

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

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

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

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

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

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Petition for rulemaking.

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

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

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

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

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

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

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

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

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

### § 3.3. Notice of Comment Period.

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

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

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

## § 3.4. Notice of meeting.

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

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

## § 3.5. Public hearings on regulations.

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

## § 3.6. Biennial review of regulations.

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

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

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

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

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

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

### § 4.2. Limitation of service.

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

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

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

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

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

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

VA.R. Doc. Nos. R94-885 and R94-886; Filed April 22, 1994, 4:49 p.m.

## DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

**Title of Regulation:** VR 615-45-3. Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces.

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

**Effective Date:** July 1, 1994.

### Summary:

The amendments to the existing regulations are intended to reflect the requirement of § 63.1-248.6 of the Code of Virginia which requires that information regarding founded child abuse/neglect complaints involving active duty military personnel or members of their households be shared with Family Advocacy Program representatives of the United States Armed Forces. Existing regulations permit this information sharing on a discretionary basis.

Two changes have been made in § 2.1 B of the regulation. The notification time frame has been changed to require that the mandatory notification be made after the individual has exercised any administrative appeal rights. A sentence has been deleted because the level of detail is more appropriate for inclusion in the department's policy manual: the statement regarding use of the disposition notification letter will be moved to department policy.

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



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Regulations.

Agency Contact: Copies of the regulation may be obtained from Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820. There may be a charge for copies.

VR 615-45-3. Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces.

## PART I. DEFINITIONS.

### § 1.1. Definitions.

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

" [ ~~Alleged~~ ] *Abuser/neglector*" means any person who is the subject of a complaint and is suspected of or is found to have committed the abuse or neglect of a child pursuant to § 63.1-248 et seq. of the Code of Virginia.

[ "*Administrative appeal rights*" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to § 63.1-248 et seq. of the Code of Virginia, under which an individual who is suspected of or is found to have committed abuse or neglect may request that the Department of Social Services' records be amended. ]

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

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

"*Family Advocacy Program representative*" means the professional employed by the United States Armed Forces who has responsibility for the program which is designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up and reporting of family violence.

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

"*Investigation*" means the formal fact-finding process utilized by the local department of social services in determining whether or not abuse/neglect has occurred. This process is employed for each valid complaint received by the local department.

"*Report*" means any information transmitted to the local department of social services relating the suspicion of possible abuse/neglect of a child pursuant to § 63.1-248 et seq. of the Code of Virginia.

## PART II. POLICY.

§ 2.1. Release of information to Family Advocacy Program representatives of the United States Armed Forces.

[ A. ] Information regarding child protective services reports, complaints, investigations and related services and follow-up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces when the local agency determines such release to be in the best interest of the child. Provision of information as addressed in this regulation shall apply to instances where the alleged abuser/neglector is a member (or the spouse of a member) of the United States Armed Forces. In these situations coordination between child protective services and the Family Advocacy Program is intended to facilitate identification, treatment and service provision to the military family.

[ § 2-2. B. ] *In founded complaints in which the abuser/neglector is an active duty member of the United States Armed Forces, or the spouse of a member residing in the member's household, information regarding the disposition, type of abuse/neglect, and the identity of the abuser/neglector shall be provided to the appropriate Family Advocacy Program representative. This notification shall be made in writing within 30 days [ of advising the abuser/neglector of the founded disposition : A copy of the disposition notification letter to the abuser may be used for this purpose if it does not contain confidential information such as the names of victim children who are not a part of the military family after administrative appeal rights of the abuser/neglector have been exhausted or forfeited ] .*

*The military member shall be advised that this information is being provided and shall be given a copy of the written notification sent to the Family Advocacy Program representative.*

*When needed by the Family Advocacy Program representative to facilitate treatment and service provision to the military family, additional related information shall also be provided to the Family Advocacy Program representative.*

VA.R. Doc. No. R94-843; Filed April 20, 1994, 8:46 a.m.

## DEPARTMENT OF TAXATION

Title of Regulation: VR 630-0-1. Guidelines for Public Participation in Regulation Development and Promulgation.

Statutory Authority: §§ 9-6.14:7.1 and 58.1-203 of the Code of Virginia.

Effective Date: June 29, 1994.

Summary:

*The regulation governs the development of regulations which are not exempt from the public participation provisions of the Administrative Process Act.*

*The amendments to the regulation provide: (i) the general policy for regulation revision and conditions for petitioning the Department of Taxation (the "department") for revision of a particular regulation; (ii) procedures by which the department develops a list of interested parties for participation in the regulation development process; (iii) procedures by which the department will notify interested parties; and (iv) procedures by which the department will involve interested parties, including ad hoc working groups, preparation of working drafts, submission of the proposed regulation, public hearings, response to comments on proposed regulations, and procedures for publication and adoption of final regulations.*

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from J. Timothy Winks, Assistant Commissioner for Tax Policy, Department of Taxation, 2220 West Broad Street, Richmond, VA 23220, telephone (804) 367-8010. There may be a charge for copies.

VR 630-0-1. Guidelines for Public Participation in Regulation Development and Promulgation.

*PART I.  
GENERAL PROVISIONS.*

§ 1.1.1. Generally.

*A. These guidelines shall govern the development or revision of all regulations not exempt from the public participation provisions of the Administrative Process Act ("APA"), Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.*

In developing any regulation which it proposes, the Department of Taxation ("department") is committed to soliciting a high level of input and comment from a broad cross section of interested taxpayers, professional associations, and industry associations. Such input and participation shall be actively solicited by the department.

*The department will generally promulgate new regulations or revise existing regulations as the result of federal or state law changes, regulatory changes by other federal or state agencies, changes or clarifications in department policy, or upon petition by an individual or*

*group. Petitions requesting revision or development of a regulation will be responded to by the department within 180 days from the date the petition is received by the department.*

*B. Any person who is interested in participating in the regulation development process generally, or in specific regulation development efforts, or who wishes to petition for the development or revision of a regulation or regulations, should immediately notify the department in writing. Such notification of interest should be sent to Director, Tax Policy Division, Department of Taxation, P.O. Box 6-L, Richmond, VA 23282. Assistant Commissioner for Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, Virginia 23282-1880.*

*PART II.  
IDENTIFICATION OF INTERESTED PARTIES.*

§ 2. 2.1. Identification of interested parties.

Prior to the development of any regulation, the department shall identify persons associations, committees, groups, or individuals whom it feels would be interested in or affected by the proposal. The methods for identifying interested parties generally shall include, but not be limited to, the following:

1. Obtain annually from the Secretary of the Commonwealth a list of all persons, taxpayer groups, associations and others who have registered as lobbyists for the annual General Assembly session. This list will be used to identify interest groups which may be interested in the subject matter of the proposed regulation.
2. Utilize the statewide listing of business, professional, civic, and charitable associations and societies in Virginia published by the State Chamber of Commerce to identify additional industry and professional associations which might be interested in the regulation.
3. Utilize department subject matter files to identify persons who have previously raised questions or expressed an interest in the subject matter under consideration through requests for formal rulings or administrative appeals.
4. Utilize a standing list, compiled by the department, of persons who have previously participated in public proceedings relative to similar subject matters or who have expressed an interest in all tax regulations.
5. Utilize a standing list, compiled by the department, [ or of ] attorneys, certified public accountants, and corporate tax personnel who practice in the field of state and local taxation.
6. Develop a list of persons who, in accordance with § 1.1 of this regulation, petitioned for the

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*development or revision of a regulation or notified the department of an interest in participating in the regulation development process.*

## PART III. NOTIFICATION OF INTERESTED PARTIES.

### § 3. Notification of interested parties.

#### A. § 3.1. Generally.

The department shall prepare a Notice of ~~Intent to Develop Regulation~~ *Intended Regulatory Action* ("notice") prior to the development of any regulation. The notice shall identify the subject matter and ~~purpose for the development of the new intent of the planned regulation(s)~~ and shall specify a time deadline of *at least 30 days* for receipt of responses from persons interested in participating in the development process. *The notice shall also state whether the department intends to conduct a public hearing on the regulation after its publication. See § 4.2 of this regulation.*

#### B. § 3.2. Dissemination of notice.

The methods for disseminating the notice to the public generally shall include, but not be limited to, the following:

1. ~~Send~~ *Sending* the notice to all persons identified ~~( pursuant to subsection B above)~~ *§ 2.1 of this regulation* as having a potential interest in the regulation;
2. ~~Publish~~ *Publishing* the notice in The Virginia Register of Regulations; and
3. ~~Request~~ *Requesting* that industry, professional and taxpayer associations to whom the notice is sent publish such notice in newsletters or journals or use any other means available to them to disseminate the notice to ~~the~~ *their* membership.

#### § 3.3. Working draft.

*The department may elect to begin development of a working draft of the regulation (see § 4.1 B of this regulation) during the period of time covered by the notice. Also, the department may choose to develop a working draft prior to this time and disseminate the draft to interested persons along with the notice in order to facilitate informed comments.*

*The department will not submit a proposed regulation to the Registrar of Regulations for publication in The Virginia Register of Regulations until a minimum of 30 days after the notice is published in The Virginia Register of Regulations.*

## PART IV. PUBLIC PARTICIPATION.

### § 4. Public participation.

#### A. § 4.1. Regulation development.

~~I. Initial comment.~~ *A.* After interested parties have responded to the notice, the department will analyze the level of interest. If sufficient interest exists, ~~the department may schedule or absent a substantial expression of interest if the department feels such action is warranted, informal meetings prior to the development of any regulation may be scheduled~~ to determine the specific areas of interest or concern and to gather factual information relative to the subject matter of the regulation.

Alternatively, the department may elect to request that persons who have responded to the notice make written submittals of comments, concerns and suggestions relative to the ~~proposed~~ regulation.

*The department, in its discretion, may establish an ad hoc working group to assist in the regulation development process. The department will always establish an ad hoc working group if: (i) requested by 25 or more persons affected by the regulation; (ii) requested by an industry, professional, or similar group, organized formally or informally, representing 25 or more persons affected by the regulation; or (iii) the subject matter of the regulation is of an esoteric nature.*

*The activities of an ad hoc working group typically will include: (i) reviewing or drafting one or more working drafts and providing feedback; (ii) furnishing information on, and facilitating the department's understanding of, a business or industry, including site visits to plants or other facilities; (iii) formulating alternative approaches within applicable statutory and case law; and (iv) providing any other assistance that will facilitate the adoption of a comprehensive and technically accurate regulation.*

~~2. Preparation of working draft.~~ *B.* Subsequent to the initial public input on the development of any regulation, the department shall develop a working draft of the proposed regulation. In certain instances where the technical nature of the subject matter merits, the department may request that industry or professional groups, or ad hoc working groups formed under subsection A of this section, develop a working draft. ~~A copy of this draft~~ *Copies of the working draft* will be furnished to all ~~persons interested parties~~ who responded to the notice ~~indicating an interest in the regulation~~ and to those persons participating in the initial comment phase of the development process. Persons to whom a copy of the working draft is furnished will be invited to submit written comments on the draft. *The communication providing the working draft to interested parties shall specify the deadline for comments. A minimum of 14 days will generally be allowed by the department for comments and where possible a longer period of time will be provided for this purpose.* If the response warrants, or upon request by interested parties or a working group, additional

informal meetings may be held to discuss the working draft.

~~B.~~ § 4.2. Submission of the regulation pursuant to under the Administrative Process Act.

Upon ~~conclusion~~ of the development process consideration of comments received in connection with the working draft, the department shall prepare the a proposed regulation for submission to under the Administrative Process Act ("APA") APA. After submission of the proposed regulation to the Registrar of Regulations pursuant to the APA, the regulation will be published in The Virginia Register of Regulations.

The department shall furnish to all persons identified as having a potential interest in the subject matter interested parties identified in accordance with § 2.1 of this regulation, a copy of the regulation as submitted pursuant to under the APA, together with a copy of the General Public Notice of Informational Proceeding any other material that may be helpful in better understanding the regulation. A cover letter accompanying these documents shall explain the deadlines for submitting formal public comments pursuant to under the APA. A minimum of 60 days shall be provided for the submission of written comments after the proposed regulation is published in The Virginia Register of Regulations.

Except in the case of nonsubstantive changes, the department will generally conduct a public hearing on proposed regulations. If a nonsubstantive regulation is being promulgated and comment will be restricted to written submittals, the date and place to which submittals must be made shall be clearly specified.

In cases when the department states in the notice that it does not intend to hold a public hearing, no such hearing is required unless the Governor requests the department to do so or the department receives requests for a hearing from 25 or more persons.

Where a public proceeding hearing is to be held, the time, date, and place shall be clearly specified in the department's communications with interested parties. Additionally, the date by which persons intending to participate in the public proceeding should notify the department of their interest shall be noted. Additionally, notice of the public hearing will be publicized in accordance with the APA, including publication in the Richmond Times-Dispatch or another newspaper of general circulation in the state capital and publication in The Virginia Register of Regulations.

When a public hearing will be held, persons who will participate will be encouraged to submit written copies of their comments in advance or at the public proceeding hearing in order to insure that all comments are accurately reflected in the formal transcript of the proceeding.

~~C.~~ § 4.3. Adoption period.

Upon responding to all public comments on the proposed regulation and making any changes it deems necessary based upon such comments, the department may adopt the regulation.

The final regulation will also be published in The Virginia Register of Regulations. Generally, the final regulation will become effective 30 days after its publication in The Virginia Register of Regulations.

However, when one or more changes of substantial impact have been made between the proposed and final regulation, a person may petition the department to request an opportunity to submit additional comments on the change(s). In any case in which 25 or more such requests are received, the department will suspend the adoption of the regulation for 30 days to allow for additional public comment, except when the department determines that the change(s) in question are minor or inconsequential in their impact.

Similarly, the Governor has the discretion to suspend the regulatory process for 30 days to enable the department to seek additional public comment on any substantial change(s) made between the proposed and final regulations.

Upon issuing an order At least five days prior to adopting a regulation, the department, at its discretion, may will send a copy of the final regulation as adopted together with a summary of public comments and its response to comments made during the public proceeding or written submittal period, to participants responses to all commentators and interested parties.

~~D.~~ § 4.4. Publication of final regulation.

When any regulation is published, the department shall print and distribute such regulation. The distribution of any regulation shall be made with a goal of increasing voluntary tax compliance.

VA.R. Doc. No. R94-893; Filed April 26, 1994, 8:52 a.m.

## BOARD OF VETERINARY MEDICINE

Title of Regulation: VR 645-01-0:1. Public Participation Guidelines.

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

Effective Date: June 15, 1994.

Summary:

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



# Final Regulations

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regulations and establishes the definitions of terms used in the regulations. Part II establishes the composition of the mailing list and the process for adding or deleting names from that list. It also lists the documents to be sent to persons on the mailing list. Part III sets forth the requirements and procedures for a petition for rulemaking, for the issuance of notices, and for the conduct of a public hearing and biennial review of regulations. Part IV establishes the requirements and criteria for the appointment of advisory committees in the development of regulations and for the terms and conditions of service.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Elizabeth A. Carter, Executive Director, Board of Veterinary Medicine, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9915. There may be a charge for copies.

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

## PART I. GENERAL PROVISIONS.

### § 1.1. Purpose.

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

### § 1.2. Definitions.

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

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

"Board" means the Board of Veterinary Medicine.

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

## PART II. MAILING LIST.

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

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

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

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

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

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

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

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

## PART III. PUBLIC PARTICIPATION PROCEDURES.

### § 3.1. Petition for rulemaking.

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

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

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

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

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

## § 3.2. Notice of Intended Regulatory Action.

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

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

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

## § 3.3. Notice of Comment Period.

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

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

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

## § 3.4. Notice of meeting.

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

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

## § 3.5. Public hearings on regulations.

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

## § 3.6. Biennial review of regulations.

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

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

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

## PART IV. ADVISORY COMMITTEES.

### § 4.1. Appointment of committees.

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

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

### § 4.2. Limitation of service.

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

1. There is no response to the Notice of Intended Regulatory Action, or
2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

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

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

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

VA.R. Doc. No. R94-847; Filed April 20, 1994, 1:40 p.m.

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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 HEALTH (STATE BOARD OF)

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

#### Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 19, 1994

V.A.R. Doc. No. R94-877; Filed April 21, 1994, 9:35 a.m.

### DEPARTMENT OF MOTOR VEHICLES

Title of Regulation: **VR 485-10-9101. Public Participation Guidelines for Regulation Development and Promulgation.**

#### Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 19, 1994

V.A.R. Doc. No. R94-875; Filed April 21, 1994, 9:35 a.m.

### BOARD OF OPTOMETRY

Title of Regulation: **VR 510-01-2. Public Participation Guidelines.**

#### Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 18, 1994

V.A.R. Doc. No. R94-880; Filed April 18, 1994, 4:17 p.m.

### BOARD OF PROFESSIONAL COUNSELORS

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

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

#### Guidelines.

#### Governor's Comment:

I reserve my right to make final comments after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 19, 1994

V.A.R. Doc. No. R94-890; Filed April 21, 1994, 9:35 a.m.

### BOARD OF PSYCHOLOGY

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

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

#### Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 19, 1994

V.A.R. Doc. No. R94-876; Filed April 21, 1994, 9:35 a.m.

### BOARD OF SOCIAL WORK

Title of Regulation: **VR 620-01-3. Public Participation Guidelines.**

#### Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 18, 1994

V.A.R. Doc. No. R94-878; Filed April 18, 1994, 4:17 p.m.

### DEPARTMENT OF TAXATION

Title of Regulation: **VR 630-3-302. Corporate Income Tax: Definitions.**

#### Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor

Date: April 3, 1994

V.A.R. Doc. No. R94-850; Filed April 20, 1994, 1:40 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-302.2. Corporate Income Tax: Foreign Source Income.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

V.A.R. Doc. No. R94-851; Filed April 20, 1994, 1:40 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-311. Corporate Income Tax: Report of Change of Federal Taxable Income.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

V.A.R. Doc. No. R94-852; Filed April 20, 1994, 1:40 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-312. Corporate Income Tax: Limitations on Assessments.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

V.A.R. Doc. No. R94-853; Filed April 20, 1994, 1:40 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-323. Corporate Income Tax: Excess Cost Recovery - Taxable Years Beginning Before January 1, 1988.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

V.A.R. Doc. No. R94-854; Filed April 20, 1994, 1:40 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-323.1. Corporate Income Tax: Excess Cost Recovery.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

V.A.R. Doc. No. R94-855; Filed April 20, 1994, 1:40 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-400.1. Corporate Income Tax: Telecommunication Companies.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

V.A.R. Doc. No. R94-856; Filed April 20, 1994, 1:40 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-402. Corporate Income Tax: Determination of Virginia Taxable Income.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

V.A.R. Doc. No. R94-857; Filed April 20, 1994, 1:41 p.m.

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Title of Regulation: **VR 630-3-402.1. Corporate Income Tax: Additions in Determining Virginia Taxable Income.**

Governor's Comment:

I reserve my right to make final comments on this

# Governor

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regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

VA.R. Doc. No. R94-858; Filed April 20, 1994, 1:41 p.m.

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Title of Regulation: **VR 630-3-402.2. Corporate Income Tax: Subtractions and Adjustments in Determining Virginia Taxable Income.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

VA.R. Doc. No. R94-859; Filed April 20, 1994, 1:41 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-402.3. Corporate Income Tax: Net Operating Losses.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

VA.R. Doc. No. R94-860; Filed April 20, 1994, 1:41 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-403. Corporate Income Tax: Additional Modifications for Savings and Loan Associations, Railway Companies and Telecommunications Companies.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

VA.R. Doc. No. R94-861; Filed April 20, 1994, 1:41 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-409. Corporate Income Tax:**

**Property Factor.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

VA.R. Doc. No. R94-862; Filed April 20, 1994, 1:41 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-411. Corporate Income Tax: Average Value of Property.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

VA.R. Doc. No. R94-863; Filed April 20, 1994, 1:41 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-420. Corporate Income Tax: Railway Companies; Apportionment.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

VA.R. Doc. No. R94-864; Filed April 20, 1994, 1:41 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-431. Corporate Income Tax: Energy Income Tax Credit - Taxable Years Beginning Before January 1, 1988.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

VA.R. Doc. No. R94-865; Filed April 20, 1994, 1:41 p.m.

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VA.R. Doc. No. R94-869; Filed April 20, 1994, 1:41 p.m.

Title of Regulation: **VR 630-3-440. Corporate Income Tax: Accounting.**

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Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 3, 1994

VA.R. Doc. No. R94-866; Filed April 20, 1994, 1:41 p.m.

\*\*\*\*\*

Title of Regulation: **VR 630-3-443. Corporate Income Tax: Prohibition of Worldwide Consolidation or Combination.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 4, 1994

VA.R. Doc. No. R94-867; Filed April 20, 1994, 1:41 p.m.

\*\*\*\*\*

Title of Regulation: **VR 630-3-445. Corporate Income Tax: Consolidation of Accounts.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 4, 1994

VA.R. Doc. No. R94-868; Filed April 20, 1994, 1:41 p.m.

\*\*\*\*\*

Title of Regulation: **VR 630-3-446.1. Corporate Income Tax: Foreign Sales Corporations (REPEAL).**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 4, 1994

VA.R. Doc. No. R94-869; Filed April 20, 1994, 1:41 p.m.

Title of Regulation: **VR 630-3-449. Corporate Income Tax: Supplemental Accounts.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 4, 1994

VA.R. Doc. No. R94-870; Filed April 20, 1994, 1:41 p.m.

\*\*\*\*\*

Title of Regulation: **VR 630-3-453. Corporate Income Tax: Extension of Time for Filing Returns.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 4, 1994

VA.R. Doc. No. R94-871; Filed April 20, 1994, 1:41 p.m.

\*\*\*\*\*

Title of Regulation: **VR 630-3-500. Corporate Income Tax: Declarations of Estimated Income Tax Required.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 4, 1994

VA.R. Doc. No. R94-872; Filed April 20, 1994, 1:41 p.m.

\*\*\*\*\*

Title of Regulation: **VR 630-3-503. Corporate Income Tax: Instructions for Filing Estimated Taxes.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor

# Governor

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Date: April 4, 1994

VA.R. Doc. No. R94-873; Filed April 20, 1994, 1:41 p.m.

\* \* \* \* \*

Title of Regulation: **VR 630-3-504. Corporate Income Tax:  
Failure to Pay Estimated Income Tax.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 4, 1994

VA.R. Doc. No. R94-874; Filed April 20, 1994, 1:41 p.m.

## **BOARD OF VETERINARY MEDICINE**

Title of Regulation: **VR 645-01-0:1. Public Participation  
Guidelines.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen  
Governor  
Date: April 18, 1994

VA.R. Doc. No. R94-879; Filed April 18, 1994, 4:17 p.m.

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# GENERAL NOTICES/ERRATA

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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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## GENERAL NOTICES

### SECRETARY OF THE COMMONWEALTH

#### † Notice to Counties, Cities, Towns, Authorities, Commissions, Districts and Political Subdivisions of the Commonwealth

Notice is hereby given that pursuant to § 2.1-71 of the Code of Virginia, each county, city and town and each authority, commission, district or other political subdivision of the Commonwealth to which any money is appropriated by the Commonwealth or any of the above which levies

any taxes or collects any fees or charges for the performance of public services or issues bonds, notes or other obligations, shall annually file with the Secretary of the Commonwealth a list of all bond obligations, the date and amount of the obligation and the outstanding balance therein, on or before June 30 of each year.

A copy of the form for use herein described follows.

**Contact:** Sheila A. Evans, Conflict of Interest and Appointments Specialist, P. O. Box 2454, Richmond, VA 23201-2454, Old Finance Building, Capitol Square, Richmond, VA 23219, telephone (804) 786-2441.

OFFICIAL TITLE OF POLITICAL SUBDIVISION: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

FILING FORM PER §2.1-71 OF THE CODE OF VIRGINIA - 1994  
OFFICE OF THE SECRETARY OF THE COMMONWEALTH

<u>Type of Obligation</u>	<u>Date Issued</u>	<u>Amount of Issue</u>	<u>Balance Outstanding</u>	<u>Type of Project Financed</u>
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# General Notices/Errata

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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Designation of Regional Solid Waste Management Planning Area

In accordance with the provisions of § 10.1-1411 of the Code of Virginia and Part V of Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Waste Division of the Department of Environmental Quality intends to designate Smyth County and the Towns of Chilhowie, Marion, and Saltville as a solid waste management region. The director has approved a comprehensive solid waste management plan for the area. Smyth County is the designated contact for implementation of the plan.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on May 26, 1994, to Ms. Anne M. Field, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, Virginia 23240-0009, FAX (804) 762-4346. Questions concerning this notice should be directed to Ms. Field at (804) 762-4365.

Following the closing date for comments, the Director of the Waste Division will notify the affected local governments of his designation of the region or of the need to hold a public hearing on the designation.

## DEPARTMENT OF LABOR AND INDUSTRY

### † Notice to the Public

The Virginia State Plan for the enforcement of Virginia Occupational Safety and Health (VOSH) laws 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 (OSHA). 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, 1926, and 1928  
[Docket No. H-22]

### INDOOR AIR QUALITY

**AGENCY:** Occupational Safety and Health Administration (OSHA)

**ACTION:** Notice of proposed rulemaking; notice of informal public hearing

**SUMMARY:** By this notice, the Occupational Safety and Health Administration (OSHA) proposes to adopt standards addressing indoor air quality in indoor work environments. The basis for this proposed action is a preliminary determination that employees working in indoor work environments face a significant risk of material

impairment to their health due to poor indoor air quality, and that compliance with the provisions proposed in this notice will substantially reduce that risk.

The provisions of the standard are proposed to apply to all indoor "nonindustrial work environments." In addition, all worksites, both industrial and nonindustrial within federal OSHA's jurisdiction are covered with respect to the proposed provisions addressing control of environmental tobacco smoke. The proposal would require affected employers to develop a written indoor air quality compliance plan and implement that plan through actions such as inspection and maintenance of building systems which influence indoor air quality.

Provisions under the standard also propose to require employers to implement controls for specific contaminants and their sources such as outdoor air contaminants, microbial contamination, maintenance and cleaning chemicals, pesticides, and other hazardous chemicals within indoor work environments. Designated smoking areas which are to be separate, enclosed rooms exhausted directly to the outside are proposed to be required in buildings where the smoking of tobacco products is not prohibited. Specific provisions are also proposed to limit the degradation of indoor air quality during the performance of renovation, remodeling and similar activities. Provisions for information and training of building system maintenance and operation workers and other employees within the facility are also included in this notice.

Finally, proposed provisions in this notice address the establishment, retention, availability, and transfer of records such as inspection and maintenance records, records of written compliance programs, and employee complaints of building-related illness.

The agency invites the submission of written data, views and comments on all regulatory provisions proposed in this notice, and on all relevant issues pertinent to those provisions. Federal OSHA is also scheduling an informal public hearing where persons may orally submit their views. It is noted here that subsequent Federal Register notices may be published subsequent to this notice if the public presents views leading to a substantial change in focus or it is otherwise determined to be appropriate.

**DATES:** Comments on the proposed standard must be postmarked by June 29, 1994. Notices of intention to appear must be postmarked by June 20, 1994. Testimony and evidence to be submitted at the hearing must be postmarked by July 5, 1994. The hearing will commence at 9:30 a.m. on July 12, 1994.

**ADDRESS:** Comments are to be submitted in quadruplicate or one original and one disk (5 1/4 or 3 1/2) in WP 5.0, 6.0 or Ascii to The Docket Office, Docket No. H-122, Room N-2625, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20210, telephone (202) 219-7894. Any information not contained on disk, e.g.,

studies, articles, etc., must be submitted in quadruplicate.

An additional copy should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219.

Notices of intention to appear and testimony and evidence are to be submitted in quadruplicate to Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U. S. Department of Labor, 200 Constitution Avenue, N. W., Room N-3649, Washington, D. C. 20210, telephone (202) 219-8615.

The hearing will be held in the auditorium of the U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C.

**FOR FURTHER INFORMATION CONTACT: Proposal:** Mr. James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U. S. Department of Labor, Room N-3641, 200 Constitution Avenue, N.W., Washington, D. C. 20210, telephone (202) 219-8151.

**Informal Hearing Information:** Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U. S. Department of Labor, Room N-3649, 200 Constitution Avenue, N.W., Washington, D. C. 20210, telephone (202) 219-8615.

## VIRGINIA CODE COMMISSION

### NOTICE TO STATE AGENCIES

**Mailing Address:** Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and 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

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# CALENDAR OF EVENTS

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<b>Symbols Key</b>	
†	Indicates entries since last publication of the Virginia Register
☒	Location accessible to handicapped
☎	Telecommunications Device for Deaf (TDD)/Voice Designation

## NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and The Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

## VIRGINIA CODE COMMISSION

### EXECUTIVE

#### DEPARTMENT FOR THE AGING

**July 2, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Aging intends to **repeal** regulations entitled: **VR 110-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 110-01-01:1. Public Participation Guidelines**. The proposed regulation establishes guidelines for the involvement of the public in the development and promulgation of department regulations.

Statutory Authority: §§ 2.1-373 and 9-6.14:7.1 of the Code of Virginia.

**Contact:** Bill Fascitelli, Senior Planner, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2852 or toll-free 1-800-552-4464.

#### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (STATE BOARD OF)

**May 18, 1994 - 9 a.m.** – Open Meeting  
Washington Building, 1100 Bank Street, Room 204,  
Richmond, Virginia. ☒

At this regular meeting, the board plans to discuss

legislation, regulations and fiscal matters and will receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of the other business, the board will review public comments for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

**Contact:** Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD ☎

#### Virginia Egg Board

† **June 24, 1994 - 10 a.m.** – Open Meeting  
The Cavalier Hotel, Ocean Front at 42nd Street, Virginia Beach, Virginia. ☒

The board will meet to discuss business matters pertaining to the egg industry and the Virginia Egg Board. Any person who needs any accommodation in order to participate at the meeting should contact Cecilia Glembocki, Program Director, at least five days prior to the meeting so that suitable arrangements can be made. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

**Contact:** Cecilia Glembocki, Program Director, Virginia Egg Board, 911 Saddleback Court, McLean, VA 22102, telephone (703) 790-1984.

#### Virginia Marine Products Board

† **June 14, 1994 - 5:30 p.m.** – Open Meeting  
Sewell's Ordinary Restaurant, Route 17, Gloucester, Virginia. ☒

The board will meet to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business. Any person who needs any accommodation in order to participate at the meeting should contact the agency before the meeting date, so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

**Contact:** Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Boulevard, Suite B, Newport News, VA 23602, telephone (804) 874-3474.

## Pesticide Control Board

† **June 28, 1994 - 10 a.m.** – Open Meeting

Department of Agriculture and Consumer Services, Washington Building, 4th Floor Conference Room, 1100 Bank Street, Richmond, Virginia. ☒

The Policy and Procedures Committee will convene for the purpose of formulating a proposal to be presented to the full board at the July meeting on the regulation of commercial applicators not-for-hire. This is a continuation of the April 14-15, 1994, board meeting.

Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting so that suitable arrangements can be made for any appropriate accommodations.

**Contact:** Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P. O. Box 1163, 1100 Bank Street, Room 401, Richmond, VA 23209, telephone (804) 371-6558.

## AUCTIONEERS BOARD

**May 17, 1994 - 10 a.m.** – CANCELLED

Kirn Memorial Library, 301 East City Hall Avenue, Kirkby Room, 2nd Floor, Norfolk, Virginia.

The formal administrative hearing in regard to the Virginia Auctioneers Board v. Calvin Zedd, t/a "Col." Calvin Zedd Auction Company and t/a Zedd Auctioneers, Ltd., has been cancelled.

**Contact:** Carol A. Mitchell, Assistant Director, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

**June 7, 1994 - 9 a.m.** – Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to conduct regular board business and other matters which may require board action.

**Contact:** Geralde W. Morgan, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

## BOARD FOR BARBERS

**June 6, 1994 - 9 a.m.** – Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☒

A meeting to:

1. Review applications
2. Review correspondence
3. Conduct review and disposition of enforcement files
4. Conduct regulatory review
5. Conduct routine board business.

A public comment period will be scheduled during the meeting. No public comment will be accepted after that period. However, the meeting is open to the public. Any person who needs any accommodations in order to participate at the meeting should contact Les Newton at (804) 367-8590 at least 10 days before the meeting date so that suitable arrangements can be made.

**Contact:** Nancy T. Feldman, Assistant Director, Board for Barbers, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

### Central Area Review Committee

**May 18, 1994 - 10 a.m.** – Open Meeting

**June 16, 1994 - 2 p.m.** – Open Meeting

Chesapeake Bay Local Assistance Department, 8th Street Office Building, 8th and Broad Streets, 7th Floor Conference Room, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Central Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. Public comment will not be received at the committee meeting. However, written comments are welcome.

**Contact:** Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

### Northern Area Review Committee

**May 26, 1994 - 10 a.m.** – Open Meeting

**June 9, 1994 - 10 a.m.** – Open Meeting

Chesapeake Bay Local Assistance Department, 8th Street Office Building, 8th and Broad Streets, 7th Floor, Conference Room, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay

# Calendar of Events

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Preservation Area programs for the Northern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. Public comment will not be received at the committee meeting. However, written comments are welcome.

**Contact:** Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

## Southern Area Review Committee

**May 25, 1994 - 10 a.m. – Open Meeting**

**June 22, 1994 - 10 a.m. – Open Meeting**

Chesapeake Bay Local Assistance Department, 8th Street Office Building, 8th and Broad Streets, 7th Floor, Conference Room, Richmond, Virginia. ☎ (Interpreter for the 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. Public comment will not be received at the committee meeting. However, written comments are welcome.

**Contact:** Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

## INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

### Coordinating Committee

† **May 20, 1994 - 8:30 a.m. – Open Meeting**

Office of the Coordinator, Interdepartmental Regulation, 730 East Broad Street, Theatre Row Building, Richmond, Virginia. ☎

A regularly scheduled 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, Jr., Coordinator, Office of the Coordinator, Interdepartmental Regulation, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1960.

## STATE BOARD FOR COMMUNITY COLLEGES

**May 18, 1994 - 1 p.m. – Open Meeting**

Eastern Shore Community College, 29300 Lankford Highway, Melfa, Virginia.

Committee meetings will be held.

**Contact:** Joy S. Graham, Assistant Chancellor of Public Affairs, Virginia Community College System, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

**May 19, 1994 - 9 a.m. – Open Meeting**

Eastern Shore Community College, 29300 Lankford Highway, Melfa, Virginia.

A regularly scheduled meeting.

**Contact:** Joy S. Graham, Assistant Chancellor of Public Affairs, Virginia Community College System, 101 N. 14th St., 15th Floor, Richmond, VA 23219, (804) 225-2126 or (804) 371-8504/TDD ☎

## BOARD ON CONSERVATION AND DEVELOPMENT OF PUBLIC BEACHES

† **June 8, 1994 - 10:30 a.m. – Open Meeting**

York County Human Services Building, Recreational Services Office Community Room, 301 Goodwin Neck Road, Gloucester Point, Virginia. ☎

A meeting to discuss proposals from localities requesting matching grant funds from the board.

**Contact:** Susan M. Townsend, Program Support Technician, Department of Conservation and Recreation, P. O. Box 1024, Gloucester Point, VA 23062, telephone (804) 642-7121.

## DEPARTMENT OF CONSERVATION AND RECREATION

† **May 18, 1994 - 7 p.m. – Open Meeting**

Buckingham County Agricultural Center, Cumberland, Virginia. ☎ (Interpreter for the deaf provided upon request)

A public information gathering meeting for the James River park site in Buckingham County. A draft plan will be provided for comments. A/E consultant and park manager will give highlights and overview of site.

**Contact:** J. Scott Shanklin, Park Manager, Bear Creek Lake State Park, Route 1, Box 253, Cumberland, VA 23040-9518, telephone (804) 492-4410.

## BOARD FOR CONTRACTORS

### Recovery Fund Committee

**June 22, 1994 - 9 a.m. – Open Meeting**

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting

will be open to the public; however, a portion of the discussion may be conducted in Executive Session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact Christine Martine at (804) 367-8561. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

**Contact:** Holly Erickson, Assistant Administrator, Board for Contractors, 3600 West Broad Street, Richmond, VA 23219, telephone (804) 367-8561.

**DEPARTMENT OF CORRECTIONS (STATE BOARD OF)**

**May 23, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to adopt regulations entitled: **VR 230-01-004. Regulations for Human Subject Research.** The Human Subject Research Regulations establish under what circumstances human research is authorized and conducted within the Department of Corrections as required in § 32.1-162.16 et seq. of the Code of Virginia. In accordance with the legislation, the regulations define requirements for obtaining informed consent and require the establishment of human research review committees which review and approve all human research activities. These regulations apply to the Department of Corrections and to any facility, program or organization owned, operated, funded, or licensed by the department which conducts or which proposes to conduct or authorize research which uses human participants. Human research participants may be either employees or clients of the department.

Statutory Authority: §§ 53.1-5 and 53.1-5.1 of the Code of Virginia.

**Contact:** Dr. Larry Guenther, Agency Management Lead Analyst, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

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**June 3, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to adopt regulations entitled: **VR 230-01-005. Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility.** These regulations govern the form and review process for proposed agreements

between the Director of the Department of Corrections and public or private entity to operate a work program in a state correctional facility for inmates confined therein. The regulations establish both the review process and criteria for evaluating proposed agreements.

Statutory Authority: §§ 53.1-5 and 53.1-45.1 of the Code of Virginia.

**Contact:** Amy Miller, Regulatory Coordinator, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3262.

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**June 8, 1994 - 10 a.m.** – Public Hearing  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.

**July 2, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to amend regulations entitled: **VR 230-30-001. Minimum Standards for Jails and Lockups.** The amendments to the Minimum Standards for Jails and Lockups alter the requirements for administration and programs in jails and lockups and are based on a board committee review of the implementation and application of the standards. In summary, the changes are directed toward offering more flexibility in terms of population management; strengthening requirements where inmate supervision and general safety are a concern; and rearranging portions of the standards to enhance clarity, organization, and consistency among standards.

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

**Contact:** Lou Ann White, Department of Corrections, P. O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

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**June 8, 1994 - 10 a.m.** – Public Hearing  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.

**July 2, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to amend regulations entitled: **VR 230-30-002. Community Diversion Program Standards.** The amendments to the Community Diversion Program Standards alter requirements for the development, operation and evaluation of programs and services

# Calendar of Events

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provided under the Community Diversion Incentive Act. The amendments include format and organization changes in order to enhance clarity, the deletion of some text which is now incorporated in other documents, and a few substantive changes.

Statutory Authority: §§ 53.1-5 and 53.1-182 of the Code of Virginia.

**Contact:** Dee Malcan, Chief of Operations, Department of Corrections, P. O. Box 26963, Richmond, VA 23261, telephone (804) 674-3242.

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**July 2, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Corrections intends to repeal regulations entitled: **VR 230-30-006. Jail Work/Study Release Program Standards.** The Jail Work/Study Release Program Standards are being repealed because the provisions of these regulations will be included in the proposed amended regulations, VR 230-30-001, Minimum Standards for Jails and Lockups.

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

**Contact:** Lou Ann White, Department of Corrections, P. O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

## DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

**June 10, 1994 - 10 a.m.** – Public Hearing  
State Capitol, House Room 1, Richmond, Virginia.

**June 6, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to adopt regulations entitled: **VR 240-04-4. Crime Prevention Specialists.** The purpose of the proposed regulation is to establish requirements and administrative procedures for individuals employed by local and state law-enforcement agencies who are applying for certification as a crime prevention specialist.

Statutory Authority: §§ 9-170, 9-173.14 and 9-173.15 of the Code of Virginia.

**Contact:** Patrick D. Harris, Manager, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8467.

## DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

**May 20, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Deaf and Hard-of-Hearing intends to **repeal** regulations entitled: **VR 245-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 245-01-01:1. Public Participation Guidelines.** This regulation requires the director to maintain a list of persons who have requested to be notified of the formation and promulgation of regulations by the department. It also requires the department to receive petitions for rulemaking, to publish a Notice of Intended Regulatory Action prior to promulgating or amending regulations, and to hold a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment. Finally, this regulation allows the director to appoint an ad hoc advisory committee to assist in the review and development of regulations for the department.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85.4 of the Code of Virginia.

**Contact:** Leslie G. Hutcheson, Special Projects Manager, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 12th Floor, Richmond, VA 23219-3640, telephone (804) 225-2570 or toll-free 1-800-552-7917.

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**May 20, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Deaf and Hard-of-Hearing intends to amend regulations entitled: **VR 245-02-01. Regulation Governing Eligibility Standards and Application Procedures of the Distribution of Technological Assistive Devices.** This regulation is to screen applicants for the Telecommunications Assistance Program (TAP) and to determine the applicant's contribution towards the purchase of telecommunications equipment, if any. The amendments allow the department to give priority to first-time applicants during times of fiscal constraint. Renewal applicants, individuals who have previously received equipment through the program, must wait five years to submit subsequent applications and must include proof that the original equipment is no longer working. Additionally, amendments may allow an applicant to request an exchange for new equipment which becomes available through TAP and is deemed a more compatible device for the applicant. Finally, amendments allow for those applicants whose income exceeds 150% of the maximum amount established by the Economic Needs Guidelines to be

required to contribute 100% of the contractual cost of devices.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Contact: Bruce A. Sofinski, Communications and Technical Programs, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 12th Floor, Richmond, VA 23219-3640, telephone (804) 225-2570 or toll-free 1-800-552-7917.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

May 20, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to adopt regulations entitled: VR 270-01-0055. Regulations for the Protection of Students as Participants in Human Research. These proposed regulations are designed to ensure that the rights of students who may become subjects of research are protected. The regulations specifically address the rights of students in the areas of personal privacy and informed consent. These rights are protected by means of the creation in each school entity of a review committee to oversee all research involving students that is conducted within the realm of its authority.

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

Contact: Lawrence McCluskey, Lead Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2762.

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June 7, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to adopt regulations entitled: VR 270-01-0060. Minimum Standards for the Accreditation of Child Day Programs Serving Children of Preschool Age or Younger in Public Schools. These regulations serve as the basis for the accreditation of all nonmandated programs operated by public schools intended to serve preschool age children not subject to compulsory attendance laws.

Statutory Authority: § 22.1-19 of the Code of Virginia.

Contact: Charles W. Finley, School Accreditation Associate Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2747 or toll-free 1-800-292-3820.

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June 7, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to adopt regulations entitled: VR 270-01-0061. Minimum Standards for the Accreditation of Child Day Programs Serving School Age Children Offered in Public Schools. These regulations serve as the basis for the accreditation of all nonmandated programs operated by public schools intended to serve school age children in before- and after-school programs and summer camps.

Statutory Authority: § 22.1-19 of the Code of Virginia.

Contact: Charles W. Finley, School Accreditation Associate Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2747 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

June 2, 1994 - 5:30 p.m. - Open Meeting Chesterfield County Administration Building, 10001 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.

LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF MONTGOMERY/TOWN OF BLACKSBURG

June 14, 1994 - 3 p.m. - Open Meeting Montgomery County Courthouse, 3rd Floor, Board of Supervisors Room, Christiansburg, Virginia. §

A meeting to discuss the development of hazardous materials emergency response plan for Montgomery County and the Town of Blacksburg.

Contact: Steve Via, New River Valley Planning District Commission, P. O. Box 3726, Radford, VA 24143, telephone (703) 639-9313.

LOCAL EMERGENCY PLANNING COMMITTEE - PRINCE WILLIAM COUNTY, MANASSAS CITY, AND MANASSAS PARK CITY

† May 16, 1994 - 1:30 p.m. - Open Meeting One County Complex Court, Potomac Conference Room, Prince William, Virginia. §



# Calendar of Events

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A multijurisdictional local emergency planning committee meeting 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, One County Complex Court, Internal Zip MC470, Prince William, VA 22192, telephone (703) 792-6800.

## LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† **June 1, 1994 - 2:30 p.m.** – Open Meeting  
Shawnee Fire Company, 2333 Roosevelt Boulevard, Winchester, Virginia 22601

A general meeting.

**Contact:** L.A. Miller, Fire Chief, Winchester Fire and Rescue Department, 126 N. Cameron St., Winchester, VA 22601, telephone (703) 662-2298.

## VIRGINIA EMPLOYMENT COMMISSION

† **June 22, 1994 - 10:30 a.m.** – Public Hearing  
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia.

† **July 15, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Employment Commission intends to amend regulations entitled: **VR 300-01-1. Definitions and General Provisions.** The proposed amendment encompasses changes to public participation guidelines in response to the 1993 amendment of the Virginia Administrative Process Act and adds definitions for terms used within VEC regulations.

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

**Contact:** Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P. O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

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† **June 22, 1994 - 10:30 a.m.** – Public Hearing  
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia.

† **July 15, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Employment

Commission intends to amend regulations entitled: **VR 300-01-2. Unemployment Taxes.** The proposed amendment clarifies existing provisions to enhance ease of use.

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

**Contact:** Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P. O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

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† **June 22, 1994 - 10:30 a.m.** – Public Hearing  
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia.

† **July 15, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Employment Commission intends to **repeal** regulations entitled: **VR 300-01-3. Benefits and adopt regulations** entitled: **VR 300-01-3.1. Required Records and Reports.** The purpose of the proposed amendment is to repeal current VR 300-01-3 and adopt new VR 300-01-3.1 in order to clarify and reorganize existing provisions within VEC regulations.

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

**Contact:** Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P. O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

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† **June 22, 1994 - 10:30 a.m.** – Public Hearing  
Virginia Employment Commission, 703 East Main Street, Richmond, Virginia.

† **July 15, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Employment Commission intends to **repeal** regulations entitled: **VR 300-01-4. Adjudication** and **adopt** regulations entitled: **VR 300-01-4.1. Combined Employer Accounts.** The purpose of the proposed amendment is to repeal current VR 300-01-4 and adopt VR 300-01-4.1 in order to clarify and reorganize existing provisions within VEC regulations.

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

**Contact:** Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P. O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

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† June 22, 1994 - 10:30 a.m. - Public Hearing  
Virginia Employment Commission, 703 East Main Street,  
Richmond, Virginia.

† July 15, 1994 - Written comments may be submitted  
through this date.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Virginia Employment  
Commission intends to adopt regulations entitled: **VR  
300-01-5. Employer Elections to Cover Multi-state  
Workers.** The proposed regulation would promulgate  
existing provisions in a new form in order to facilitate  
greater ease of use.

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

**Contact:** Michael P. Maddox, Legislative Analyst, Virginia  
Employment Commission, P. O. Box 1358, Richmond, VA  
23211, telephone (804) 786-1070.

\* \* \* \* \*

† June 22, 1994 - 10:30 a.m. - Public Hearing  
Virginia Employment Commission, 703 East Main Street,  
Richmond, Virginia.

† July 15, 1994 - Written comments may be submitted  
through this date.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Virginia Employment  
Commission intends to adopt regulations entitled: **VR  
300-01-6. Benefits.** The proposed regulation would  
promulgate existing provisions in a new form in order  
to facilitate greater ease of use.

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

**Contact:** Michael P. Maddox, Legislative Analyst, Virginia  
Employment Commission, P. O. Box 1358, Richmond, VA  
23211, telephone (804) 786-1070.

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† June 22, 1994 - 10:30 a.m. - Public Hearing  
Virginia Employment Commission, 703 East Main Street,  
Richmond, Virginia.

† July 15, 1994 - Written comments may be submitted  
through this date.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Virginia Employment  
Commission intends to adopt regulations entitled: **VR  
300-01-7. Interstate and Multi-state Claimants.** The  
proposed regulation would promulgate existing  
provisions in a new form in order to facilitate greater  
ease of use.

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

**Contact:** Michael P. Maddox, Legislative Analyst, Virginia  
Employment Commission, P. O. Box 1358, Richmond, VA  
23211, telephone (804) 786-1070.

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† June 22, 1994 - 10:30 a.m. - Public Hearing  
Virginia Employment Commission, 703 East Main Street,  
Richmond, Virginia.

† July 15, 1994 - Written comments may be submitted  
through this date.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Virginia Employment  
Commission intends to adopt regulations entitled: **VR  
300-01-8. Adjudication.** The proposed regulation would  
promulgate existing provisions in a new form in order  
to facilitate greater ease of use.

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

**Contact:** Michael P. Maddox, Legislative Analyst, Virginia  
Employment Commission, P. O. Box 1358, Richmond, VA  
23211, telephone (804) 786-1070.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**May 19, 1994 - 2 p.m. - Public Hearing**  
Virginia Museum of Fine Arts, Reynolds Lecture Hall, 2800  
Grove Avenue, Richmond, Virginia. ☎

A public hearing to allow public comment on proposed  
amendment to the Commonwealth of Virginia State  
Implementation Plan. The proposed amendment  
consists of a determination that the use of no control  
is reasonably available control technology for the  
control of volatile organic compound emissions to the  
atmosphere from Philip Morris USA's Blended Leaf  
Facility located at 2301 Everett Street in Richmond,  
VA.

**Contact:** James E. Kyle, P.E., Department of  
Environmental Quality, 9210 Arboretum Pkwy., #250,  
Richmond, VA 23236-3472, telephone (804) 323-2409.

**Interagency Committee on Land Application of Sewage  
Sludge**

**May 18, 1994 - 10 a.m. - Open Meeting**  
Department of Environmental Quality, Innsbrook Corporate  
Center, 4900 Cox Road, Training Room, Glen Allen,  
Virginia.

A meeting to discuss PAN rates for the SCAT  
regulations, the use of values for soil productivity  
classification and crop N requirements, and the future  
role of the committee.

# Calendar of Events

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**Contact:** Martin Ferguson, Department of Environmental Quality, 4900 Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5030.

## Virginia Pollution Prevention Advisory Committee

**June 2, 1994 - 1 p.m.** – Open Meeting  
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia. ☒

A quarterly meeting. The advisory committee has been established to assist the Department of Environmental Quality in its implementation of voluntary pollution prevention technical assistance throughout the Commonwealth.

**Contact:** Sharon K. Baxter, Pollution Prevention Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4344 or (804) 762-4021/TDD ☎

## BOARD OF GAME AND INLAND FISHERIES

**June 10, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Game and Inland Fisheries intends to amend regulations entitled: **VR 325-04-2. Motorboat Numbering.** Section 58.1-3511 of the Code of Virginia requires commissioners of revenue to assess for personal property taxation purposes motorboats based on where the boats are “normally garaged, docked, or parked.” Currently § 1 of this regulation requires individuals applying for a certificate of number for a motorboat to indicate on the application the “locality of principal use,” not where the boats are “normally garaged, docked, or parked.” Adoption of this proposed amendment to § 1 of VR 325-04-2 will enable the department to gather the information necessary to report motorboat registration to the commissioners of revenue in conformity with § 58.1-3511.

The Soldier's and Sailor's Civil Relief Act provides certain exemptions from local personal property taxation assessment for individuals who are on active military duty. The Department of Game and Inland Fisheries does not now ask an individual to indicate military status at the time an application is submitted to register a motorboat. As a result, residents who are eligible for assessment relief are assessed personal property taxes and required to complete additional paperwork at the local level. In rectifying the problem, amending § 5 of VR 325-04-2 will enable the department to provide the commissioners of revenue needed military status information so personal property taxes will not be assessed qualifying individuals. This action will also give the Department of Game and Inland Fisheries necessary authority to

require individuals to notify the agency in the event there is a change in military status.

Statutory Authority: § 29.1-701 of the Code of Virginia.

**Contact:** Mark D. Monson, Chief, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000.

**May 19, 1994 - 9 a.m.** – Open Meeting

**May 20, 1994 - 9 a.m.** – Open Meeting

Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The board will meet to discuss whether they should initiate a regulation that will provide for the use of crossbows for hunting by physically impaired individuals on their own property. They will also consider final action that will implement a permit fee schedule in accordance with language included in House Bill 1777 during the 1993 General Assembly session. Other topics of discussion include a review of the agency's audit, a financial status report, review and approval of the agency's capital and operating budgets, and a discussion on legislative proposals for the 1995 General Assembly session. Other general and administrative matters, as necessary, may be discussed and the appropriate action will be taken. The board will hold an executive session.

Please note that the board has changed its meeting procedure. Public comment is now accepted on the first meeting day. If the board completes its announced meeting agenda, they will not meet on May 20, 1994.

**Contact:** Belle Harding, Secretary to the Director, Board of Game and Inland Fisheries, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

## BOARD FOR GEOLOGY

**June 16, 1994 - 10 a.m.** – Public Hearing

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 395, Richmond, Virginia.

**July 1, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Geology intends to amend regulations entitled: **VR 335-01-02. Rules and Regulations for the Virginia Board for Geology.** The purpose of the proposed amendments is to revise fee structure, allow examination fee to be adjusted in response to contracts awarded in compliance with the Virginia Public Procurement Act, and establish the status of certifications between

expiration and reinstatement.

Statutory Authority: § 54.1-1402 of the Code of Virginia.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

## GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

† **May 23, 1994 - 10:30** – Open Meeting  
The Embassy Suites Hotel, 2924 Emerywood Parkway, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A general meeting.

**Contact:** Abria M. Singleton, Executive Secretary, Governor's Employment and Training Department, 4615 W. Broad St., 3rd Floor, Richmond, VA 23230, telephone (804) 367-9816, toll free 1-800-552-7020 or (804) 367-6283/TDD ☎

## HAZARDOUS MATERIALS TRAINING COMMITTEE

**May 17, 1994 - 10 a.m.** – Open Meeting  
Department of Emergency Services, Training Center, 308 Turner Road, Richmond, Virginia.

A meeting to discuss curriculum course development and review existing hazardous materials courses. Individuals with a disability, as defined in the Americans with Disabilities Act of 1990 (ADA), desiring to attend this meeting should contact VDES 10 days prior to the event to ensure appropriate accommodations are provided.

**Contact:** George B. Gotschalk, Jr., Department of Criminal Justice Services, 308 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001.

## DEPARTMENT OF HEALTH (STATE BOARD OF)

**June 3, 1994 - 10 a.m.** – Public Hearing  
Office of Emergency Medical Services, 1538 East Parham Road, Richmond, Virginia.

**July 5, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **VR 355-32-500. Regulations Governing the Emergency Medical Services Do Not Resuscitate Program.** These regulations will replace emergency regulations previously adopted and they set forth the requirements, provisions and implementation

procedures, as well as the special form, for the Emergency Medical Services Do Not Resuscitate Program.

Statutory Authority: §§ 32.1-151, 32.1-153, and 54.1-2987.1 of the Code of Virginia.

**Contact:** Susan McHenry, Director, Emergency Medical Services, 1538 E. Parham Road, Richmond, VA 23228, telephone (804) 371-3500 or toll-free 1-800-523-6019.

**May 16, 1994 - 7 p.m.** – Open Meeting  
Eastern Shore Community College, Melfa, Virginia. ♂

A meeting to discuss the issue surrounding the potential for repacking of foreign crabmeat in Virginia.

**Contact:** Robert J. Wittman, Deputy Director, Department of Health, 1500 E. Main St., Suite 109, Richmond, VA 23219, telephone (804) 786-7937.

## Commissioner's Waterworks Advisory Committee

† **May 19, 1994 - 10 a.m.** – Open Meeting  
Princess Anne Community Recreation Center, 1400 Ferrell Parkway, Virginia Beach, Virginia.

A general business meeting of the committee. The committee meets the third Thursday of odd months at various locations around the state. The schedule is as follows: July 21, 1994; September 15, 1994; November 17, 1994; and January 19, 1995. Locations will be announced.

**Contact:** Thomas B. Gray, P.E., Special Projects Manager, Division of Water Supply Engineering, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-5566.

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

**May 24, 1994 - 9:30 a.m.** – Open Meeting  
**June 28, 1994 - 9:30 a.m.** – Open Meeting  
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia. ☒

A monthly meeting.

**Contact:** Kim Bolden Walker, Public Relations Coordinator, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

## BOARD FOR HEARING AID SPECIALISTS

**May 16, 1994 - 8:30 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♂

# Calendar of Events

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A meeting to conduct (i) examinations to eligible candidates; (ii) review of investigative files; (iii) regulatory review; and (iv) other matters which may require board action.

**Contact:** Geralde W. Morgan, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

**June 14, 1994 - 9 a.m.** – Open Meeting  
Radford University, Radford, Virginia.

A general business meeting. For more information and a time confirmation, contact the council.

**Contact:** Anne Pratt, Associate Director, 101 N. 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2632 or (804) 371-8017/TDD ☎

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**June 7, 1994 - 9 a.m.** – Open Meeting  
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on emergency preparedness as required by SARA Title III.

**Contact:** Robert Brown, Emergency Service Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

**May 17, 1994 - 11 a.m.** – Open Meeting  
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☎

A regular meeting of the Board of Commissioners to (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 their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

## COUNCIL ON INFORMATION MANAGEMENT

**May 24, 1994 - 1:30 p.m.** – Open Meeting  
Washington Building, 1100 Bank Street, 9th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular bimonthly meeting.

**Contact:** Linda 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 ☎

## STATE COUNCIL ON LOCAL DEBT

**May 18, 1994 - 11 a.m.** – Open Meeting  
**June 15, 1994 - 11 a.m.** – Open Meeting  
**July 20, 1994 - 11 a.m.** – Open Meeting  
James Monroe Building, 101 N. 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☎

A regular meeting subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to the meeting date to ascertain whether or not the meeting is to be held as scheduled.

**Contact:** Gary Ometer, Debt Manager, Department of the Treasury, P. O. Box 1879, Richmond, VA 23215, telephone (804) 225-4928.

## STATE LOTTERY BOARD

**May 23, 1994 - 10 a.m.** – Open Meeting  
State Lottery Department, 2201 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which have not yet been determined. Two periods for public comment are scheduled.

**Contact:** Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106 or (804) 367-3000/TDD ☎

## MARINE RESOURCES COMMISSION

**May 24, 1994 - 9:30 a.m.** – Open Meeting  
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☎ ☎

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 at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans, fishery conservation issues, licensing, and shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing.

The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

**Contact:** Sandra S. Schmidt, Secretary to the Commission, Marine Resources Commission, P. O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646 or (804) 247-2292/TDD ☎

## GEORGE MASON UNIVERSITY

### Board of Visitors

**May 18, 1994 - 4 p.m. – Open Meeting**  
George Mason University, Mason Hall, Room D23, Fairfax, Virginia. ☒

A regular meeting to hear reports of the standing committees of the board and act on those recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals and organizations who request it. EEO and Affirmative Action Committee will meet at 6:30 p.m. on May 17, 1994. Standing committees will meet during the day on May 18, 1994, beginning at 9 a.m.

**Contact** Ann Wingblade, Administrative Assistant, Office the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8704.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

**July 1, 1994 –** Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1100. Amount, Duration, and**

**Scope of Services: Coverage Limits for Single Antigen Vaccines.** The Omnibus Budget Reconciliation Act of 1993, § 13631 prohibits the payment of federal financial participation for single-antigen vaccines except where medically justified. The purpose of this proposal is to promulgate permanent regulations to provide coverage policies for single-antigen vaccines.

Prior to the current emergency regulation, DMAS' policy for the coverage of childhood immunizations provided for the payment of claims for all single- and multi-antigen vaccines at the vaccines' acquisition cost without medical justification. The exception to this policy was the coverage of the measles, mumps, and rubella (MMR) vaccine which is provided to physicians through the DMAS/Merck MMR vaccine replacement program. Prior to the emergency regulation there were no requirements that in cases where a multi-antigen vaccine was available, that medical necessity be proven to receive Medicaid reimbursement for cases in which a single-antigen vaccine was administered. With the DMAS/Merck MMR vaccine replacement program, approval by DMAS is necessary only to reimburse physicians who do not participate in the replacement program for the cost of MMR vaccine purchased by the physician for use with Medicaid children. The Merck vaccine replacement program remains unchanged by this regulation.

The Omnibus Budget Reconciliation Act of 1993 required that federal financial participation (FFP) be denied for any amount expended for a single-antigen vaccine and its administration when the use of a multi-antigen vaccine was medically appropriate. This change was effective October 1, 1993. Additionally, this requirement focused on immunizations for measles, mumps, and rubella.

The proposed regulations concerning coverage limits for single-antigen vaccines have been modified from the initial emergency regulations to reflect recently promulgated federal guidelines from the U.S. Centers for Disease Control and Prevention, at the request of the Advisory Committee on Immunization Practices (ACIP), addressing the list and schedules of pediatric vaccines to be purchased and administered under the Vaccines for Children Program. The ACIP is also required, under § 1928(c)(2)(B)(i) and 1928(e) of the Social Security Act, to establish a list of vaccines for routine administration to children, along with schedules regarding the appropriate periodicity, dosage, and contraindications. Both the list of vaccines to be purchased and the administration schedule recommend that the single-antigen Haemophilus Influenzae b Conjugate vaccine (Hib) be one of the vaccines used to immunize children against Haemophilus Influenzae type b. The ACIP also notes that the combined DTP-Hib vaccine is also available for use where appropriate.

# Calendar of Events

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As a result, the proposed regulations will not require physicians to use the multi-antigen DTP-Hib vaccine when immunizing Medicaid children against diphtheria, tetanus, pertussis and haemophilus influenzae b. In other words, physicians may use the single-antigen Hib vaccine and receive reimbursement without providing medical justification. Physicians may, of course, continue to use the multi-antigen DTP-Hib vaccine.

Medical justification for the use of the single-antigen measles, mumps, or rubella vaccines with Medicaid children will continue to be required. The periodicity schedule promulgated by the ACIP recommends that two doses of the multi-antigen measles, mumps, and rubella vaccine be administered at 12-15 months of age and again before school entry. The ACIP further notes that the single-antigen measles, mumps, or rubella vaccines should be used only if (i) there is a specific contraindication to one component of the MMR vaccine, (ii) the child is known to be immune or adequately vaccinated for one or more of these diseases, or (iii) there is a need to immunize a child prior to one year of age (for example, during a measles outbreak).

The advantage to Medicaid eligible children, and the intent of Congress, is for more children to be more completely immunized. There will be no significant fiscal impact associated with these proposed regulations because the incidence of use of single virus vaccines is relatively low.

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

Written comments may be submitted through July 1, 1994, to Michael Jurgenson, Supervisor, Division of Policy and Research, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

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

## Drug Utilization Review Board

† **June 23, 1994 - 3 p.m.** – Open Meeting

Department of Medical Assistance Services, 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, Client Services Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

## BOARD OF MEDICINE

**May 23, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed amendments is to further specify current statutes pertaining to limited licenses and intern and resident licenses, provide standardized reference to schools not approved by an accrediting agency recognized by the board, and respecify examination fees for the Podiatric Medical Licensure Examination (PMLEXIS).

Statutory Authority: §§ 54.1-2400, 54.1-2935, 54.1-2936, 54.1-2937, and 54.1-2961 of the Code of Virginia.

Written comments may be submitted until May 23, 1994, to Hilary H. Connor, M.D., Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

**Contact:** Russell Porter, Assistant Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎

**June 9, 1994 - 9 a.m.** – Open Meeting

**June 10, 1994 - 9 a.m.** – Open Meeting

**June 11, 1994 - 9 a.m.** – Open Meeting

**June 12, 1994 - 9 a.m.** – Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 1, 2, 3 and 4, Richmond, Virginia.

☒

A meeting to conduct general board business, receive committee and board reports, review reports, interview licensees, make decisions on disciplinary matters, and discuss any other items which may come before the board. The board will also review any regulations that may come before it. The board will entertain public comments during the first 15 minutes on agenda items.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

## Credentials Committee

**June 10, 1994 - 2 p.m.** – Open Meeting

**June 11, 1994 - 8:15 a.m.** – Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☒

The committee will meet in open and closed session

to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and to discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

### Informal Conference Committee

**May 18, 1994 - 9 a.m. – Open Meeting**

Holiday Inn - South, US 1 and I-95, Fredericksburg, Virginia. ☒

† **July 6, 1994 - 9 a.m. – Open Meeting**

Sheraton Inn - Roanoke Airport, Ballroom B, 2727 Ferndale Road, Roanoke, Virginia. ☒

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

### Advisory Board on Physical Therapy

**June 23, 1994 - 9 a.m. – Open Meeting**

Board of Medicine, 6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ☒ ☎

A meeting to receive officers and staff reports on the Federation of Physical Therapy Boards' annual meeting; review credentialing agencies relating to foreign educated therapist; discuss proposals for impaired therapist and such other business that may come before the board.

The chairman will entertain public comments following the adoption of the agenda for 10 minutes on agenda items.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

### DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD OF)

**May 25, 1994 - 10 a.m. – Open Meeting**  
Eastern Shore Community Services Board, Nassawadox, Virginia. ☒

† **June 22, 1994 - 10 a.m. – Open Meeting**  
Highlands Community Services Board, 3279 Lee Highway, Bristol, Virginia. ☒

A regular monthly meeting. Agenda to be published one week prior to meeting date. Agenda can be obtained by calling Jane Helfrich.

Tuesday: Informal Session - 8 p.m.

Wednesday: Committee Meetings - 9 a.m.

Regular Session - 10 a.m.

**Contact:** Jane V. Helfrich, Board Administrator, State Mental Health, Mental Retardation and Substance Abuse Services Board, P. O. Box 1797, Richmond, VA 23214, (804) 786-3921.

\* \* \* \* \*

† **June 22, 1994 - 10 a.m. – Public Hearing**  
Roanoke City Hall, 215 Church Avenue, S.W., Roanoke, Virginia.

† **June 24, 1994 - 10 a.m. – Public Hearing**  
Fairfax County Government Center, Fairfax County Board Auditorium, 12000 Government Center Parkway, Fairfax, Virginia.

† **June 27, 1994 - 10 a.m. – Public Hearing**  
Henrico Area Mental Health and Retardation Services Board, 10299 Woodman Road, Conference Room C, Glen Allen, Virginia.

† **July 6, 1994 - 10 a.m. – Public Hearing**  
Eastern Virginia Medical School, Lewis Hall Auditorium, 700 Olney Road, Norfolk, Virginia.

† **August 16, 1994 – Written comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to repeal regulations entitled: **VR 470-02-03. Rules and Regulations for the Licensure of Private Psychiatric Hospitals; VR 470-02-07. Rules and Regulations for the Licensure of Correctional Psychiatric Facilities; VR 470-02-08. Rules and Regulations for the Licensure of Supported Residential Programs and Residential Respite Care/Emergency Services Facilities; VR 470-02-09.**



# Calendar of Events

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**Rules and Regulations for the Licensure of Outpatient Facilities; VR 470-02-10. Rules and Regulations for the Licensure of Day Support Programs; and VR 470-02-11. Rules and Regulations for the Licensure of Residential Facilities and adopt regulations entitled: VR 470-02-13. Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of these regulatory actions is to redraft and consolidate six current licensure regulations for all licensable facilities except residential facilities for children.

Statutory Authority: § 37.1-10(6) and Chapter 8 (§ 37.1-179 et s eq.) of Title 37.1 of the Code of Virginia.

Written comments may be submitted until August 16, 1994, to Jacqueline M. Ennis, Assistant Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214.

**Contact:** Edith Smith, Manager, Licensure Operations, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 371-6885.

## VIRGINIA MILITARY INSTITUTE

### Board of Visitors

**May 18, 1994 - 8:30 a.m. – Open Meeting**  
Virginia Military Institute, Smith Hall, Lexington, Virginia. ☒

Finals meeting of the VMI Board of Visitors, and a regular meeting to receive committee reports; approve awards, distinctions and diplomas; discuss personnel changes; and elect president pro tem.

**Contact:** Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206.

## VIRGINIA MUSEUM OF FINE ARTS

### Building and Grounds Committee

**May 19, 1994 - 10 a.m. – Open Meeting**  
Virginia Museum of Fine Arts, Conference Room, 2800 Grove Avenue, Richmond, Virginia. ☒

A review of buildings and grounds issues.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, VA 23221-2466, telephone (804) 367-0553.

## Finance Committee

**May 19, 1994 - 11 a.m. – Open Meeting**  
Virginia Museum of Fine Arts, Conference Room, 2800 Grove Avenue, Richmond, Virginia. ☒

A regular meeting to include budget review.

**Contact:** Emily C. Robertson, Secretary of the Museum, 2800 Grove Avenue, Richmond, VA 23221-2466, telephone (804) 367-0553.

## Board of Trustees

**May 19, 1994 - Noon – Open Meeting**  
Virginia Museum of Fine Arts, Auditorium, 2800 Grove Avenue, Richmond, Virginia. ☒

Annual meeting of the board to consider reports from officers, committees, and staff; budget review; and approval of art acquisition.

**Contact:** Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, VA 23221, telephone (804) 367-0553.

## BOARD OF NURSING

**† May 16, 1994 - 9 a.m. – Open Meeting**  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☒  
(Interpreter for the deaf provided upon request)

A Special Conference Committee, comprised of two members of the Virginia Board of Nursing, will conduct informal conferences with licensees to determine what, if any, action should be recommended to the Board of Nursing. Public comment will not be received.

**Contact:** M. Teresa Mullin, R.N., Assistant Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

\* \* \* \* \*

**May 20, 1994 –** Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to adopt regulations entitled: **VR 495-04-1. Public Participation Guidelines.** These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3005 of

the Code of Virginia.

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

† **May 23, 1994 - 9 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, Conference Rooms 2 and 3, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Two Special Conference Committees will conduct informal conferences in the morning. A panel of the Board of Nursing will conduct formal hearings in the afternoon. Public comment will not be received.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

† **May 24, 1994 - 8:30 a.m.** – Open Meeting  
† **May 25, 1994 - 8:30 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, Conference Room 2, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting to consider matters relating to nursing education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. Public comment will be received during an open forum session beginning at 11 a.m. on Tuesday, May 24, 1994. At 3 p.m. on May 24, 1994, the board will consider proposed amendments to regulations related to changes in the administration of licensing examinations and to those regulations related to education program approval to ensure compliance with changes in the Administrative Process Act.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

† **May 26, 1994 - 8:30 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, Conference Room 2, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A panel of the Board of Nursing will conduct formal Hearings. If the agenda is not filled with formal hearings, two Special Conference Committees will conduct informal conferences as time permits. Public comment will not be received.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

## Nurse Aide Registry

**May 20, 1994 - 1:30 p.m.** – Open Meeting  
Chamber of Commerce, Route 13, Melfa, Virginia. ☎ (Interpreter for the deaf provided upon request)

A formal hearing with a certified nurse aide. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., M.S.N., Assistant Executive Director, Board of Nursing, 6606 West Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

## BOARD OF OPTOMETRY

**May 19, 1994 - 9 a.m.** – Open Meeting  
Omni Hotel, 777 Waterside Drive, Norfolk, Virginia. ☎ (Interpreter for the deaf provided upon request)

A general board meeting to include a discussion of regulatory issues relating to contact lens prescriptions and adjustment to the fee structure. Brief public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

**May 19, 1994 - 1:30 p.m.** – Open Meeting  
Omni Hotel, 777 Waterside Drive, Norfolk, Virginia. ☎ (Interpreter for the deaf provided upon request)

Informal conferences. Brief public comment will be received at the beginning of the meeting.

**Contact:** Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

## VIRGINIA OUTDOORS FOUNDATION

† **May 26, 1994 - 10 a.m.** – Open Meeting  
James Monroe Building, 101 N. 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☎

A general business meeting. Agenda available upon request.

**Contact:** Leslie H. Grayson, Acting Executive Director, P.O. Box 322, Aldie, VA 22001, telephone (703) 327-6118.

## BOARD OF PSYCHOLOGY

**May 17, 1994 - 9:30 a.m.** – Open Meeting

# Calendar of Events

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Department of Health Professions, 6606 West Broad Street, Room #1, Richmond, Virginia. ☒

A general business meeting.

**Contact:** Evelyn Brown, Executive Director or Jane Ballard, Administrative Assistant, Board of Psychology, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9913.

## REAL ESTATE APPRAISER BOARD

**June 7, 1994 - 10 a.m. – Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

**Contact:** Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039.

\* \* \* \* \*

† **June 21, 1994 - 10 a.m. – Public Hearing**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

† **July 18, 1994 –** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Appraiser Board intends to amend regulations entitled: **VR 583-01-03. Real Estate Appraiser Board Rules and Regulations.** The purpose of the proposed amendments is to achieve consistency with current federal standards and guidelines, allow for a renewal grace period, permit reinstatement, reflect current board policy, and improve current continuing education requirements.

Statutory Authority: §§ 54.1-2013, 54.1-2014, and 54.1-2016 of the Code of Virginia.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

## Complaints Committee

**NOTE: CHANGE IN DATE**

† **May 17, 1994 - 10 a.m. – Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to review complaints.

**Contact:** Karen W. O'Neal, Assistant Director, Real Estate

Appraiser Board, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039.

## SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† **May 25, 1994 - 10 a.m. – Open Meeting**  
General Assembly Building, Senate Room A, Capitol Square, Ninth and Broad Streets, Richmond, Virginia. ☒

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia, and VR 355-34-02.

**Contact:** Constance G. Talbert, Secretary to the Board, 1500 E. Main St., P. O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

## DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

**June 17, 1994 –** Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **VR 615-25-01:1. Minimum Standards for Licensed Family Day Homes.** The purpose of the regulation is to clarify or revise certain existing licensing requirements to ensure the reasonableness and enforceability of these standards while safeguarding protection to children in care.

Statutory Authority: §§ 63.1-196 and 63.1-202 of the Code of Virginia.

Written comments may be submitted through June 17, 1994, to Alfreda Redd, Department of Social Services, Division of Licensing Programs, 730 East Broad Street, 7th Floor, Richmond, Virginia 23219.

**Contact:** Peggy Friedenber, Legislative Analyst, Department of Social Services, Office of Governmental Affairs, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1820.

**May 18, 1994 - 1:30 p.m. – Open Meeting**  
**May 19, 1994 - 9 a.m. (if necessary) – Open Meeting**  
Mountain Lake Hotel, Route 700, Mountain Lake, Virginia. ☒

A work session and formal business meeting.

**Contact:** Phyllis Sisk, Special Assistant to the Commissioner, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1900, toll free 1-800-552-3431, or

1-800-552-7096/TDD ☎

**DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF) AND CHILD DAY-CARE COUNCIL**

**May 21, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services and Child Day-Care Council intend to amend regulations entitled: **VR 615-30-01 and VR 175-03-01. General Procedures and Information for Licensure.** The purpose of the proposed amendments is to incorporate new legislation and to simplify and clarify licensing procedures.

Statutory Authority: §§ 63.1-174 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until May 21, 1994, to Kathryn Thomas, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219.

**Contact:** Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

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**May 21, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services and Child Day-Care Council intend to adopt regulations entitled: **VR 615-38-01 and VR 175-11-01. Standards and Regulations for Licensed Child Day Center Systems.** The purpose of this regulation is to set forth standards and procedures that licensees and Department of Social Services staff must follow in the administration of child day center systems.

Statutory Authority: § 63.1-196.01:1 of the Code of Virginia.

Written comments may be submitted until May 21, 1994, to Kathryn Thomas, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219.

**Contact:** Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

**BOARD OF SOCIAL WORK**

† **May 26, 1994 - 10 a.m.** – Open Meeting  
† **May 27, 1994 - 9 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct general board business, respond to correspondence, and discuss current regulations for regulatory review changes. No public comment will be received.

**Contact:** Evelyn B. Brown, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9914.

**VIRGINIA SOIL AND WATER CONSERVATION BOARD**

† **May 18, 1994 - 6 p.m.** – Open Meeting  
Ramada Inn, 955 Pepper's Ferry Road, Wytheville, Virginia.

A bimonthly business meeting (dinner meeting).

**Contact:** Linda J. Cox, Administrative Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-2152.

**TELECOMMUNICATIONS RELAY SERVICE ADVISORY BOARD**

† **May 26, 1994 - 10 a.m.** – Open Meeting  
Virginia Relay Center, 831 Park Avenue, Norton, Virginia.  
☎ (Interpreter for the deaf provided upon request)

A regular business meeting. Public comment permitted with advance notice.

**Contact:** Loretta H. Barker, Administrative Assistant, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 12th Floor, Richmond, VA 23219, telephone (804) 371-7892 (V/TTY), toll free 1-800-552-7917 (V/TTY), or (804) 225-2570/(V/TTY) ☎

**TRANSPORTATION SAFETY BOARD**

**June 6, 1994 - 9:30 a.m.** – Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ☎

A quarterly meeting to discuss new transportation safety legislation.

**Contact:** Bill Dennis, Executive Assistant, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-2666.

**DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)**

**May 18, 1994 - 2 p.m.** – Open Meeting  
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided)

# Calendar of Events

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upon request)

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

**Contact:** Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

**May 19, 1994 - 10 a.m. – Open Meeting**  
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.

Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

**Contact:** Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

**June 9, 1994 - 2 p.m. – Public Hearing**  
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

Final allocation hearing for the eastern districts. Final hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit for the Richmond, Fredericksburg, Suffolk, Culpeper and Northern Virginia districts.

**Contact:** Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

**June 9, 1994 - 9 a.m. – Public Hearing**  
Salem District Office, Harrison Avenue, Salem, Virginia. ☒ (Interpreter for the deaf provided upon request)

Final allocation hearing for the western districts. Final hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit for Bristol, Salem, Lynchburg and Staunton districts.

**Contact:** Claude D. Garver, Jr., Assistant Commissioner of

Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

## TREASURY BOARD

**May 18, 1994 - 9 a.m. – Open Meeting**  
**June 15, 1994 - 9 a.m. – Open Meeting**  
**July 20, 1994 - 9 a.m. – Open Meeting**  
James Monroe Building, 101 N. 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ☒

A regular meeting.

**Contact:** Gloria J. Hatchel, Administrative Assistant to the Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

**May 16, 1994 - 2 p.m. – Public Hearing**  
**May 16, 1994 - 6:30 p.m. – Public Hearing**  
Virginia Rehabilitation Center for the Blind, Assembly Room, 401 Azalea Avenue, Richmond, Virginia. ☒

**May 18, 1994 - 5 p.m. – Public Hearing**  
Lions Sight Foundation, 501 Elm Avenue, S.W., Roanoke, Virginia. ☒

**May 24, 1994 - 6:30 p.m. – Public Hearing**  
Arlington County Central Library, 2nd Floor Meeting Room, 1015 N. Quincy St., Arlington, Virginia. ☒

A hearing to invite comments from the public regarding vocational rehabilitation for persons with visual disabilities and the implementation of an Order of Selection. Comments will be considered in developing the state plan for this program.

**Contact:** James G. Taylor, Vocational Rehabilitation Program Specialist, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3111, toll free 1-800-622-2155 or (804) 371-3140/TDD ☎

## VIRGINIA VOLUNTARY FORMULARY BOARD

**May 20, 1994 - 10 a.m. – Public Hearing**  
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

A hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drugs and drug products to the formulary that became effective on February 17, 1993, and the most recent supplement to that formulary. Copies of the proposed revisions to the formulary are available for inspection at the Virginia Department of

Health, Bureau of Pharmacy Services. Written comments sent to this address and received prior to 5 p.m. on May 20, 1994, will be made a part of the hearing record.

**Contact:** James K. Thompson, Bureau of Pharmacy Services, Department of Health, 109 Governor St., Room B 1-9, Richmond, VA 23219, telephone (804) 786-4326.

† **July 21, 1994 - 10:30 a.m.** – Open Meeting  
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

## BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

**May 17, 1994 - 9 a.m.** – Open Meeting  
**May 18, 1994 - 9 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☎

A general meeting.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

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**June 10, 1994 - 10 a.m.** – Public Hearing  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 395, Richmond, Virginia.

**July 1, 1994** – Written comments may be submitted through 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Waste Management Facility Operators intends to amend regulations entitled: **VR 674-01-02. Waste Management Facility Operators Licensing Regulations.** The proposed revisions increase the fees charged to applicants to comply with § 54.1-113 of the Code of Virginia; revise definitions; empower the board to extend interim certifications for up to six months should training and examination resources be inadequate to allow industry compliance by January 1, 1995; delete the first time full certification renewal continuing professional education (CPE) requirement

as too rigorous just two years after meeting the entry training and examination requirements; revise the language describing the required examinations to recognize a change in the manner in which examinations will be constructed and administered; delete the 70% examination passing score in favor of a psychometrically established passing score; establish the status of a certified individual between the date his certification expires and the date it is reinstated to add a provision on which the current regulations are silent; and revise language to add to clarity, and correct errors in citations, grammar and word usage.

Statutory Authority: § 54.1-2211 of the Code of Virginia.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

## LEGISLATIVE

### SUBCOMMITTEE ON STORMWATER MANAGEMENT

**May 17, 1994 - 10 a.m.** – Open Meeting  
General Assembly Building, 910 Capitol Square, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

An open meeting. SJR 44 (1994)

**Contact:** Patricia Schwab, Committee Clerk, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-5742 or (804) 786-5742/TDD ☎

## CHRONOLOGICAL LIST

### OPEN MEETINGS

**May 16**  
Health, Department of  
Hearing Aid Specialists, Board for  
† Emergency Planning Committee, Local - Prince William County, Manassas City, and Manassas Park City  
† Nursing, Board of  
- Special Conference Committee

**May 17**  
Hazardous Materials Training Committee  
Housing Development Authority, Virginia  
Psychology, Board of  
† Real Estate Appraiser Board  
- Complaints Committee

# Calendar of Events

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Stormwater Management, Subcommittee on  
Waste Management Facility Operators, Board for

## May 18

Agriculture and Consumer Services, Board of  
Chesapeake Bay Local Assistance Board  
- Central Area Review Committee  
Community Colleges, State Board for  
† Conservation and Recreation, Department of  
Environmental Quality, Department of  
- Land Application of Sewage Sludge, Interagency  
Committee on  
George Mason University  
- Board of Visitors  
Local Debt, State Council on  
Medicine, Board of  
- Informal Conference Committee  
† Soil and Water Conservation Board, Virginia  
Virginia Military Institute  
- Board of Visitors  
Social Services, Board of  
Transportation Board, Commonwealth  
Treasury Board  
Waste Management Facility Operators, Board for

## May 19

Community Colleges, State Board for  
Game and Inland Fisheries, Board of  
† Health, Department of  
- Commissioner's Waterworks Advisory Committee  
Museum of Fine Arts, Virginia  
- Building and Grounds Committee  
- Finance Committee  
- Board of Trustees  
Optometry, Board of  
Social Services, Board of  
Transportation Board, Commonwealth

## May 20

† Children's Residential Facilities, Coordinating  
Committee for Interdepartmental Regulation of  
Game and Inland Fisheries, Board of  
Nursing, Board of  
- Nurse Aide Registry

## May 23

† Governor's Job Training Coordinating Council  
Lottery Board, State  
† Nursing, Board of

## May 24

Health Services Cost Review Council, Virginia  
Information Management, Council on  
Marine Resources Commission  
† Nursing, Board of

## May 25

Chesapeake Bay Local Assistance Board  
- Southern Area Review Committee  
Mental Health, Mental Retardation and Substance  
Abuse Services Board, State

† Nursing, Board of  
† Sewage Handling and Disposal Appeals Review  
Board

## May 26

Chesapeake Bay Local Assistance Board  
- Northern Area Review Committee  
† Nursing, Board of  
† Outdoors Foundation, Virginia  
† Social Work, Board of  
† Telecommunications Relay Service Advisory Board

## May 27

† Social Work, Board of

## June 1

† Emergency Planning Committee, Local - Winchester

## June 2

Emergency Planning Committee, Local - Chesterfield  
County  
Environmental Quality, Department of  
- Pollution Prevention Advisory Committee, Virginia

## June 6

Barbers, Board for  
Transportation Safety Board

## June 7

Auctioneers Board, Virginia  
Hopewell Industrial Safety Council  
Real Estate Appraiser Board

## June 8

† Conservation and Development of Public Beaches,  
Board on

## June 9

Chesapeake Bay Local Assistance Board  
- Northern Area Review Committee  
Medicine, Board of

## June 10

Medicine, Board of  
- Credentials Committee

## June 11

Medicine, Board of

## June 12

Medicine, Board of

## June 14

† Agriculture and Consumer Services, Department of  
- Virginia Marine Products Board  
Higher Education for Virginia, State Council of  
Emergency Planning Committee, Local - County of  
Montgomery/Town of Blacksburg

## June 15

Local Debt, State Council on

## Treasury Board

### June 16

Chesapeake Bay Local Assistance Board  
- Central Area Review Committee

### June 22

Contractors, Board for  
- Recovery Fund Committee  
Chesapeake Bay Local Assistance Board  
- Southern Area Review Committee  
† Mental Health, Mental Retardation and Substance Abuse Services Board, State

### June 23

† Medical Assistance Services, Department of  
- Drug Utilization Review Board  
Medicine, Board of  
- Physical Therapy, Advisory Board on

### June 24

† Agriculture and Consumer Services, Department of  
- Virginia Egg Board

### June 28

† Agriculture and Consumer Services, Department of  
- Pesticide Control Board  
Health Services Cost Review Council, Virginia

### July 6

† Medicine, Board of  
- Informal Conference Committee

### July 20

Local Debt, State Council on  
Treasury Board

### July 21

† Voluntary Formulary Board, Virginia

## Health, Board of

### June 8

Corrections, Board of

### June 9

Transportation, Department of

### June 10

Criminal Justice Services, Department of  
Waste Management Facility Operators, Board for

### June 16

Geology, Board for

### June 21

† Real Estate Appraiser Board

### June 22

† Employment Commission, Virginia  
† Mental Health, Mental Retardation and Substance Abuse Services, Department of

### June 24

† Mental Health, Mental Retardation and Substance Abuse Services, Department of

### June 27

† Mental Health, Mental Retardation and Substance Abuse Services, Department of

### July 6

† Mental Health, Mental Retardation and Substance Abuse Services, Department of

## PUBLIC HEARINGS

### May 16

Visually Handicapped, Department for the

### May 18

Visually Handicapped, Department for the

### May 19

Environmental Quality, Department of

### May 20

Voluntary Formulary Board, Virginia

### May 24

Visually Handicapped, Department for the

### June 3



# Calendar of Events

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