

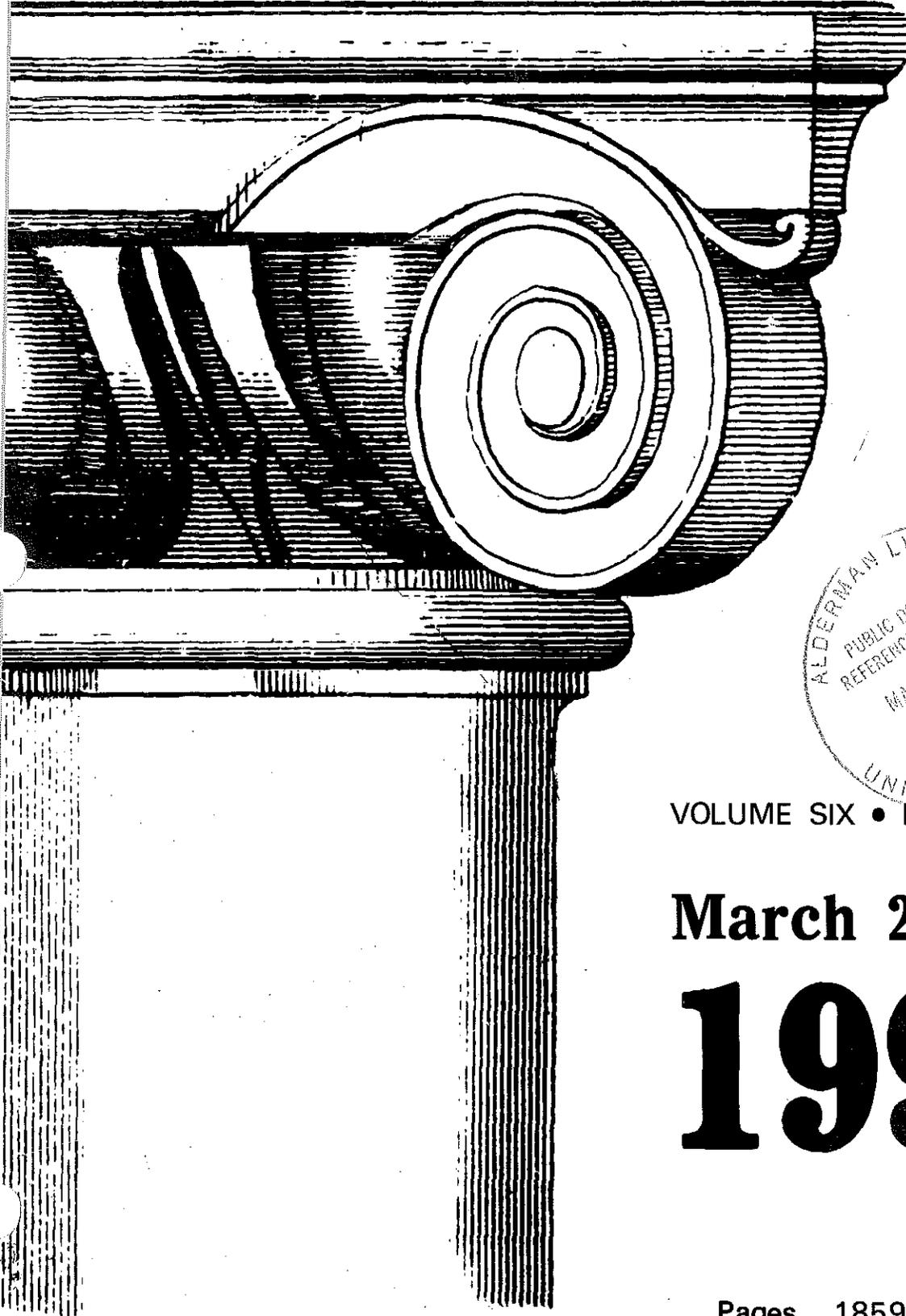
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# THE VIRGINIA REGISTER

OF REGULATIONS

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VOLUME SIX • ISSUE THIRTEEN

March 26, 1990

# 1990

Pages 1859 Through 2044

## VIRGINIA REGISTER

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

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

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

### ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

### EMERGENCY REGULATIONS

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

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

### STATEMENT

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

### CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. 1:3 VA.R. 75-77 November 12, 1984 refers to Volume 1, Issue 3, pages 75 through 77 of the *Virginia Register* issued on November 12, 1984.

"The *Virginia Register of Regulations*" (USPS-001831) is published bi-weekly, except four times in January, April, July and October for \$85 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. POSTMASTER: Send address changes to the *Virginia Register of Regulations*, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

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

Members of the Virginia Code Commission: Dudley J. Emick, Jr., Chairman, J. Samuel Glasscock, Vice Chairman; Russell M. Carneal; Joseph V. Gartlan, Jr.; John Wingo Knowles; Gail S. Marshall; E. M. Miller, Jr.; Theodore V. Morrison; William F. Parkerson, Jr.; A. L. Philpott.

Staff of the Virginia Register: Joan W. Smith, Registrar of Regulations; Ann M. Brown, Deputy Registrar of Regulations.

VIRGINIA REGISTER OF REGULATIONS  
PUBLICATION DEADLINES AND SCHEDULES

March 1990 through May 1991

**MATERIAL SUBMITTED BY**                      **PUBLICATION DATE**  
Noon Wednesday

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# PROPOSED REGULATIONS

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## Symbol Key

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

### DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

**Title of Regulation:** VR 230-40-001. ~~Core Standards for Interdepartmental Licensure and Certification Regulation of Residential Facilities for Children.~~

**Statutory Authority:** §§ 16.1-311, 22.1-321, 37.1-10, 37.1-192, 53.1-249, 63.1-196.4 and 63.1-217 of the Code of Virginia.

**Public Hearing Date:** N/A (written comments may be received until May 25, 1990)

(See Calendar of Events section for additional information)

#### Summary:

*The proposed amendments to the regulation are designed to assure that adequate care, treatment, and education are provided by residential facilities for children. The proposed revisions amend and clarify requirements governing staff supervision of children in §§ 1.1 and 3.27 et. seq. The revisions are designed to allow residential facility administrators increased flexibility in deploying staff supervising children, to reduce the level of supervision required for adolescents in independent living programs, to increase the level of supervision required for infants and during the hours children are normally sleeping, and to protect children from unwarranted and intrusive body searches.*

**NOTICE:** Please refer to the Department of Social Services in the Proposed Regulations section of this issue of the Virginia Register of Regulations for the publication of "Standards for Interdepartmental Regulation of Residential Facilities for Children."

### DEPARTMENT OF EDUCATION (STATE BOARD OF)

**Title of Regulation:** VR 270-01-003. ~~Core Standards for Interdepartmental Licensure and Certification Regulation of Residential Facilities for Children.~~

**Statutory Authority:** §§ 16.1-311, 22.1-321, 37.1-10, 37.1-182, 53.1-249, 63.1-196.4 and 63.1-217 of the Code of Virginia.

**Public Hearing Date:** N/A (written comments may be submitted until May 25, 1990)

(See Calendar of Events section for additional information)

#### Summary:

*The proposed amendments to the regulation are designed to assure that adequate care, treatment, and education are provided by residential facilities for children. The proposed revisions amend and clarify requirements governing staff supervision of children in §§ 1.1 and 3.27 et. seq. The revisions are designed to allow residential facility administrators increased flexibility in deploying staff supervising children, to reduce the level of supervision required for adolescents in independent living programs, to increase the level of supervision required for infants and during the hours children are normally sleeping, and to protect children from unwarranted and intrusive body searches.*

**NOTICE:** Please refer to the Department of Social Services in the Proposed Regulations section of this issue of the Virginia Register of Regulations for the publication of "Standards for Interdepartmental Regulation of Residential Facilities for Children."

\* \* \* \* \*

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

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

**Public Hearing Date:** May 24, 1990 - 10 a.m.

(See Calendar of Events section for additional information)

#### Summary:

*The proposed Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits state the criteria for the establishment, operation and continuing approval of certain privately owned and operated schools offering occupational training, correspondence schools and schools for handicapped children. Although some of the defined schools may be operated by nonprofit entities, the majority are for-profit institutions. The regulations further set forth the criteria to be used for monitoring the operation of the schools by staff of the Department of Education. Amendments were made to the regulations to have them conform to applicable state and federal statutes, to provide a basis for improved consumer protection, and as a result of input from an 18-member task force appointed by the department which included school owners and directors, public school personnel, personnel from the department, and members of the general public.*

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The proposed regulations delete some existing regulations, amend or relocate others and add new regulations. Substantial changes are being made for the first time since the adoption of the regulations in 1970 and the subsequent addition of the requirement of regulating privately owned and operated schools for the handicapped in 1973.

The major changes to the regulations are (i) a new provision which allows a school to operate branch campuses anywhere in the Commonwealth under one certificate; (ii) an amendment which standardizes the financial reporting requirements for all schools; (iii) an amendment which requires schools to permanently maintain and have available to former students a record of their studies; (iv) an amendment to strengthen the minimum requirements for administrators and instructors in career schools; (v) amendments to strengthen the requirements for program content; (vi) amendments which set minimum standards for student services offered by the institutions; (vii) amendments which provide refund policies more favorable to the student; (viii) amendments to the specific regulations for schools for the handicapped which conform to other state and federal statutes and regulations governing education of the handicapped; (ix) an amendment setting forth specific requirements for the establishment and operation of a Student Tuition Guaranty Fund which will, in most instances, replace the current ineffective surety bond requirement which is used to protect the contractual (financial) rights of students who attend career schools; (x) amendments which set new fees for the operation of schools which supplement state general fund moneys appropriated for the oversight activities of the department; and (xi) an amendment which allows the Board of Education to deny the issuance of a certificate to an applicant for cause.

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

## PART I. DEFINITIONS, EXEMPTIONS.

### I § 1.1. Definitions.

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

A. "Trade or Technical School." A privately owned and operated educational institution or educational organization maintained or conducting classes for the purpose of offering instruction for a consideration, profit or tuition, to prepare an individual to pursue any occupation for profit in any skilled trade, electronics, data processing or industry, or to give occupational training, or to give training designed to prepare an individual for, or to update an individual in, technical occupations and technical phases of other occupations.

B. "Business School." A privately owned and operated educational institution or educational organization, no matter how titled, maintained or conducting classes for the purpose of offering instruction for a consideration, profit or tuition, to prepare individuals to pursue any occupation for profit in business administration, bookkeeping, accounting, data processing, stenography, clerical, secretarial, receptionist or other office occupations.

C. "Correspondence School." A privately owned and operated educational organization which for a consideration, profit or tuition, teaches or instructs in any subject through the medium of correspondence between the pupil and the school by which the school transmits printed or typewritten matter to the pupil.

D. "School for the Handicapped." A privately owned and operated preschool, school, industrial institution or educational organization, no matter how titled, maintained or conducting classes for the purpose of offering instruction for a consideration, profit or tuition, to mentally retarded, visually impaired, speech impaired, hearing impaired, learning disabled, physically handicapped, emotionally disturbed or multiple handicapped persons.

E. Any of the previously defined schools shall be referred in these regulations as "school" or "schools."

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

G. "Person." Any individual, group of individuals, partnerships, association, business trust, corporation, or other similar business entity.

H. "Department" The Department of Education.

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

"Board" means the Virginia Board of Education.

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

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

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

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

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

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

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

"Superintendent" means the Superintendent of Public Instruction.

## H § 1.2. Exemptions.

These regulations shall not apply to any of the following:

A. Any trade or technical, business, or correspondence school for which there is a legally existing licensing board in this state which issues licenses or approval to either the school, the teachers, or both;

B. Any trade or technical, business, or correspondence school conducted by any person, firm, corporation, or other organization solely for training its own employees;

C. Courses of instruction given by any fraternal or organization, civic club, or benevolent order, for which no tuition or charge is made;

D. Any university, professional, or liberal arts college accredited as such and permitted to award undergraduate or graduate degrees by the State Council of Higher Education for Virginia or similar agency of the state in which its campus is located, public high school or private

high school offering programs in secondary education similar to those offered by public high schools accredited by the Board of Education, which has heretofore offered or which may hereinafter offer one or more courses covered in the Act, provided the tuition, fees and charges, if any, made by higher education shall be collected by its regular officers in accordance with the rules and regulations prescribed by the board of trustees or governing body of such university, college, high school or institution of higher education;

E. Tutorial instruction for five persons or less at one time given in a private home or elsewhere as a supplement to regular classes for students enrolled in any public or private school;

F. Schools in dance, arts, song, musical instruments, or fine arts which are conducted solely to further artistic appreciation, talent, or development;

G. Schools offering exclusively religious instruction;

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

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

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

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

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

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

F. Tutorial instruction given in a private home or elsewhere as supplemental to regular classes for students enrolled in any public or private school or in preparation

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of an individual for an examination for professional practice or higher education.

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

H. Schools offering exclusively religious instruction.

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

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

## PART II COMPLIANCE.

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

### III. Required Application Forms

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

B. The application shall be certified under oath as true in content by an authorized official of the school.

§ 2.3. Following notification of the results of the initial review of an application for certification, all deficiencies must be corrected within a period of time, not to exceed 90 days. Thereafter, the school must submit a written request for continued consideration and repay the initial application fee.

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

### IV. Certification by Recognized Accrediting Agencies

§ 2.5. Any school which is accredited by a national accrediting agency recognized by the United States Department of Education and accepted by the Board of Education shall continue to be certified or may operate branch campuses after the initial issuance of a Certificate to Operate without the submission of certain information otherwise required by §§ 22.1-319 through 22.1-335 of the Code of Virginia and these regulations. Such certification accreditation shall exempt the school from the inspection provisions of § 22.1-323 and from the provisions submission of information required by subdivisions 4, 5, 6, 8 and 9 of § 22.1-324 of the Code and subsections C, F, G, H, and K of § 3.1 of these regulations. In addition, such schools may be exempt from the periodic monitoring visits required by

§ 5.1 A of these regulations if department staff is invited and accompanies the team from the school's accrediting agency on its visits to the school.

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

### V. Compliance

A. It shall be unlawful for any school defined in the Act, except schools for the handicapped, to be operated in this state without having received a Certificate to Operate issued by the board.

B. It shall be unlawful for any school for the handicapped, as defined in this chapter, to be operated in this state without having applied for and received a Certificate to Operate issued by the Board.

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

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

## PART III APPLICATION.

### VI. Basic Information and Commitments for Certifying Schools

A § 3.1. The following information shall be submitted as part of the application:

1. The title or name of the school, together with the names and home addresses of its owners, controlling officials, and managing employees. Where a school is owned by a partnership or corporation, evidence of compliance with all applicable regulations of the State Corporation Commission to lawfully conduct business in the Commonwealth shall be submitted. Every school shall be designated by a permanent and distinct name which shall not be changed without first securing the approval of the department. The school name shall not be in violation of § 23-272 D of the Code of Virginia which deals with the use of the word "college" in the school name nor shall it misrepresent the nature of the school;

2. The specific fields, subjects, and courses of instruction which will be offered and the specific

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purpose of such instruction; Program outlines, along with narrative descriptions of the courses in the program and occupational objectives shall be submitted where applicable;

2. The location or locations where such instruction will take place;

3. A scale drawing or copy of the floor plan which includes room dimensions of the location or locations where such instruction will take place;

4a) A report from the appropriate government agency indicating that the location or locations meet fire safety standards;

b) A report from the appropriate government agency indicating that the facilities comply with building code standards;

e) A report from the appropriate government agency indicating that the facilities comply with the appropriate sanitation requirements;

d) In localities that require the three inspections noted above prior to issuing a Certificate of Occupancy, the Certificate of Occupancy may be accepted by the Department in lieu of the inspections.

4. A Certificate of Occupancy or other report(s) from the appropriate government agency(ies) indicating that the location or locations meet applicable fire safety, building code and sanitation requirements;

5. A copy of the deed, lease, or other legal instruments authorizing the school to occupy such locations;

6. A listing of the equipment available, training aids and textbooks used for instruction in each field program or course;

7. The maximum anticipated enrollment to be accommodated with the equipment available in each specified field program or course and the ratio of students to instructors; as of the date of application;

8. The educational and teaching qualifications of instructors and supervisors in each specified field;

8. A listing of the educational and teaching qualifications of instructors and administrative staff of the school;

9. Documentation of the financial resources available to equip, maintain, and operate the school (the Department may require the submission of a certified audit); A copy of the financial statements of the school or owning entity to include, but not be limited to, the following:

a. A balance sheet, reflecting assets, liabilities, equity, and retained earnings;

b. An income statement, reflecting revenues, expenses, and profits and losses;

c. A statement of increase or decrease in cash, reflecting the sources and uses of working capital; and

d. Explanatory notes, which reflect the disclosures required by generally accepted accounting principles. These statements must be as of the date of the school's most recently-ended fiscal year.

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

a. An audited financial statement, certified by an outside, independent, certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants; or

b. A financial statement which has been "reviewed" by an outside, independent, certified public accountant in accordance with principles established for reviews by the American Institute of Certified Public Accountants.

10. The current forms and contents A copy of the student enrollment agreement, a current schedule of tuition and other fees, copies of all other forms used to keep student records, and the procedure for collecting and refunding tuition;

11. Copies of all advertising currently used or proposed for use by such school;

12. A surety bond payable to the State of Virginia to protect the contractual rights of students in an amount required by Section 22.1-324(B); and, Documentation as determined by the department evidencing compliance with the student tuition guaranty provisions of § 22.1-324 B of the Code and Part VIII of these regulations;

13. A copy of a written agreement for the permanent maintenance and retrieval of student records evidencing compliance with the provisions of subsection B of § 7.1 of Part VII of these regulations; and

13 14. Such additional information as the board or department may deem necessary to carry out the provisions of the Act.

B § 3.2. Each application for a Certificate to Operate also shall include the following commitments:

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

2. To permit the board or department to inspect the school or classes being conducted therein at any time and to make available to the board or department, when requested to do so, all information pertaining to the activities of the school and its financial condition;

3. To advertise the school at all times in a form and manner that is free from misrepresentation, deception, or fraud and that conforms to the regulations of the board governing advertising;

4. To see that all representations made by anyone authorized by the school to act as an agent or solicitor for prospective students shall be free from misrepresentation, deception, or fraud and shall conform to the regulations of the board governing such representations;

5. To display prominently the current Certificate to Operate where it may be inspected by students, visitors, and the board or department;

6. To maintain all premises, equipment, and facilities of the school in an adequate, safe, and sanitary condition;

7. To submit to the department, in the event a school should close with students enrolled who have not completed their program of study, a list of students enrolled at the time the school closes, including the amount of tuition paid and the amount of their course or program completed;

8. To maintain current, complete, and accurate student records which shall be accessible at all times to the Board of Education or its authorized representatives. These records shall include, in addition to other information, a record of units of work completed and skills developed information outlined in Part VII of these regulations;

9. To conduct all courses or programs in substantial accordance with outlines submitted to and approved by the department; and

10. To conduct the school in an ethical manner at all times. To publish and adhere to policies which conform to all state and federal laws and regulations barring discrimination on the basis of race, religion, sex, national origin or handicapping condition in all school operations.

## PART IV. STAFF QUALIFICATIONS.

### § 4.1. Administrators.

Personnel employed as administrators shall have the following qualifications:

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

2. Is qualified by appropriate education and relevant experience; and

3. Have documented four years of experience related to the job responsibilities.

### VII. Personnel Qualifications (For schools other than schools for the handicapped)

#### A. Administrator

An administrator or director of a school must be a graduate of an accredited college or university or have a minimum of two years of occupational or teaching experience in one or more of the major subjects taught in the school.

The Board may make an exception to the above for good cause.

#### B. Instructors

1. All instructors shall meet the following minimum requirements: Be a graduate of an accredited college or university or a proprietary school certified by the Board with a major in the subject(s) which the applicant intends to teach, or have 24 months of actual occupational experience in the trade or occupation in which the instructor will teach, or 24 months of successful teaching experience in the trade or occupation.

2. Instructors must be competent to teach the course (s) they are employed to teach. The Board may utilize the services of consultants or employ other measures to determine the qualifications of the instructor for the trade or occupation for which the person is engaged.

### § 4.2. Instructional staff.

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

1. Hold a degree from an accredited college or university with a major in the area of teaching responsibility, where applicable, or hold a degree in a related subject area; or

2. Be a graduate of a proprietary school certified by the board (or similar certification or approval if the

school is located in another state) or other training program above the high school level with a major in the area of teaching responsibility and have a minimum of two years of occupational experience in the area of teaching responsibility or a related area; or

3. Have a minimum of four years of occupational experience, above the learning stage, in the area(s) of teaching responsibility.

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

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

§ 4.5. Personnel employed in schools for the handicapped shall meet the specific requirements of Part XI of these regulations.

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

## PART V. PHYSICAL FACILITIES, INSPECTIONS.

### VII § 5.1. Facilities.

A. Except as provided in Section V, The department shall make an inspection of the school plant and facilities and file a report with the board of Education; the Board must approve such facilities as a prerequisite to certification. The department shall schedule periodic monitoring visits to each school at least once every two years. All facilities in use must shall comply with appropriate state and local ordinances governing fire safety, sanitation, and health.

B. A change in the location of a school must shall be reported to the department at least 30 days before the move on forms provided by the department, and documents required by subsections C, D and E of § 3.1 of these regulations for the new location must shall be found satisfactory by the agencies listed in Section VII, Part A, Item 4, and submitted to the department before the actual move takes place. An on-site visit shall be made by the department as soon as possible following notification of the change.

C. The services of representatives from the Division of Special Education Administration and Finance may be utilized in the inspection of schools for the handicapped.

D. Whenever possible, the initial inspection of schools

for the handicapped should be made by a team consisting of, but not limited to, representatives of: the Proprietary School Service, the Division of Special Education Administration and Finance, the local school divisions, and the private schools.

C. The services of representatives from the Division of Special Education Management Services or the Special Education Compliance Service may be utilized in the inspection of schools for the handicapped. Whenever possible, the inspection of schools for the handicapped should be made by a team knowledgeable of education for the handicapped. In addition, representatives of local school divisions or other schools for the handicapped may be included if appropriate.

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

## PART VI. INSTRUCTIONAL PROGRAMS.

### IX § 6.1. Instructional Occupational training programs.

A. The instructional programs shall consist of those programs or courses or subjects which schools have been certified to offer. The course of study must shall conform to state, federal, trade, or manufacturing standards of training for the occupational fields in which such standards have been established and adopted by the Board. Training programs in occupational fields for which no state or federal standards have been developed or must conform to recognized training practices in those fields. In the case of the schools for the handicapped, programs must conform to state educational standards for exceptional children. In cases where the Board has no fixed standards, it may seek the assistance of appropriate consultants in determining the standards of the courses and programs.

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

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

D. Where programs contain internships or externships, in any form, the school shall enter into a written agreement for such internship or externship with the receiving company or entity, a copy of which shall be available for review by the board or department.

E. Each resident school offering programs longer than three months in length shall divide the programs into sessions such as semesters, terms, quarters, or the like,

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most suitable to the school's operating calendar for a given year. Schools operating on a nonterm basis may divide their programs into modules not longer than four and one-half months in length.

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

## § 6.2. Programs in schools for the handicapped.

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

### PART VII.

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

#### ~~XXII.~~ Separation of Student Application and Contract Forms

##### § 7.1. Student services and records.

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

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

B. Each school shall enter into a continuing agreement with another institution for the permanent maintenance and retrieval of such records described in subdivision A 3 above in the event it closes. The board must be notified of such provisions and any changes thereto. Records for students in schools for the handicapped who have been referred by local school divisions shall be returned to the school division at the time the student ceases to be enrolled in the school.

C. Each school offering career training shall offer placement services to the graduates of the school. A written policy must be developed and an explicit description of the extent and nature of the service submitted to the department with the application for a certificate and published in the school's catalog. In the case of correspondence schools, promises for job placement or career enhancement shall be as reported, to include a placement service if appropriate.

D. Records of student counseling sessions for academic or disciplinary reasons shall be maintained in the student's permanent record if termination, dismissal or withdrawal is the basis for the counseling while he is in attendance

and shall be signed by the student and the staff member administering the counseling. The student shall receive a copy of said report.

E. Schools shall develop, publish and make available to students policies for student conduct, attendance, satisfactory progress, etc. which shall be clearly written and measurable. No policy which allows for a subjective determination of noncompliance shall be developed.

F. Each school shall develop, publish and make available to students a procedure for resolving complaints which shall include information on reporting such complaints to the department. The department may utilize outside services to investigate and resolve complaints.

##### § 7.2. Applications and enrollment agreements.

A. The application for admission to a school which has received a Certificate to Operate from the Board of Education shall be in writing on a form separate from any other document.

1 B. Any contract between a school certificated by the board and a student shall be separate from the application for admission referred to previously and shall clearly outline the obligations of both the school and the student.

2 C. Any contract or enrollment agreement used by the school shall comply with the following provisions:

- a) 1. The name and address of the school must shall be clearly stated;
- b) 2. The name or other identification of the course or program, including the *credit* or number of hours of classroom instruction, home study lessons, or their study units shall be included;
- e) 3. The total cost of the course or program, including tuition and all other charges, shall be clearly stated;
- d) 4. Inclusion of a disclosure that such agreement becomes a legally binding instrument upon the school's written acceptance of the student, unless cancelled pursuant to Section ~~XXIII~~ of the Regulations applicable sections of these regulations ;
- e) 5. Must Shall contain the school's cancellation and refund policy, which shall be clearly stated; and
- f) 6. Each contract or enrollment agreement shall contain an explanation of the form and notice that should be used if a student elects to cancel the contract or enrollment agreement, the effective date of cancellation, and the name and address to which the notice should be sent.

E D. An application for admission is not to be construed as binding on the student.

§ 7.3. Records for students in schools for the handicapped shall be kept in accordance with the provisions found in Part XI of these regulations.

## PART VIII. CANCELLATION AND REFUND POLICY.

XXIII § 8.1. Cancellations, refunds, and minimum refund policy.

A. The school shall adopt a minimum refund policy relative to the refund of the unused portion of tuition, fees, and other charges if the student does not enroll in the school, does not enter begin the program or course, withdraws, or is dismissed. The minimum refund policy for a certificated proprietary school shall be as follows:

1. All fees and payment remitted to a school by a prospective student shall be refunded, with the exception of fees covered in A-2 and A-9 of this section if the student is not admitted due to ineligibility or suitability;

2 B. A school may require the payment of a reasonable nonrefundable initial fee, not to exceed \$100 \$50 , to cover expenses in connection with processing a student's application enrollment , provided it issues a receipt and retains a signed statement in which the parties acknowledge their understanding that the fee is nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.

C. All fees and payments, with the exception of the nonrefundable fee described in subsection B above, remitted to the school by a prospective student shall be refunded if the student is not admitted.

D. The school shall provide a period of at least three business days, weekends and holidays excluded, during which a student applicant may cancel his enrollment without financial obligation other than the nonrefundable fee described in subsection B above.

3 E. Following the period described in subsection D above, a student applicant (one who has applied for admission to a school) may cancel, by written notice, his enrollment at any time prior to the first class day of the session for which application was made. When cancellation is requested under these circumstances, the school is required to refund all tuition paid by the student, less a maximum tuition fee of 15% of the stated costs of the course not to exceed or program or \$100 whichever is greater . A student applicant will be considered a student as of the first day of classes.

4 F. An individual's status as a student shall be terminated by the school not later than seven calendar consecutive instructional days after the last day on which the student actually attended the school. Termination may be effected earlier by written notice. In the event that a written notice is submitted, the effective date of

termination will be the date of receipt of the notice by the school the student last attended classes . Schools may require that written notice be transmitted via registered or certified mail, provided that such a stipulation is contained in the written enrollment contract. The school may require that the parents or guardians of students under 18 years of age submit notices of termination on behalf of their children or wards. Schools are required to submit refunds to individuals who have terminated their status as students within 30 days after receipt of a written request or the date the student last attended classes whichever is sooner .

G. The minimum refund policy for schools which financially obligate the student for a quarter, semester, trimester or other period not exceeding four and one-half months shall be as follows:

5 1. A student who enters school but withdraws during the first one-fourth (25%) of the course period is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period .

6 2. A student who enters a school but withdraws after completing one-fourth (25%) , but less than one-half (50%) of the course period is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period .

7 3. A student who withdraws after completing half, or more than half, of the course period is not entitled to a refund.

H. The minimum refund policy for schools which financially obligate the student for the entire amount of tuition and fees for the program or course shall be as follows:

1. A student who enters the schools but withdraws or is terminated during the first one-fourth of the program shall be entitled to a minimum refund amounting to 75% of the cost of the program.

2. A student who withdraws or is terminated during the second one-fourth of the program shall be entitled to a minimum refund amounting to 50% of the cost of the program.

3. A student who withdraws or is terminated during the third one-fourth of the program shall be entitled to a minimum refund amounting to 25% of the cost of the program.

4. A student who withdraws after completing three-fourths (75%) of the program shall not be entitled to a refund.

8 I. Fractions of credit for courses completed shall be determined by dividing the total amount of time required to complete the period or the program by the amount of time the student actually spent in the course (clock,

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quarter, trimester, semester hours, etc., as delineated in the school catalogue) program or the period, or by the number of academic units or correspondence course lessons completed, as described in the contract ; and .

J. It is not required that expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges, deposits, and all other charges be considered in tuition refund computations when these expenses have been represented separately to the student in the enrollment contract and catalogue, or other documents prior to enrollment in the course or program. Schools shall adopt and adhere to reasonable policies regarding the handling of these expenses when calculating the refund and submit the policies to the department for approval .

K. For programs longer than one year, the policy outlined in subsections G and H above shall apply separately for each year or portion thereof.

L. All certificated proprietary schools must shall comply with the cancellation and settlement policy outlined in this section, including promissory notes or contracts for tuition or fees sold to third parties. When notes, contracts or enrollment agreements are sold to third parties, the school continues to have the responsibility to provide the training specified therein.

§ 8.2. In the case of correspondence schools where a specific time limit for completion may not be applicable, the refund policy may be based on the number of lessons completed or other means acceptable to the department. If the program is a combination correspondence/resident program, the refund policy shall apply to each part separately and the policy outlined in either subsection G or H above shall apply to the resident portion depending on the length of the resident portion.

§ 8.3. In the case of home-solicited sales, the terms of the "Virginia Home Solicitation Sales Act," § 59.1-21.3, shall supersede the provisions of this section of the Proprietary School regulations.

§ 59.1-21.3 Cancellation of sale. (1) Except as provided in subdivision 5, the buyer has the right to cancel a home solicitation sale until midnight of the third business day on which the buyer signs an agreement or offer to purchase.

§ 8.4. Schools which charge or are paid on a "services-rendered" basis may be exempted from the provisions of this part upon written request to the department.

§ 8.5. Schools may adopt a policy more liberal or fairer to the student than those outlined in this part upon approval of the department.

## PART IX. ADVERTISING, PUBLICATIONS.

### XXIV § 9.1. Advertising and publications.

A. Each school shall use its complete name and address as listed on its Certificate to Operate ; together with a complete address for all publicity or advertising purposes and in all publications and promotions .

B. The school may advertise only that it has a "Certificate to Operate from the Virginia Board of Education." No school, by virtue of having been issued a Certificate to Operate, may advertise that it is "supervised," "recommended," "endorsed," or "accredited," "certified" or any other similar term, by the board, the department, or the state Commonwealth of Virginia.

A school holding a Certificate to Operate issued by the board of Education shall not expressly or by implication indicate by any means that the Certificate to Operate represents an endorsement of any course or study or program offered by the school .

C. No school, owner, partner, officer, employee, agent, or salesman shall advertise or represent, either orally or in writing, that the school is endorsed by colleges, universities, or other institutions of higher learning, unless it is so endorsed and a copy of such endorsement is filed with the board.

D. A guarantee of placement for graduates shall not be promised or implied by a school, owner, partner, officer, employee, agent, or salesman. No school, in its advertising or through its owners, officers, or representatives, shall guarantee employment or imply the guarantee of employment or of any wage or salary before enrollment, while the course is being offered, or after its completion.

E. A school shall not advertise for enrollment in the "help-wanted" or other employment columns of newspapers or other publications. Referral ads placed in these columns are also prohibited.

F. Printed catalogues, bulletins, pamphlets, or promotional literature must be accurate concerning the school's prerequisite training requirements for admission, curricula, subject and course content, graduation requirements, tuition and other fees or charges, and terms for payment of tuition and other fees. Copies of such materials must be filed with the board.

G. A school shall not make any fraudulent or misleading statement about any phase of its operation including, but not limited to, the course outline, curriculum, premises, equipment, enrollment, and facilities in advertising, on its stationery, or in bulletins, pamphlets, or other material published or distributed by the school or its representatives.

H. Schools holding a franchise to offer specialized courses shall not advertise such courses in a manner that would impugn the value and scope of courses offered by other schools that do not hold such a franchise.

Advertising special courses offered under a franchise shall be limited to the courses covered by the franchise.

I. Photographs, cuts, engraving, or illustrations in catalogues or sales literature shall not be used by a school in such a manner as to convey a false impression about the size, importance, or location of the school's facilities, or its equipment.

J. Schools shall not use endorsements, commendations, or recommendations by students, except with their consent and without any offer of financial compensation. Such material shall be kept on file by the school.

K. No school may advertise that it is endorsed by manufacturers, business establishments, organizations, or individuals engaged in the line of work for which it provides training, unless written evidence of this fact is presented to the board and permission to advertise is given by the board.

L. The accrediting agency must be named if accreditation is used as part of a school's promotional material.

M. No school may use the seal of the Commonwealth in any advertisement, publication or document.

N. Each school shall develop and publish a catalogue conforming to these regulations. The catalogue shall describe the school's programs, policies, etc., and be submitted to the department for review and approval prior to final printing.

## PART X. CORRESPONDENCE SCHOOLS.

### XXV § 10.1. Correspondence schools.

A. The board recognizes that requirements for facilities, equipment, and methods of instruction for correspondence schools are different from those of resident schools. Where applicable, however, the regulations, as outlined, shall apply to correspondence schools.

B. Since the method of instruction provided by correspondence schools is provided primarily through the exchange of printed material and written examinations, the board will place considerable emphasis on the following when reviewing documentation submitted with an application for a Certificate to Operate from a correspondence school is being reviewed :

1. The educational objectives shall be clearly defined, simply stated, and of such a nature that they can be achieved through correspondence study.

2. Courses offered are sufficiently comprehensive, accurate, and up-to-date, and educationally sound instructional material and methods are used to achieve the stated objectives.

3. The school provides adequate examination services, maintenance of records, encouragement to students, and attention to individual differences.

C. Correspondence schools that require, as a part of their training program, some type of terminal residence training shall comply with the regulations pertaining to facilities and staff.

## PART XI. SPECIFIC REQUIREMENTS FOR SCHOOLS FOR THE HANDICAPPED.

### XXVI. Schools for Handicapped Persons.

#### A § 11.1. Statement of purpose, philosophy, and objectives.

Each school shall be responsible for formulating a written statement setting forth its purpose, philosophy, and objectives : The statement of purpose, philosophy, and objectives and admissions policies which shall be used for guidance concerning the character and number of handicapped students to be served, the instructional program to be offered, the staff to be used, and the services to be provided.

#### B § 11.2. Administrative personnel.

##### † A. Administrators.

a) 1. Each school shall designate a person to be responsible for the administration of the school. This person shall be a graduate of an accredited college or university and shall have sufficient time, training, and ability to carry out effectively the duties involved.

b) The Board may make exception to the above for good cause.

2. The individual responsible for the day-to-day operation of the educational program, no matter how titled, shall hold and maintain a valid teaching certificate issued by the department. This individual shall hold an endorsement in at least one appropriate area of exceptionality served by the school. The individual serving in this capacity could be the same person functioning as the administrator identified in subdivision 1 above provided certification requirements are met.

3. The department may make exception to the above requirements for good cause upon application by the school.

#### ‡ § 11.3. Teachers.

a) A. The Teachers of academic courses shall hold a valid collegiate professional teaching certificate, issued by the Division of Teacher Certification department , with endorsement in at least one of the specific areas of exceptionality served by the school , or otherwise comply

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with the board of Education regulations. "Otherwise comply" means: a teacher without endorsement in a specific area of exceptionality has nine semester hours credit towards such endorsement, three semester hours of which must be in the specific area, and is earning must agree in writing to begin earning credit at the rate of six semester hours per year toward full endorsement in the next semester. Requirements for a teaching certificate and the procedure for securing a certificate are outlined in the current edition of the department's bulletin; effective July 1978 *Certification Regulations for Teachers*.

B. Teachers of specialized subjects such as music, art, and vocational education must hold a valid teaching certificate with an endorsement in the teaching area of responsibility and agree to complete coursework or inservice training in working with students of exceptionalities served by the school.

b) C. The board may make exception to the above requirements for good cause.

## 3 § 11.4. Therapists Ancillary personnel.

A. A therapist employed by a school shall be professionally trained in the area or areas of therapy in which he practices. The areas of therapy would include physical and occupational therapy. If the school employs a physical therapist, this person shall be licensed by the appropriate state authority. It is preferred that occupational therapists be registered with the American Occupational Therapy Association.

## 4. Audiologists and Speech Therapists

B. If the school employs an audiologist or speech therapist, this person Audiologists or speech therapists employed by the school shall be licensed by the Board of Audiology of the state of Virginia appropriate state authority or meet the requirements for certification as outlined in *Certification Regulations for Teachers*.

## 5. Psychologists

C. If the school employs a psychologist, this person Psychologists employed by the school shall be licensed by the Board of Psychologists Examiners of the state of Virginia appropriate state authority, and/or meet the requirements for school psychologists, or both, as outlined in *Certification Regulations for Teachers*.

## 6. Teacher Aides

a) D. The aide Teacher aides employed by the school shall be, at a minimum, a high school graduate or the equivalent and have inservice training or experience in working with the type of student served by the school.

b) The Board may make exception to the above for good cause.

## 7. Supportive Personnel

a) E. All supportive support personnel such as librarians, guidance counselors, and social workers, etc., shall have earned a bachelor's degree from an accredited institution and as a part thereof, or in addition to, 18 semester hours in their professional fields and hold a valid certificate, where applicable, issued by the department or be licensed by the appropriate state authority.

b) F. All medical personnel, including but not limited to nurses and physicians, shall hold all licenses required by the state Commonwealth of Virginia to practice in this state Commonwealth.

G. All volunteers and interns, or students who are receiving professional training shall be properly supervised.

e) H. The Board department may make exception to the above for good cause upon application by the school.

## 8 § 11.5. Personnel files.

Personnel files for instructional staff shall be kept maintained and should shall include the following documentation:

a) 1. Academic preparation and past experience;

b) 2. Attendance records;

e) 3. Copies of contract(s) indicating dates and term(s) of employment; and

d) 4. Results of a current X-ray or tuberculin test and preemployment physical examination reports or other health records required by § 22.1-300 of the Code and applicable regulations of the Virginia Department of Health.

9. Educational Director If the school employs an educational director, effective July 1, 1978, this person shall hold a Postgraduate Professional Certificate with a special education endorsement. Persons employed in such positions on July 1, 1978, shall be exempt from compliance with this provision.

## 9 § 11.6. Educational program.

± A. The educational program of each school shall demonstrate reflect the written philosophy of the school and implement by implementing the stated objectives. The through methods, procedures, and practices shall which reflect an understanding of and meet the applicable academic, vocational, therapeutic, recreational, and socialization needs of the handicapped students served. Each student shall have an individualized education program on file in the school in a manner prescribed by the Department which encourages each student to develop to the maximum of his or her potential. Educational programs for handicapped students shall be conducted in

accordance with those described in appropriate bulletins regulations governing the education of the handicapped approved and issued by the board.

2 B. Programs for the handicapped shall also comply with the following requirements:

a) To the maximum extent appropriate, handicapped children shall be educated with children who are not handicapped.

b) Confidential records of handicapped children will properly maintained.

c) Testing and evaluative materials utilized for the purpose of classification and placement of handicapped children are selected and administered so as not to be racially or culturally discriminatory.

d) A program for comprehensive, personnel development will be provided.

e) There will be ongoing parent or guardian consultation.

1. Each student identified by an LEA (Local Education Agency) as eligible for special education and related services shall have an individualized education program on file with the school in accordance with regulations of the board governing the education of handicapped children. Students not identified as such shall have an individualized program plan;

2. Records of students shall be kept in accordance with regulations of the board. Guidelines for recordkeeping are outlined in the current edition of the publication, *Management of the Students Scholastic Record in the Public Schools of Virginia*;

3. The school uses testing and evaluation materials that are not racially or culturally discriminatory and do take into consideration the student's handicapping condition(s), racial and cultural background;

4. Records of triennial evaluations of eligible handicapped students conducted in accordance with board regulations shall be on file;

5. A planned program for personnel development shall be provided;

6. There will be a plan for and documentation of contact with parents, guardians, and local school division personnel;

7. All procedural safeguards required by regulations governing the education of the handicapped shall apply for eligible handicapped students;

8. Instructional/training schedules shall be conducted

in accordance with board regulations; and

9. The school shall maintain pupil-teacher ratios in accordance with department regulations.

f) Guaranteed, procedural safeguards will be applied when applicable.

## § 11.7. Behavior management programs.

If a school has a program for behavior management or modification, the school shall develop and have on file written policies and procedures conforming to the provisions of this section approved by the governing body of the school. All interested parties shall be informed of the policies through written information contained in the institution's catalogue, brochure, enrollment contract or other publications.

### 1. Definitions.

For the purposes of this section, the following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Aversive stimuli" means physical forces (e.g., sound, electricity, heat, cold, light, water or noise) or substances (e.g., hot pepper or pepper sauce on the tongue) measurable in duration and intensity which when applied to a student are noxious or painful to the student, but in no case shall the term "aversive stimuli" include striking or hitting the student with any part of the body or with an implement or pinching, pulling, or shaking the student.

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

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

2. The following actions are prohibited:

a. Deprivation of drinking water or food necessary

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to meet a student's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the student's file. Denial of use of toilet facilities is also prohibited;

b. Any action which is humiliating, degrading, or abusive;

c. Corporal punishment except as permitted in a public school or a school maintained by the Commonwealth pursuant to § 22.1-280 of the Code of Virginia;

d. Deprivation of health care including counseling;

e. Intrusive aversive therapy except as permitted by other applicable regulations; and

f. Application of aversive stimuli except as part of an intrusive aversive therapy plan approved pursuant to other applicable regulations.

## D § 11.8. Equipment and instructional materials.

1 A. Equipment and materials for instruction shall be provided in sufficient variety, quantity, and design to implement the educational program to meet the needs of the handicapped students and to help them realize their probable future potential as identified in the IEP (Individual Education Program) as appropriate .

2 B. There shall be a library adequately equipped or resource materials available on site to meet the needs of the students according to the types of training programs or educational programs offered by the school, if applicable. Depending upon the age and needs of the handicapped students, reference materials should be available to the preacademic, the academic, and the career education levels, if applicable.

## E § 11.9. The school plant.

In the case of new construction, schools shall comply with § 2.1-109 of the State Code of Virginia with reference to architectural barriers.

## F § 11.10. Provisions for health.

1. No person suffering from any communicable disease shall be employed in the school. Each staff member and other adults employed in the school shall have a physical examination prior to employment and a tuberculin test. The requirement thereafter will be for a biennial tuberculin test. Reports of such examinations shall be kept on file.

2. A physician's certificate for each student shall be on file.

A. A report of physical examination by a physician and

an immunization record shall be on file for each student. Said reports shall not be more than three years old.

3 B. A student suffering with contagious or infectious disease shall be excluded from school while in that condition unless attendance is approved by a physician.

4 C. An adequate first-aid outfit shall be provided for use in the case of accidents.

5 D. In schools where meals are served ; it is preferable that on a daily basis, the school shall have the services of either a full-time or part-time dietitian ; since or nutritionist, or consultative assistance to ensure that a well-balanced nutritious daily menu is important to both eating and good health provided . If no nutritionist is on the full-time staff, the administrator should obtain consultative help. Records of menus for all meals served should will be kept on file for six months.

## G § 11.11. Transportation.

1 A. All drivers of vehicles transporting students shall comply with the requirements of the applicable laws of Virginia. Appropriate safety measures which take into consideration the age range and handicapping conditions of students served at the school shall be taken by staff members or other adults who may transport students to and from school.

2 B. Evidence of liability insurance to protect those students transported to and from the school shall be submitted.

C. All schools shall have on file evidence that school owned vehicles used for the purpose of transporting students to and from school and school-related activities meet federal and state standards and are maintained in accordance with applicable state and federal laws.

## H. Admissions Requirements

There shall be clearly written admission's policy.

## § 11.12. Intradepartmental cooperation.

Staff from the Division of Special Education Administration and Finance Programs for the Handicapped and the Special Education Compliance Service of the department will be available for consultation on educational programming.

## PART XII.

### CERTIFICATE GENERALLY, RESTRICTIONS.

#### X § 12.1. Certificate to Operate is not Transferable .

A. A Certificate to Operate is not transferable. New owners of a school shall make an application for an original Certificate to Operate. A change of ownership occurs when control of a school changes from one person

to another.

B. If there is a change in ownership of a school, the current owner shall notify the board at least 30 days prior to the proposed date of sale and provide a copy of the agreement of sale. An application for an original Certificate to Operate, including ~~bond~~ all attachments listed in § 3.1 of these regulations shall be submitted to the board by the new owner at least within 30 days prior to following the effective date of the change ; ~~and~~ . The school ~~shall not be operated or conducted~~ may be operated on a temporary basis under the new ownership until an original Certificate to Operate has been issued by the board.

C. A school may be operated as a branch under the certificate issued to the main campus provided application is made to the department on forms provided and the school has complied with all applicable regulations.

D. The Certificate to Operate issued by the board shall be returned immediately by registered mail to the department upon:

1. Revocation;
2. Change of location;
3. Change of ownership;
4. Change of name;
5. Voluntary closure of institution;
6. Termination of surety bond or failure to comply with the guaranty provisions of Part XIII of these regulations; and
7. Any other cause deemed sufficient by the board.

✕ § 12.2. Display of Certificate to Operate.

A Certificate to Operate issued hereunder shall be prominently displayed on the premises of the school where it may be inspected by students, visitors, the board, its representatives, or any interested person during regular school hours.

§ 12.3. Restrictions.

A. Certificate to Operate shall be restricted to the programs or courses specifically indicated and no other program(s) or course(s) shall be offered by a school.

B. No school offering franchised courses shall be issued a Certificate to Operate, nor shall any franchised course be approved without prior inspection and approval of the franchise agreement by the department. Such agreement shall contain a provision that the franchise shall not be terminated unless a satisfactory arrangement has been made to assure completion of instruction of the students in

the school.

C. Authority is granted to the department to withdraw approval of programs or courses of holders of Certificates to Operate that do not continue to meet the requirements of these regulations. A school that has had approval withdrawn shall be notified by certified mail and shall not enroll new students in such programs.

## PART XIII. STUDENT GUARANTY PROVISIONS.

### XII. Bonding Requirements

A. A surety bond, payable to the state of Virginia, on forms provided by the Board of Education to protect the contractual rights of the students shall be filed with the application for a Certificate to Operate.

B. The amount of the bond shall be based on the total maximum enrollments as follows:

Maximum Student Enrollment	Minimum Bond
0-50	\$5,000
51-100	10,000
101-150	15,000
151-200	20,000
201-250	25,000
251-300	30,000
301-350	35,000
351-400	40,000
401-450	45,000
451 and over	50,000

C. The bonding requirements may be reduced, at the discretion of the Department, if the school shows that no course of study for which tuition is collected lasts longer than 30 consecutive calendar days or that the school collects no advance tuition other than equal monthly installments based on the length of the course of study. The minimum bond for any school shall be \$1,000. Schools that feel they may qualify for a reduced bond may apply, on forms provided for that purpose, to the Proprietary School Service for authority to submit less bond than the law requires.

D. For bonding purposes, the school shall count its total current enrollment as of the date of the application, or its largest enrollment as of the date of the application, or its largest enrollment in the preceding 12 months, whichever is greater. A school being organized shall use the maximum projected enrollment which will be subject to revision based on the enrollment 60 days following the date classes start.

E. In the event the surety bond is terminated, the Certificate to Operate will automatically expire if a replacement bond is not provided.

§ 13.1. As required by § 22.1-321 of the Code of Virginia

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each school applying for or maintaining a Certificate to Operate shall provide a certain guaranty to protect the contractual rights of students. Either or both of the following provisions shall apply as determined by the department.

## A. Student Tuition Guaranty Fund (Career schools only).

1. For purpose of this regulation, the following terms have the meanings indicated:

a. "Assessment year" means the calendar year (January 1 through December 31) to which the term "gross tuition collected" is applicable, as specified in these regulations.

b. "Fund" means Student Tuition Guaranty Fund.

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

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

2. The board hereby creates and provides for a Student Tuition Guaranty Fund.

3. The purpose of the fund is to reimburse tuition and fees due students at institutions approved under these regulations when the institution ceases to operate.

4. The initial minimum operating balance of the fund shall be set at \$250,000.

5. Each institution approved to operate by the board shall pay into the fund the amount required by this regulation. Except as otherwise provided, each institution participating in the fund need not maintain or acquire surety bonds, irrevocable letters of credit, or other financial guaranties to protect student tuition as a condition to continued operation after the adoption of these regulations unless notified by the department.

6. If the department determines that deficiencies exist in the operating circumstances of any institution authorized to operate, the institution may be required to post a surety bond in accordance with the provisions of these regulations. If so required, the institution shall maintain the bond and comply with these provisions until notified otherwise.

7. Each institution shall make one payment into the fund on the following basis:

a. Payment into the fund for an institution approved to operate on or before the adoption of these regulations shall be in accordance with the schedule set forth in subdivision 6 c below, and shall be based upon gross tuition collected in the assessment year beginning January 1 of the preceding year. The payment shall be made not later than 60 days after notification or January 1, whichever is earliest.

b. Payment into the fund for an institution operating for less than one assessment year on the effective date of this regulation or for an institution approved to operate on or after the effective date of this regulation shall be \$150.

c. An assessment shall then be made after an institution has been operating one assessment year and it shall then make payment into the fund in accordance with the schedule set forth below based on the previous assessment year's operation. All payments into the fund shall be made within 30 days of the close of the assessment year or notification, whichever is sooner:

Gross Tuition Collected During Assessment Year	Payment Into the Fund
\$ 1 to \$ 25,000	\$ 200
25,000 to 50,000	250
50,000 to 100,000	300
100,000 to 200,000	400
200,000 to 300,000	500
300,000 to 400,000	600
400,000 to 500,000	700
500,000 to 750,000	1,000
750,000 to 1,000,000	1,250
1,000,000 to 1,500,000	1,500
1,500,000 to 2,000,000	2,000
Over 2,000,000	2,000 plus 1/10 of 1% of all gross tuition over \$2,000,000

d. New schools shall pay into the fund in a pattern equal to payments made by other schools upon notification by the department.

8. If, after the effective date of this regulation, the board authorizes the operation of an institution upon the determination that there has been a change in ownership, the institution shall make a payment into the fund, without regard to payments, if any, previously made by the institution or its predecessor under the following conditions:

a. If the institution has been operating for at least one assessment year, the institution, under its new ownership, shall pay into the fund in accordance with the schedule in subdivision 6 c for the last assessment year of operation and the payment shall

be due before approval to operate under new ownership; or

b. If an institution has been operating for less than one assessment year, the institution, under its new ownership, shall pay into the fund in accordance with the provisions of subdivision 6 b.

## 9. Advisory committee.

a. The board shall appoint a five-member advisory committee to make recommendations to it respecting the fund.

b. The five-member advisory committee shall be appointed and have terms as follows:

(1) Three members shall be school owners or operators;

(2) Two members shall be persons other than school owners or operators;

(3) All members shall be appointed for a three-year term except that the first appointment shall be for terms as follows:

(a) The terms for each of the three school owners or operators shall be one for three years, one for two years, and one for one year, respectively.

(b) The terms for each of the two persons who are other than school owners or operators shall be one to a two-year and one to a one-year term, respectively.

(c) Advisory committee members are eligible for reappointment.

(d) The advisory committee shall establish the time and place for its meetings and rules of procedures for its meetings.

(e) On July 31 of each year the advisory committee shall file an advisory report on the fund with the board which shall include such recommendations concerning the operations or changes in operation or minimum balance of the fund as it may deem appropriate.

(f) The advisory committee shall recommend to the superintendent the amount of money which it concludes is the minimum operating level of the fund necessary for the fund to function effectively.

10. The superintendent may appoint a director of the fund from his staff who shall serve at his pleasure and be responsible to the superintendent for the administration of the fund.

11. The director of the fund shall have the authority

to determine whether a claim merits reimbursement from the fund, and if so, the:

a. Amount of the reimbursement;

b. Time, place, and manner of its payment;

c. Conditions upon which payment shall be made; and

d. Order in which payments shall be made.

12. A claimant or other person does not have any right in the fund as beneficiary or otherwise.

13. Claims against the fund may be paid in whole or in part, taking into consideration the:

a. Amounts available and likely to become available to the fund for payments of claims;

b. Size and number of claims likely to be presented in the future;

c. Size and number of claims caused by the cessation of operation of an institution;

d. Amounts of reimbursement of claims in the past;

e. Availability to the claimant of a transfer program; and

f. Amount of money remaining in the fund after payment of duly authorized claims may not drop below \$35,000 of the original amount collected into the fund.

14. A claim shall be made against the fund only if it arises out of the cessation of operation by an institution on or after the effective date of these regulations. Claims shall be filed with the Director of the fund on forms prescribed by the department within three years after cessation of operation by the institution. Claims filed after that are not considered. Within a reasonable time after receipt of a claim, the director shall give the institution or its owners, or both, notice of the claim and an opportunity to show cause, within 30 days, why the claim should not be reimbursed in whole or part. The director may cause to be made other investigation of the claim as he deems appropriate or may base his determination, without further investigation, upon information contained in the records of the board.

15. The director's determination shall be in writing and shall be mailed to the claimant and the institution or its owners, or both, and shall become final 30 days after the receipt of the determination unless either the claimant or the institution, or its owners, within the 30-day period, files with the director a written request for a hearing. Upon

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request, a hearing shall be held and, subject to the authority of the director to exclude irrelevant or other inappropriate evidence, the claimant and the institution or its owners may present such information as they deem pertinent.

16. The superintendent shall administer the fund upon the following basis:

a. The assets of the fund may not be expended for any purpose other than to pay bona fide claims made against the fund;

b. All payments into the fund shall be maintained by the State Comptroller who shall deposit and invest the assets of the fund in any savings accounts or funds which are federally or state insured, and all interests or other return on the fund shall be credited to the fund;

c. Payment into the fund shall be made in the form of a company or cashier's check or money order made payable to the "Student Tuition Guaranty Fund";

17. When a claim is allowed by the director, the superintendent, as agent for the fund, shall be subrogated in writing to the amount of the claim and the superintendent is authorized to take all steps necessary to perfect the subrogation rights before payment of the claim. If payment of an institution's obligation is made from the fund, the superintendent shall seek repayment of the sums from the institution or such other persons or entities as may be responsible for the institution's obligations. This provision shall be enforced through the office of the Attorney General.

18. If the moneys in the fund are insufficient to satisfy duly authorized claims, there shall be a reassessment based on the formula specified in subdivision 6 c above. If there are three reassessments, the superintendent and the advisory committee shall conduct a review of the operating circumstances of the fund and make recommendations to the board. These recommendations shall include, but not be limited to, recommendations as to whether the fund should remain in force or whether the minimum balance is sufficient. During the course of this review, the superintendent shall solicit advice from the schools and members of the public respecting the fund.

## § 13.2. Bonding requirements.

A. Schools for the handicapped shall provide a bond as required by this section.

B. If it is determined that a surety bond is required for a career school in accordance with the provisions of § 13.1 5, a surety bond, payable to the Commonwealth of

Virginia, on forms provided by the Board of Education to protect the contractual rights of the students shall be filed with the application for a certificate to operate.

C. The amount of the bond shall be based on the total maximum enrollments as follows:

Maximum Student Enrollment	Minimum Bond
0-50	\$5,000
51-100	10,000
101-150	15,000
151-200	20,000
201-250	25,000
251-300	30,000
301-350	35,000
351-400	40,000
401-450	45,000
451 and over	50,000

C. The bonding requirements for schools for the handicapped may be reduced, at the discretion of the department, if the school shows that it collects no advance tuition other than equal monthly installments or is paid after services have been rendered. The minimum bond for any school shall be \$1,000. Schools that feel they may qualify for a reduced bond may apply, on forms provided for that purpose, to the proprietary school service for authority to submit less bond than the law requires.

D. For bonding purposes, the school shall count its total current enrollment as of the date of the application, or its largest enrollment as of the date of the application, or its largest enrollment in the preceding 12 months, whichever is greater. A school being organized shall use the maximum projected enrollment which will be subject to revision based on the enrollment 60 days following the date classes start.

E. In the event the surety bond is terminated, the Certificate to Operate will automatically expire if a replacement bond is not provided.

## PART XIV. FEES.

### ~~XV~~ § 14.1. Fees, generally.

A. Each original application for a Certificate to Operate shall be accompanied by a filing fee of \$50 which shall not be returnable. The following fees shall be charged and shall apply toward the cost of investigation and issuance of the Certificate to Operate:

1. Original Certificate to Operate - \$150
2. Renewal of Certificate to Operate - \$ 75
3. Reissuance of Certificate to Operate for:

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a. Change of Location - \$ 25

b. Addition of Program(s) - \$ 25

4. Review of Out-of-State School for Issuing of Agent Permits (Annual) - \$ 50

5. Original Agent Permit - \$ 5

6. Renewal of Agent Permit - \$ 1

7. Penalty for failure to meet the deadline for submission of renewal applications - \$100

B. There shall be an annual renewal fee of \$25.

B. All fees shall be submitted at the time of application and are nonrefundable.

C. No fee shall be charged for a supplementary application for the approval of additional fields or courses of instruction.

C. All fees shall be paid by school or company check or money order made payable to the "Treasurer of Virginia." Personal checks are not acceptable.

D. All fees shall be paid on or before June 30 of each year.

E. No fees shall be refunded if a Certificate to Operate is revoked.

## PART XV. CERTIFICATE RENEWAL.

XVI § 15.1. Renewal of certificate to operate.

A. Every school that continues to operate as such shall submit annually, on or before May 15, an application, on forms provided by the board and pay the required fee for certificate renewal. The application for renewal shall include in addition to other information, a current financial statement, a current fire inspection report, and a current schedule of tuition and other fees. *Schools which do not submit complete applications and documents required for renewal within the renewal period designated by the department, including a grace period of five business days after the deadline, shall be subject to the penalty fee described in subdivision A 7 of § 14.1 of these regulations.*

B. Every Certificate to Operate which has not been renewed by the board on or before June 30 of each year shall expire and the school shall cease operation immediately. A new Certificate to Operate shall be obtained from the board before such school may continue to operate resume operations. An original application shall be submitted together with the required fee. All of the requirements of Part III of these regulations shall be met.

C. The commitments as stated in Section VII Part B shall be verified under oath.

C. Any school not complying with the provisions of this section shall be deemed to be in violation of these regulations and shall be reported to the Office of the Attorney General for appropriate action.

## PART XVI. DENIAL, REVOCATION, SUSPENSION OR REFUSAL TO RENEW A CERTIFICATE, GROUNDS.

XVII. Revoking, Suspending, or Refusing to Renew a Certificate to Operate

A § 16.1. The Certificate to Operate shall not be denied, revoked or suspended or a request for renewal refused except upon the action of the board which shall be reported in writing. Records of the board's findings and recommendations concerning revocations, suspensions, or refusals to renew requests for certificate and actions shall be preserved in writing.

B § 16.2. The board may refuse to renew or may deny, revoke or suspend the Certificate to Operate of a school for any one or combination of the following causes:

1. Violation of any provision of the act or any regulation made by the board;
2. Furnishing false, misleading, or incomplete information to the board or department or failure to furnish information requested by the board or department;
3. Violation of any commitment made in an application for a Certificate to Operate;
4. Presenting to prospective students information which is false, misleading, or fraudulent regarding employment opportunities, starting salaries or the possibility of receiving academic credit from any institution of higher learning;
5. Failure to provide or maintain the premises or equipment in a safe and sanitary condition as required by law or by state regulations or local ordinances;
6. Making false promises through solicitors or by advertising or by using some other method to influence, persuade, or induce enrollment;
7. Paying a commission or providing other compensation for service performed in violation of the act;
8. Failing to maintain adequate financial resources to conduct satisfactorily the courses of instruction offered or to retain an adequate, qualified instructional staff;
9. Conducting instruction in a course or field program

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which has not been approved by the board or department;

10. Demonstrating unworthiness or incompetency to conduct a school in any matter not calculated to safeguard the interests of the public;

11. Failing within a reasonable time to provide information requested by the board or department as a result of a formal or informal complaint which would indicate a violation of the act or as supplement to an application ;

12. Attempting to use or employ enrolled students in any commercial activity whereby the school receives compensation without reasonable remuneration to the students unless activities are essential to their training and are permitted and authorized by the board as a part of the program or course ;

13. Engaging in or authorizing other conduct which constitutes fraudulent or dishonest action;

14. Attempt to confer any degree on any student in violation of § 23-272 D of the Code of Virginia;

15. Violation of the bonding requirements or failure to adhere to the student guaranty provisions set forth in Section XII Part XIII of these regulations;

16. Failure to comply with all applicable laws promulgated by a state outside Virginia in which the school is soliciting students; and,

17. Failing, within a reasonable time, to make refunds due and payable.

§ 16.3. The board or department may, upon its own motion, and shall upon the written complaint of any individual setting forth facts which, if proved, would constitute grounds for *denial*, refusal, suspension, or revocation of a Certificate to Operate, investigate the actions of any applicant or any persons holding or claiming to hold such certificate.

§ 16.4. Authority is granted to the department staff to investigate complaints from individuals and other sources concerning alleged violations of the ~~Proprietary School Regulations Act~~ or the regulations either by a school or by an agent. Where the finding(s) of the department is in favor of the complainant, the school shall abide by any recommendation(s) made. If the school disagrees with the recommendation(s), the department shall hold an informal hearing to determine whether further action (i.e., revocation, suspension or refusal to renew a certificate) is warranted. The superintendent or his designee shall chair the hearing.

§ 16.5. Before proceeding to a hearing, as provided for in the Act, on the question of whether a Certificate to Operate or permit shall be *denied*, refused, suspended, or

revoked for any cause, the board may grant to the holder of, or applicant for, a Certificate to Operate a reasonable period of time to correct any unsatisfactory condition. If within such time, the condition is corrected to the board's satisfaction, no further action leading to *denial*, refusal, suspension, or revocation shall be taken by the board.

F. Before the Board refuses to issue or renew, or suspend or revoke any Certificate, the Department shall conduct a hearing at such time and place as it shall determine. At least 20 days prior to the date set for such hearing, the Department shall notify by certified mail the applicant for, or holder of a Certificate, hereinafter called the respondent; that a hearing will be held on a date designated to determine whether the respondent is privileged to hold a Certificate or whether a Certificate should be suspended or revoked; and shall afford the respondent any opportunity to be heard in person or by counsel. At the time and place designated in the notice, the Department shall proceed to hear the charges and the respondent and the complainant shall be given ample opportunity to present in person or by counsel statements, testimony, evidence, and argument as may be pertinent to the charges or to any defense thereto. The Department may continue such hearing from time to time. The Board, in its discretion, may conduct any hearing as provided herein. If the hearing is held by the Department, the Department shall submit its findings and recommendations to the Board. Following any hearing, the Board shall issue a written opinion or order and send a copy by registered mail to the respondent and complainant.

G. Any person aggrieved by any order issued by the Board shall have the right of appeal to the Circuit Court of the City of Richmond. Such appeal shall be filed within 30 days after the opinion is rendered. The filing of an appeal shall not automatically stay the effect of the opinion or order appealed, but, if on application to the court, undue hardship is shown to result, the court in its discretion may suspend the execution thereof and fix the terms.

§ 16.6. All actions taken under the provisions of this section in regard to denials, revocations, suspensions, or refusals to renew shall be taken in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 16.7. Any owner of a school which has had a certificate revoked, has been denied a certificate, or has been refused renewal of a certificate shall not be allowed to apply for another certificate before at least 12 months have passed since the date the formal action was taken. In addition, this policy shall apply to any owner who closes a school without providing for the completion of students enrolled at the time of the closure.

## XVIII. Penalties

A. Any owner who opens, operates, or conducts any school defined in the Act without having first obtained a

Certificate to Operate shall be guilty of a Class 2 misdemeanor, and each day the owner permits the school to be open and operate without such a Certificate shall constitute a separate offense.

B. Any alleged violation of the provisions of Chapter 16, Section 22.1-331 of the Code of Virginia reported to the Board shall be referred to the Commonwealth's Attorney of the county or city in which the violation is alleged to have occurred.

## PART XVII. LISTING OF SCHOOLS.

### XIX. Listing of Certified Schools

§ 17.1. The Board department shall maintain a list of schools holding valid Certificates to Operate under the provisions of the Act which shall be available for the information of the public and be published in the Virginia Educational Directory .

## PART XVIII. AGENT PERMITS.

~~XX~~ § 18.1. Application for Agent's Permit permits: general provisions.

A. Every agent or solicitor representing any school for the purpose of recruiting or enrolling students off the premises of the school , whether the school is located in the state Commonwealth or outside the state Commonwealth , shall apply to the department in writing upon forms prepared and furnished by it. Every such agent shall not function as such until he or she has been issued a permit by the department. Representatives of a school participating in high school career or college-day programs to explain their school's program of study and for that purpose only are exempted from securing an agent's permit.

B. Any individual representing a school who in any way comes into contact with prospective students off the premises of the school for the purpose of gaining information or soliciting enrollment shall be regarded as an agent of the school subject to all permit licensing requirements of the Commonwealth.

C. Each school shall be responsible and liable for the acts of its agent(s) acting within the scope of his or her authority and must familiarize such agent(s) with the provisions of Chapter 16 (§§ 22.1-319 through 22.1-335) of Title 22 of the Code of Virginia and regulations adopted by the board.

B D. After an application for a permit has been filed with the department and is complete and acceptable, the department shall prepare and deliver to the applicant a card which among other things, shall contain the name, address, and picture of the agent, and the name of the employing school, and shall certify that the person whose

name appears thereon is an authorized agent of the school named thereon. The year for which a permit is issued shall be prominently displayed on the card. *The permit shall be valid for not more than one year and shall expire on December 31 following the date of issue.*

3 E. Each agent shall display or produce the agent's permit when requested to do so by any student(s), prospective student(s), parent(s), guardian(s), school official(s) or by a member of the department or its representative(s).

4 F. If agents are authorized to prepare and/ or publish advertising, or to use promotional materials, the school accepts full responsibility for the advertising and the contents of the materials used.

5 G. Where agents are authorized to collect money from an applicant for enrollment, they shall give the applicant a receipt for the money collected and a copy of the enrollment agreement.

6 H. No agent is permitted to use a title which misrepresents his duties and responsibilities.

7 I. No agent shall violate any of the standards set by the board governing advertising and promotional material.

8 J. Each agent or solicitor shall submit annually on or before ~~December~~ November 15 an application to renew his permit on forms provided by the department and pay a renewal fee of ~~\$1.00~~ as prescribed in Part XIV of these regulations . Every permit which has not been renewed by the department on or before ~~January~~ December 31 of each year shall expire. *Schools which do not submit complete applications and documents required for renewal within the renewal period designated by the department, including a grace period of five business days after the deadline shall be subject to the penalty fee described in subdivision A 7 of § 14.1 of these regulations.*

§ 18.2. ~~All agents~~ Application for permit .

1 A. Each applicant for an agent's permit shall furnish all information required by the department. The department may make such reasonable investigation of any applicant as it deems necessary. The application shall include, among other things:

1. The Recommendations of three reputable persons certifying that the applicant is truthful, honest, and of good reputation and that they recommend that a permit be issued to the applicant. *The recommendations shall include at least one from a former employer and one other professional relation.*

2. Each application for an agent's permit shall be accompanied by a fee of ~~\$5.00~~ and each application for the renewal of an agent's permit shall be accompanied by a fee of ~~\$1.00~~ as prescribed in Part XIV of these regulations . Payment shall be made by

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*company or school check or money order payable to the "Treasurer of Virginia." The fee submitted with the agent's application shall not be refunded if the agent's permit is denied. All agent's permits shall be for one year and shall expire on the thirty-first day of January following the date of issuance. Personal checks are not acceptable.*

## D B. Agents representing out-of-state schools.

1. Any agent representing a school located outside the state of Virginia desiring to solicit students inside this state shall apply for an agent permit on forms provided by the Board.

2. A permit may be issued by the Department to any agent representing a school which is not located within the state of Virginia provided the Department is furnished the following information by the school, on behalf of the agent:

a) A written request for a permit;

b) A published copy of the school's catalogue or bulletin, certified as accurate in content and policy by an authorized official of the school, and including the following:

1. Identifying data, such as volume number and date of publication;

2. Name of the school and its governing body, officials, and faculty;

3. A school calendar showing legal holidays, beginning and ending of each quarter, term or semester, and other pertinent dates;

4. Policies and regulations absences, class cuts, make-up work, and tardiness;

5. Policies and regulations governing enrollment dates and entrance requirements for each course;

6. Detailed schedule for tuition, fees and other charges;

7. The policies and regulations for the refund of the unused portion of tuition, fees, and other charges if the student does not enter the course, withdraws, or is dismissed;

8. A description of the available space, facilities, and equipment;

9. A synopsis of each course or subject for which a license is requested, type of work or skill to be learned, and approximate number of clock hours to be spent on each unit or topic; and,

10. Policies and regulations of the institution for

granting credit for previous educational training;

e) A financial statement showing capital investment, assets, and liabilities, and proposed operating budget;

d) A detailed record of ownership, showing corporate organization and officers with their addresses, if the school is a corporation, or the partnership agreement if the school is operated as a partnership;

e) Student enrollment application and contract forms;

f) Photostatic copies of inspection report or letters from proper officials showing that the building is safe and sanitary and meets local, state, and federal regulations.

g) A photostatic copy of the deed to the location or locations occupied, or a photostatic copy of the lease, if the building is not owned by the school;

h) Copies of all advertising used by the agent;

i) Such additional information as the Department may deem necessary to carry out the provisions of the Act.

*Out-of-state schools desiring to employ agents to solicit students in the Commonwealth shall submit the information prescribed in Part III of these regulations or as requested by the department in the case of renewal of permits and pay fees as listed in Part XIV of these regulations. All catalogs, applications, enrollment agreements, advertising, or other similar items shall be in compliance with applicable sections of these regulations.*

## XXI § 18.3. Revoking and suspending an agent's permit.

A. The department may *deny issuance of* or suspend or revoke any permit issued to any agent or solicitor for a proprietary school for the following causes:

1. Violation of any provision of the Act or any regulation of the board;

2. Presenting or giving to a prospective student or his or her parent or guardian, information which is false, misleading, or fraudulent or which makes false or misleading representations concerning employment opportunities, or the possibility of receiving credit for courses offered by the school at any institution of higher learning;

3. Failing to display a valid permit when requested by a prospective student, his or her parent, or guardian, or by any members of the board or representative of the department;

4. Failing to provide information requested by the

department as a result of a formal or informal complaint to the department; or

5. Failing to comply with laws promulgated by any state outside Virginia in which the agent is soliciting students.

B. No permit shall be revoked, suspended, or not renewed by the department until it has held a hearing. Such hearings and appeals therefrom shall be conducted in the same manner as those relating to revoking, suspending, or refusing to renew or denying a Certificate to Operate described in Part XVI of these regulations.

C. At the option of the student or his or her parent or guardian, all contracts entered into by any student, his parent or guardian, solicited or given them by any agent or solicitor who does not possess a current and valid permit, and any nonnegotiable promissory note or other nonnegotiable evidence of indebtedness taken in lieu of cash by such agent or solicitor may be declared invalid by the department and moneys paid recovered from either the agent or solicitor or the school he represents.

D. Any agent having a permit revoked shall be prohibited from soliciting students for any school governed by these regulations for a period of one year following the date of formal action of the revocation.

## PART XIX.

### TRANSMITTAL OF DOCUMENTS AND MATERIALS.

§ 19.1. Transmitting documents and other materials.

A. The mailing of applications, forms, letters, or other papers shall not constitute receipt of the same by the department unless sent by registered or mail, certified mail, express mail, or courier with return receipt requested.

B. Such All materials should be sent addressed to the Supervisor of Proprietary School Service, Department of Education, Box 6-Q, Richmond, VA 23216 or Proprietary School Service, James Monroe Building, 19th Floor, 101 North 14th Street, Richmond, VA 23219.

C. Before the final adoption of any amendments hereto, the Board shall hold a public hearing in Richmond after proper newspaper notice thereof has been given once a week for two consecutive weeks in a daily Richmond newspaper.

C. Material submitted by electronic means (e.g., facsimile machine, computer, etc.) will be accepted contingent upon receipt of original documents sent in accordance with subsection A of this section.

## PART XX. AMENDMENTS.

§ 20.1. Substantive amendments to these regulations shall

be made in accordance with the provisions of § 9-6.14:1 et. seq. of the Code of Virginia, formally known as the Virginia Administrative Process Act.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates (In-Patient Outlier Adjustments).

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

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

### Summary:

The Medicare Catastrophic Coverage Act (MCCA) of 1988 required State Plans for Medical Assistance to permit an outlier adjustment in payment amounts to disproportionate share hospitals. The Department of Medical Assistance Services adopted, with the Governor's approval, an emergency regulation to provide for this requirement in the State Plan.

This proposed regulation begins the promulgation of the permanent regulation. The permanent regulation, once promulgated, will allow additional compensation for exceptionally high costs. Each eligible hospital will be responsible for providing to DMAS information from which its mean Medicaid operating cost per day could be computed.

VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates - In-patient Hospital Care (In-patient Outlier Adjustments).

The state agency will pay the reasonable cost of inpatient hospital services provided under the Plan. In reimbursing hospitals for the cost of inpatient hospital services provided to recipients of medical assistance.

I. For each hospital also participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the state agency will apply the same standards, cost reporting period, cost reimbursement principles, and method of cost apportionment currently used in computing reimbursement to such a hospital under Title XVIII of the Act, except that the inpatient routine services costs for medical assistance recipients will be determined subsequent to the application of the Title XVIII method of apportionment, and the calculation will exclude the applicable Title XVIII inpatient routing service charges or patient days as well as Title XVIII inpatient routine service cost.

II. For each hospital not participating in the Program under Title XVIII of the Act, the state agency will apply

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the standards and principles described in 42 CFR 447.250 and either (a) one of the available alternative cost apportionment methods in 42 CFR 447.250, or (b) the "Gross RCCAC method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient under the Medical Assistance Program.

III. For either participating or nonparticipating facilities, the Medical Assistance Program will pay no more in the aggregate for inpatient hospital services than the amount it is estimated would be paid for the services under the Medicare principles of reimbursement, as set forth in 42 CFR 447.253(b)(2), and/or lesser of reasonable cost or customary charges in 42 CFR 447.250.

IV. The state agency will apply the standards and principles as described in the state's reimbursement plan approved by the Secretary, HHS on a demonstration or experimental basis for the payment of reasonable costs by methods other than those described in paragraphs I and II above.

V. The reimbursement system for hospitals includes the following components:

(1) Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural—0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban—0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

(2) Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement ceilings.

The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for all hospitals in calendar year 1981. Individual hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed

using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation will be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers will have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals will be adjusted to reflect this change.

Effective on and after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation will be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia, as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers will have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals will be adjusted to reflect this change.

The new method will still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

(3) Subsequent to June 30, 1982, the group ceilings should not be recalculated on allowable costs, but

should be updated by the escalator.

(4) Prospective rates for each hospital should be based upon the hospital's allowable costs plus the escalator, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment should be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to HIM-15 (Sec. 400), should be considered as pass throughs and not part of the calculation.

(5) An incentive plan should be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive should be calculated based on the annual cost report.

The table below presents three examples under the new plan:

Group Ceiling	Hospital's Allowable Cost Per Day		Difference % of Ceiling		Sliding Scale Incentive % of Difference	
	\$			\$		
\$230	\$230	0	0	0	0	0
\$230	207	23.00	10%	2.30	10%	
\$230	172	57.50	25%	14.38	25%	
\$230	143	76.00	33%	19.00	25%	

(6) There will be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

(7) Hospitals which have a disproportionately higher level of Medicaid patients and which exceed the ceiling shall be allowed a higher ceiling based on the individual hospital's Medicaid utilization. This shall be measured by the percent of Medicaid patient days to total hospital patient days. Each hospital with a Medicaid utilization of over 8.0% shall receive an adjustment to its ceiling. The adjustment shall be set at a percent added to the ceiling for each percent of utilization up to 30%.

Disproportionate share hospitals defined.

Effective July 1, 1988,<sup>1</sup> the following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

#### A. Criteria.

1. A Medicaid inpatient utilization rate in excess of 8.0% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the

Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subsection A 2 does not apply to a hospital:

- a. At which the inpatients are predominantly individuals under 18 years of age; or
- b. Which does not offer nonemergency obstetric services as of December 21, 1987.

#### B. Payment adjustment.

1. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the individual hospital's Medicaid utilization. The Medicaid utilization shall be determined by dividing the total number of Medicaid inpatient days by the number of inpatient days. Each hospital with a Medicaid utilization of over 8.0% shall receive a disproportionate share payment adjustment. The disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times (ii) the lower of the prospective operating cost rate or ceiling.

2. A payment adjustment for hospitals meeting the eligibility criteria in subsection A above and calculated under subsection B 1 above shall be phased in over a 3-year period. As of July 1, 1988,<sup>2</sup> the adjustment shall be at least one-third the amount of the full payment adjustment; as of July 1, 1989, the payment shall be at least two-thirds the full payment adjustment; and as of July 1, 1990, the payment shall be the full amount of the payment adjustment. However, for each year of the phase-in period, no hospital shall receive a disproportionate share payment adjustment which is less than it would have received if the payment had been calculated pursuant to § V (5) of Attachment 4.19A to the State Plan in effect before July 1, 1988.

(8) DMAS shall pay to disproportionate share hospitals (as defined in § V (7) above) an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1989, involving exceptionally high costs for individuals under one year of age. The adjustment shall be calculated as follows:

- (a) Each eligible hospital which desires to be

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considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals under one year of age. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

(b) Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals under one year of age. Any hospital which qualifies for the extensive neonatal care provision (as governed by § V (6) above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals under one year of age.

(c) Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in subdivision (b) above.

(d) DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

Pursuant to section 1 of Supplement 1 to Attachment 3.1 A and B, there is no limit on length of time for medically necessary stays for individuals under one year of age.

VI. In accordance with Title 42 §§ 447.250 through 447.272 of the Code of Federal Regulations which implements § 1902(a)(13)(A) of the Social Security Act, the Department of Medical Assistance Services ("DMAS") establishes payment rates for services that are reasonable and adequate to meet the costs that shall be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. To establish these rates Virginia uses the Medicare principles of cost reimbursement in determining the allowable costs for Virginia's prospective payment system. Allowable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of changes in financial position, and footnotes to the financial statements;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Home office cost report, if applicable; and
6. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

Although utilizing the cost apportionment and cost finding methods of the Medicare Program, Virginia does not adopt the prospective payment system of the Medicare Program enacted October 1, 1983.

## VII. Revaluation of assets.

A. Effective October 1, 1984, the valuation of an asset of a hospital or long-term care facility which has undergone a change of ownership on or after July 18, 1984, shall be the lesser of the allowable acquisition cost to the owner of record as of July 18, 1984, or the acquisition cost to the new owner.

B. In the case of an asset not in existence as of July 18, 1984, the valuation of an asset of a hospital or long-term care facility shall be the lesser of the first owner of record, or the acquisition cost to the new owner.

C. In establishing an appropriate allowance for depreciation, interest on capital indebtedness, and return on equity (if applicable prior to July 1, 1986) the base to be used for such computations shall be limited to A or B above.

D. Costs (including legal fees, accounting and administrative costs, travel costs, and feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) shall be reimbursable only to the extent that they have not been previously reimbursed by Medicaid.

E. The recapture of depreciation up to the full value of the asset is required.

F. Rental charges in sale and leaseback agreements shall be restricted to the depreciation, mortgage interest and (if applicable prior to July 1, 1986) return on equity based on cost of ownership as determined in accordance with A and B above.

## VIII. Refund of overpayments.

### A. Lump sum payment.

When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

### B. Offset.

If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

### C. Payment schedule.

If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services ("the director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

### D. Extension request documentation.

In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

### E. Interest charge on extended repayment.

Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

IX. Effective October 1, 1986, hospitals that have obtained Medicare certification as inpatient rehabilitation hospitals or rehabilitation units in acute care hospitals, which are exempted from the Medicare Prospective Payment System (DRG), shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding sections I, II, III, IV, V, VI, VII, VIII and excluding V(6). Additionally, rehabilitation hospitals and rehabilitation units of acute care hospitals which are exempt from the Medicare Prospective Payment System will be required to maintain separate cost accounting records, and to file separate cost reports annually utilizing the applicable Medicare cost reporting forms (HCFA 2552 series) and the Medicaid forms (MAP-783 series).

A new facility shall have an interim rate determined using a pro forma cost report or detailed budget prepared by the provider and accepted by the DMAS, which

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represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider will be held to the lesser of its actual operating cost or its peer group ceiling. Subsequent rates will be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of IX.

X. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

XI. Pursuant to Item 389 E4 of the 1988 Appropriation Act (as amended), effective July 1, 1988, a separate group ceiling for allowable operating costs shall be established for state-owned university teaching hospitals.

## XII. Nonenrolled providers.

A. Hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the DMAS average reimbursable inpatient cost-to-charge ratio, updated annually, for enrolled hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Hospitals that are not enrolled shall submit claims using the required DMAS invoice formats. Such claims must be submitted within 12 months from date of services. A hospital is determined to regularly treat Virginia Medicaid recipients and shall be required by DMAS to enroll if it provides more than 500 days of care to Virginia Medicaid recipients during the hospitals' financial fiscal year. A hospital which is required by DMAS to enroll shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding Sections I, II, III, IV, V, VI, VII, VIII, IX, and X. The hospital shall be placed in one of the DMAS peer groupings which most nearly reflects its licensed bed size and location (Section V.(1) above). These hospitals shall be required to maintain separate cost accounting records, and to file separate cost reports annually, utilizing the applicable Medicare cost reporting forms, (HCFA 2552 Series) and the Medicaid forms (MAP-783 Series).

B. A newly enrolled facility shall have an interim rate determined using the provider's most recent filed Medicare cost report or a pro forma cost report or detailed budget prepared by the provider and accepted by DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider shall be limited to the lesser of its actual operating costs or its peer group ceiling. Subsequent rates shall be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of XII.A.

C. Once a hospital has obtained the enrolled status, 500 days of care, the hospital must agree to become enrolled

as required by DMAS to receive reimbursement. This status shall continue during the entire term of the provider's current Medicare certification and subsequent recertification or until mutually terminated with 30 days written notice by either party. The provider must maintain this enrolled status to receive reimbursement. If an enrolled provider elects to terminate the enrolled agreement, the nonenrolled reimbursement status will not be available to the hospital for future reimbursement, except for emergency care.

D. Prior approval must be received from the DMAS Health Services Review Division when a referral has been made for treatment to be received from a nonenrolled acute care facility (in-state or out-of-state), except in the case of an emergency or because medical resources or supplementary resources are more readily available in another state.

E. Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

## Hospital Reimbursement Appeals Process

### § 1. Right to appeal and initial agency decision.

#### A. Right to appeal.

Any hospital seeking to appeal its prospective payment rate for operating costs related to inpatient care or other allowable costs shall submit a written request to the Department of Medical Assistance Service within 30 days of the date of the letter notifying the hospital of its prospective rate unless permitted to do otherwise under § 5 E. The written request for appeal must contain the information specified in § 1 B. The department shall respond to the hospital's request for additional reimbursement within 30 days or after receipt of any additional documentation requested by the department, whichever is later. Such agency response shall be considered the initial agency determination.

#### B. Required information.

Any request to appeal the prospective payment rate must specify: (i) the nature of the adjustment sought; (ii) the amount of the adjustment sought; and (iii) current and prospective cost containment efforts, if appropriate.

#### C. Nonappealable issues.

The following issues will not be subject to appeal: (i) the organization of participating hospitals into peer groups according to location and bedsize and the use of bedsize and the urban/rural distinction as a generally adequate proxy for case mix and wage variations between hospitals in determining reimbursement for inpatient care; (ii) the use of Medicaid and applicable Medicare Principles of

Reimbursement to determine reimbursement of costs other than operating costs relating to the provision of inpatient care; (iii) the calculation of the initial group ceilings on allowable operating costs for inpatient care as of July 1, 1982; (iv) the use of the inflation factor identified in the State Plan as the prospective escalator; and (v) durational limitations set forth in the State Plan (the "twenty-one day rule").

D. The rate which may be appealed shall include costs which are for a single cost reporting period only.

E. The hospital shall bear the burden of proof throughout the administrative process.

§ 2. Administrative appeal of adverse initial agency determination.

A. General.

The administrative appeal of an adverse initial agency determination shall be made in accordance with the Virginia Administrative Process Act, § 9-6.14:11 through § 9-6.14:14 of the Code of Virginia as set forth below.

B. The informal proceeding.

1. The hospital shall submit a written request to appeal an adverse initial agency determination in accordance with § 9-6.14:11 of the Code of Virginia within 15 days of the date of the letter transmitting the initial agency determination.

2. The request for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia shall include the following information:

- a. The adverse agency action appealed from;
- b. A detailed description of the factual data, argument or information the hospital will rely on to challenge the adverse agency decision.

3. The agency shall afford the hospital an opportunity for an informal conference in accordance with § 9-6.14:11 of the Code of Virginia within 45 days of the request.

4. The Director of the Division of Provider Reimbursement of the Department of Medical Assistance Services, or his designee, shall preside over the informal conference. As hearing officer, the director (or his designee) may request such additional documentation or information from the hospital or agency staff as may be necessary in order to render an opinion.

5. After the informal conference, the Director of the Division of Provider Reimbursement, having considered the criteria for relief set forth in §§ 4 and 5 below, shall take any of the following actions:

a. Notify the provider that its request for relief is denied setting forth the reasons for such denial; or

b. Notify the provider that its appeal has merit and advise it of the agency action which will be taken; or

c. Notify the provider that its request for relief will be granted in part and denied in part setting forth the reasons for the denial in part and the agency action which will be taken to grant relief in part.

6. The decision of the informal hearing officer shall be rendered within 30 days of the conclusion of the informal conference.

§ 3. The formal administrative hearing: procedures.

A. The hospital shall submit its written request for a formal administrative hearing under § 9-6.14:12 of the Code of Virginia within 15 days of the date of the letter transmitting the adverse informal agency decision.

B. At least 21 days prior to the date scheduled for the formal hearing, the hospital shall provide the agency with:

1. Identification of the adverse agency action appealed from; and

2. A summary of the factual data, argument and proof the provider will rely on in connection with its case.

C. The agency shall afford the provider an opportunity for a formal administrative hearing within 45 days of the receipt of the request.

D. The Director of the Department of Medical Assistance Services, or his designee, shall preside over the hearing. Where a designee presides, he shall make recommended findings and a recommended decision to the director. In such instance, the provider shall have an opportunity to file exceptions to the proposed findings and conclusions. In no case shall the designee presiding over the formal administrative hearing be the same individual who presided over the informal appeal.

E. The Director of the Department of Medical Assistance Services shall make the final administrative decision in each case.

F. The decision of the agency shall be rendered within 60 days of the conclusion of the administrative hearing.

§ 4. The formal administrative hearing: necessary demonstration of proof.

A. The hospital shall bear the burden of proof in seeking relief from its prospective payment rate.

B. A hospital seeking additional reimbursement for operating costs relating to the provision of inpatient care

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shall demonstrate that its operating costs exceed the limitation on operating costs established for its peer group and set forth the reasons for such excess.

C. In determining whether to award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care, the Director of the Department of Medical Assistance Services shall consider the following:

1. Whether the hospital has demonstrated that its operating costs are generated by factors generally not shared by other hospitals in its peer group. Such factors may include, but are not limited to, the addition of new and necessary services, changes in case mix, extraordinary circumstances beyond the control of the hospital, and improvements imposed by licensing or accrediting standards.

2. Whether the hospital has taken every reasonable action to contain costs on a hospital-wide basis.

a. In making such a determination, the director or his designee may require that an appellant hospital provide quantitative data, which may be compared to similar data from other hospitals within that hospital's peer group or from other hospitals deemed by the director to be comparable. In making such comparisons, the director may develop operating or financial ratios which are indicators of performance quality in particular areas of hospital operation. A finding that the data or ratios or both of the appellant hospital fall within a range exhibited by the majority of comparable hospitals, may be construed by the director to be evidence that the hospital has taken every reasonable action to contain costs in that particular area. Where applicable, the director may require the hospital to submit to the agency the data it has developed for the Virginia Health Services Cost Review Council. The director may use other data, standards or operating screens acceptable to him. The appellant hospital shall be afforded an opportunity to rebut ratios, standards or comparisons utilized by the director or his designee in accordance with this section.

b. Factors to be considered in determining effective cost containment may include the following:

- Average daily occupancy,
- Average hourly wage,
- FTE's per adjusted occupied bed,
- Nursing salaries per adjusted patient day,
- Average length of stay,
- Average cost per surgical case,
- Cost (salary/nonsalary) per ancillary procedure,
- Average cost (food/nonfood) per meal served,
- Cost (salary/nonsalary) per pharmacy prescription,
- Housekeeping cost per square foot,

- Maintenance cost per square foot,
- Medical records cost per admission,
- Current ratio (current assets to current liabilities),
- Age of receivables,
- Bad debt percentage,
- Inventory turnover,
- Measures of case mix,
- Average cost per pound of laundry.

c. In addition, the director may consider the presence or absence of the following systems and procedures in determining effective cost containment in the hospitals's operation.

- Flexible budgeting system,
- Case mix management systems,
- Cost accounting systems,
- Materials management system,
- Participation in group purchasing arrangements,
- Productivity management systems,
- Cash management programs and procedures,
- Strategic planning and marketing,
- Medical records systems,
- Utilization/peer review systems.

d. Nothing in this provision shall be construed to require a hospital to demonstrate every factor set forth above or to preclude a hospital from demonstrating effective cost containment by using other factors.

The director or his designee may require that an onsite operational review of the hospital be conducted by the department or its designee.

3. Whether the hospital has demonstrated that the Medicaid prospective payment rate it receives to cover operating costs related to inpatient care is insufficient to provide care and service that conforms to applicable state and federal laws, regulations and quality and safety standards.<sup>3</sup>

D. In no event shall the Director of the Department of Medical Assistance Services award additional reimbursement to a hospital for operating costs relating to the provision of inpatient care unless the hospital demonstrates to the satisfaction of the director that the Medicaid rate it receives under the Medicaid prospective payment system is insufficient to ensure Medicaid recipients reasonable access to sufficient inpatient hospital services of adequate quality.<sup>4</sup> In making such demonstration, the hospital shall show that:

1. The current Medicaid prospective payment rate jeopardizes the long-term financial viability of the hospital. Financial jeopardy is presumed to exist if, by providing care to Medicaid recipients at the current Medicaid rate, the hospital can demonstrate that it is, in the aggregate, incurring a marginal loss.<sup>5</sup>

For purposes of this section, marginal loss is the amount by which total variable costs for each patient day exceed the Medicaid payment rate. In calculating marginal loss, the hospital shall compute variable costs at 60% of total inpatient operating costs and fixed costs at 40% of total inpatient operating costs; however, the director may accept a different ratio of fixed and variable operating costs if a hospital is able to demonstrate that a different ratio is appropriate for its particular institution.

Financial jeopardy may also exist if the hospital is incurring a marginal gain but can demonstrate that it has unique and compelling Medicaid costs, which if unreimbursed by Medicaid, would clearly jeopardize the hospital's long-term financial viability; and

2. The population served by the hospital seeking additional financial relief has no reasonable access to other inpatient hospitals. Reasonable access exists if most individuals served by the hospital seeking financial relief can receive inpatient hospital care within a 30 minute travel time at a total per diem rate which is less to the Department of Medical Assistance Services than the costs which would be incurred by the Department of Medical Assistance Services per patient day were the appellant hospital granted relief.<sup>6</sup>

E. In determining whether to award additional reimbursement to a hospital for reimbursement cost which are other than operating costs related to the provision of inpatient care, the director shall consider Medicaid applicable Medicare rules of reimbursement.

§ 5. Available relief.

A. Any relief granted under §§ 1 through 4 above shall be for one cost reporting period only.

B. Relief for hospitals seeking additional reimbursement for operating costs incurred in the provision of inpatient care shall not exceed the difference between:

- 1. The cost per allowable Medicaid day arising specifically as a result of circumstances identified in accordance with § 4 (excluding plant and education costs and return on equity capital); and
- 2. The prospective operating cost per diem, identified in the Medicaid Cost Report and calculated by the Department of Medical Assistance Services.<sup>7</sup>

C. Relief for hospitals seeking additional reimbursement for (i) costs considered as "pass-throughs" under the prospective payment system, or (ii) costs incurred in providing care to a disproportionate number of Medicaid recipients, or (iii) costs incurred in providing extensive neonatal care shall not exceed the difference between the payment made and the actual allowable cost incurred.

D. Any relief awarded under §§ 1 through 4 above shall be effective from the first day of the cost period for which the challenged rate was set. Cost periods for which relief will be afforded are those which begin on or after January 4, 1985. In no case shall this limitation apply to a hospital which noted an appeal of its prospective payment rate for a cost period prior to January 4, 1985.

E. All hospitals for which a cost period began on or after January 4, 1985, but prior to the effective date of these regulations, shall be afforded an opportunity to be heard in accordance with these regulations if the request for appeal set forth in subsection A of § 1 is filed within 90 days of the effective date of these regulations.

§ 6. Catastrophic occurrence.

A. Nothing in §§ 1 through 5 shall be construed to prevent a hospital from seeking additional reimbursement for allowable costs incurred as a consequence of a natural or other catastrophe. Such reimbursement will be paid for the cost period in which such costs were incurred and for cost periods beginning on or after July 1, 1982.

B. In order to receive relief under this section, a hospital shall demonstrate that the catastrophe met the following criteria:

- 1. One time occurrence;
- 2. Less than 12 months duration;
- 3. Could not have been reasonably predicted;
- 4. Not of an insurable nature;
- 5. Not covered by federal or state disaster relief;
- 6. Not a result of malpractice or negligence.

C. Any relief sought under this section must be calculable and auditable.

D. The agency shall pay any relief afforded under this section in a lump sum.

Footnotes:

<sup>1</sup> This effective date tracks an emergency regulation adopted September 29, 1988, by the Director of the Department of Medical Assistance Services, pursuant to the Code of Virginia § 9-6.14.9, and filed with the Registrar of Regulations. HCFA has not approved the inclusion of this disproportionate share adjustment policy's effective date in the State Plan for Medical Assistance.

<sup>2</sup> Refer to explanation at first footnote.

<sup>3</sup> See 42 U.S.C. § 1396(a)(13)(A). This provision reflects the Commonwealth's concern that it reimburse only those excess operating costs which are incurred because they are needed to provide adequate care. The Commonwealth recognizes that hospitals may choose to provide more than "just adequate" care and, as a consequence, incur higher costs. In this regard, the Commonwealth notes that "Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs. Instead, the benefit provided through Medicaid is a particular package of health care

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services. . . that package of services has the general aim of assuring that individuals will receive necessary medical care, but the benefit provided remains the individual services offered – not “adequate health care.” *Alexander v. Choate* – U.S. – decided January 9, 1985, 53 U.S. L.W., 4072, 4075.

<sup>4</sup> In *Mary Washington Hospital v. Fisher*, the court ruled that the Medicaid rate “must be adequate to ensure reasonable access.” *Mary Washington Hospital v. Fisher*, at p. 18. The need to demonstrate that the Medicaid rate is inadequate to ensure recipients reasonable access derives directly from federal law and regulation. In its response to comments on the NPRM published September 30, 1981, HCFA points out Congressional intent regarding the access issue:

The report on H.R. 3982 states the expectation that payment levels for inpatient services will be adequate to assure that a sufficient number of facilities providing a sufficient level of services actively participate in the Medicaid Program to enable all Medicaid beneficiaries to obtain quality inpatient services. This report further states that payments should be set at a level that ensures the active treatment of Medicaid patients in a majority of the hospitals in the state.

46 Fed. Reg. 47970.

<sup>5</sup> The Commonwealth believes that Congressional intent is threatened in situations in which a hospital is incrementally harmed for each additional day a Medicaid patient is treated – and therefore has good cause to consider withdrawal from the Program – and where no alternative is readily available to the patient, should withdrawal occur. Otherwise, although the rate being paid a hospital may be less than that paid by other payors – indeed, less than average cost per day for all patients – it nonetheless equals or exceeds the variable cost per day, and therefore benefits the hospital by offsetting some amount of fixed costs, which it would incur even if the bed occupied by the Medicaid patient were left empty.

It should be emphasized that application of this marginal loss or “incremental harm” concept is a device to assess the potential harm to a hospital continuing to treat Medicaid recipients, and not a mechanism for determining the additional payment due to a successful appellant. As discussed below, once a threat to access has been demonstrated, the Commonwealth may participate in the full average costs associated with the circumstances underlying the appeal.

<sup>6</sup> With regard to the 30 minute travel standard, this requirement is consistent with general health planning criteria regarding acceptable travel time for hospital care.

<sup>7</sup> The Commonwealth recognizes that in cases where circumstances warrant relief beyond the existing payment rate, it may share in the cost associated with those circumstances. This is consistent with existing policy, whereby payment is made on an average per diem basis. The Commonwealth will not reimburse more than its share of fixed costs. Any relief to an appellant hospital will be computed on an occupancy adjusted basis. Relief will be computed using patient days adjusted for the level of occupancy during the period under appeal. In no case will any additional payments made under this rule reflect lengths of stay which exceed the 21 day limit currently in effect.

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

**Title of Regulation:** VR 470-02-01. **Core Standards for Interdepartmental Licensure and Certification Regulation of Residential Facilities for Children.**

**Statutory Authority:** §§ 16.1-311, 22.1-321, 37.1-10, 37.1-182, 53.1-249, 63.1-196.4 and 63.1-217 of the Code of Virginia.

**Public Hearing Date:** N/A (written comments may be submitted until May 25, 1990)

(See Calendar of Events section for additional information)

### Summary:

*The proposed amendments to the regulation are designed to assure that adequate care, treatment, and education are provided by residential facilities for children. The proposed revisions amend and clarify requirements governing staff supervision of children in §§ 1.1 and 3.27 et. seq. The revisions are designed to allow residential facility administrators increased flexibility in deploying staff supervising children, to reduce the level of supervision required for adolescents in independent living programs, to increase the level of supervision required for infants and during the hours children are normally sleeping, and to protect children from unwarranted and intrusive body searches.*

**NOTICE:** Please refer to the Department of Social Services in the Proposed Regulations section of this issue of the *Virginia Register of Regulations* for the publication of “Standards for Interdepartmental Regulation of Residential Facilities for Children.”

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

**Title of Regulation:** VR 615-01-17. **Deprivation Requirement in the Aid to Dependent Children (ADC) Program.**

**Publication Date:** 3:9 VA.R. 800-801 February 2, 1987

**NOTICE:** This is to request the **WITHDRAWAL** of the above-stated proposed regulation.

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**Title of Regulation:** VR 615-29-02. **Core Standards for Interdepartmental Licensure and Certification Regulation of Residential Facilities for Children.**

**Statutory Authority:** §§ 16.1-311, 22.1-321, 37.1-10, 37.1-182, 53.1-249, 63.1-196.4 and 63.1-217 of the Code of Virginia.

**Public Hearing Date:** N/A (written comments may be

submitted until May 25, 1990)  
(See Calendar of Events section  
for additional information)

## Summary:

*The proposed amendments to the regulation are designed to assure that adequate care, treatment, and education are provided by residential facilities for children. The proposed revisions amend and clarify requirements governing staff supervision of children in §§ 1.1 and 3.27 et. seq. The revisions are designed to allow residential facility administrators increased flexibility in deploying staff supervising children, to reduce the level of supervision required for adolescents in independent living programs, to increase the level of supervision required for infants and during the hours children are normally sleeping, and to protect children from unwarranted and intrusive body searches.*

VR 615-29-02. Standards for Interdepartmental Regulation of Residential Facilities for Children.

## PART I. INTRODUCTION.

### Article 1. Definitions.

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

*"Allegation"* means an accusation that a facility is operating without a license or receiving public funds, or both, for services it is not certified to provide.

*"Applicant"* means the person, corporation, partnership, association or public agency which has applied for a license/certificate.

*"Approval"* means the process of recognizing that a public facility or an out-of-state facility has complied with standards for licensure or certification. (In this document the words "license" or "licensure" will include approval of public and out-of-state facilities except when describing enforcement and other negative sanctions which are described separately for these facilities.)

*"Aversive stimuli"* means physical forces (e.g. sound, electricity, heat, cold, light, water, or noise) or substances (e.g. hot pepper or pepper sauce on the tongue) measurable in duration and intensity which when applied to a client are noxious or painful to the client, but in no case shall the term "aversive stimuli" include striking or hitting the client with any part of the body or with an implement or pinching, pulling, or shaking the client.

*"Behavior management"* means planned, individualized and systematic use of various techniques selected

according to group and individual differences of the children and designed to teach awareness of situationally appropriate behavior, to strengthen desirable behavior, and to reduce or to eliminate undesirable behavior. (The term is consistently generic and is not confined to those technicalities which derive specifically from behavior therapy, operant conditioning, etc.)

*"Body cavity search"* means any examination of a client's rectal or vaginal cavities except the performance of medical procedures by medical personnel.

*"Case record"* or *"Record"* means written information assembled in one folder or binder relating to one individual. This information includes social and medical data, agreements, notations of ongoing information, service plan with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

*"Certificate to operate"* means documentation of licensure or permission granted by the Department of Education to operate a school for the handicapped that is conveyed on a single license/certificate.

*"Certification"* means the process of recognizing that a facility has complied with those standards required for it to receive funding from one of the four departments for the provision of residential program services to children. (Under the Code of Virginia, the Board of Corrections is given authority to "approve" certain public and private facilities for the placement of juveniles. Similarly, school boards are authorized to pay, under certain conditions, for special education and related services in nonsectarian private residential schools for the handicapped that are "approved" by the Board of Education. Therefore, in this context the word "approval" is synonymous with the word "certification" and will be termed certification for purposes of this process.)

*"Child"* means any person legally defined as a child under state law.

*"Child placing agency"* means any person licensed to place children in foster homes or adoptive homes or a local board of public welfare or social services authorized to place children in foster homes or adoptive homes.

*"Child with special needs"* means a child in need of particular services because he is mentally retarded, developmentally disabled, mentally ill, emotionally disturbed, a substance abuser, in need of special educational services for the handicapped, or requires security services.

*"Client"* means a person receiving treatment or other services from a program, facility, institution or other entity licensed/certified under these regulations whether that person is referred to as a patient, resident, student, consumer, recipient, or another term.

*"Complaint"* means an accusation against a

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licensed/certified facility regarding an alleged violation of standards or law.

*"Confinement procedure"* means a disciplinary technique designed to reduce or eliminate inappropriate behavior by temporarily removing a child from contact with people or other reinforcing stimuli through confining the child alone to his bedroom or other normally furnished room. The room in which the child is confined shall not be locked nor the door secured in any manner that will prohibit the child from opening it. See also the definitions of "Timeout Procedure," "Seclusion," "Behavior Management," "Discipline" and other standards related to Behavior Management.

*"Contraband"* means any item prohibited by law or by the rules and regulations of the agency, or any item which conflicts with the program or safety and security of the facility or individual clients.

*"Coordinator"* means the person designated by the Coordinating Committee to provide coordination and monitoring of the interdepartmental licensure/certification process.

*"Core standards"* means those standards for residential care which are common to all four departments and which shall be met by all subject residential facilities for children in order to qualify for licensure, certification or approval.

*"Corporal punishment"* means the inflicting of pain or discomfort to the body through actions such as but not limited to striking or hitting with any part of the body or with an implement; or through pinching, pulling, or shaking; or through any similar action which normally inflicts pain or discomfort.

*"Day off"* means a period of not less than 32 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Each successive day off immediately following the first shall consist of not less than 24 additional consecutive hours.

*"Department of Corrections standards for youth facilities"* means those additional standards which must be met in order for a facility to receive funding from the Department of Corrections for the provision of residential treatment services as a juvenile detention facility, a facility providing youth institutional services, a community group home or other residential facility serving children in the custody or subject to the jurisdiction of a juvenile court or of the Department of Corrections except that Core Standards will be the Department of Corrections Standards for Youth Facilities for residential facilities receiving public funds pursuant to §§ 16.1-286 or 53.1-239 of the Code of Virginia for the provision of residential care to children in the custody of or subject to the jurisdiction of a juvenile court or of the Department of Corrections.

*"Discipline"* means systematic teaching and training that is designed to correct, mold, or perfect behavior according to a rule or system of rules governing conduct. The object of discipline is to encourage self-direction and self-control through teaching the client to accept information, beliefs and attitudes which underlie the required conduct or behavior. The methods of discipline include, besides such instruction, positive reinforcement for exhibiting desirable behavior, as well as reasonable and age-appropriate consequences for exhibiting undesirable behavior, provided that these consequences are applied in a consistent and fair manner that gives the client an opportunity to explain his view of the misbehavior and to learn from the experience. (See also, "Behavior Management")

*"Education standards"* means those additional standards which shall be met in order for a facility to (i) receive a certificate to operate an educational program that constitutes a private school for the handicapped; or (ii) be approved to receive public funding for the provision of special education and related services to eligible children.

*"Emergency"* means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off of permanent staff or other situations which should reasonably be anticipated.

*"Excursion"* means a recreational or educational activity during which children leave the facility under the direct supervision of facility staff for an extended period of time. Excursions include camping trips, vacations, and other similar overnight activities.

*"Group home"* means a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves up to 12 children.

*"Group residence"* means a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves from 13 to 24 children.

*"Human research"* means any medical or psychological investigation designed to develop or contribute to general knowledge and which utilizes human subjects who may be exposed to the possibility of physical or psychological injury as a consequence of participation as subjects, and which departs from the application of those established and accepted methods appropriate to meet the subjects' needs but does not include:

1. The conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from human subject in the course of standard medical practice;
2. Epidemiological investigations; or
3. Medical treatment of an experimental nature

intended to save or prolong the life of the subject in danger of death, to prevent the subject from becoming disfigured or physically or mentally incapacitated.

*"Independent living program"* means a program that is specifically approved to provide the opportunity for the clients to develop the skills necessary to live successfully on their own following completion of the program.

*"Individualized service plan"* means a written plan of action developed, and modified at intervals, to meet the needs of each child. It specifies short and long-term goals, the methods and time frames for reaching the goals and the individuals responsible for carrying out the plan.

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

*"Licensee"* means the person, corporation, partnership, association or public agency to whom a license is issued and who is legally responsible for compliance with the standards and statutory requirements relating to the facility.

*"Licensing/certification authority"* means the department or state board that is responsible under the Code of Virginia for the licensure, certification, or approval of a particular residential facility for children.

*"Licensure"* means the process of granting legal permission to operate a residential facility for children and to deliver program services. (Under the Code of Virginia, no person shall open, operate or conduct a residential school for the handicapped without a "certificate to operate" such school issued by the Board of Education. The issuance of such a "certificate to operate" grants legal permission to operate a school for the handicapped. Therefore, in this context, the term "certificate to operate" is synonymous with the word "licensure" and will be termed licensure for purposes of this process.)

*"Live in staff"* means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

*"Living unit"* means the space in which a particular group of children in care of a residential facility reside. Such space contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the children who reside in the unit. Depending upon its design, a building may contain only one living unit or

several separate living units.

*"Mechanical restraint"* means the application of machinery or tools as a means of physically restraining or controlling a resident's behavior, such as handcuffs, straitjackets, shackles but not including bed straps, bed rails, slings and other devices employed to support or protect physically incapacitated children.

*"Mental disabilities certification standards"* means those standards in addition to Core Standards which shall be met in order for a facility to receive funding from the Department of Mental Health, Mental Retardation and Substance Abuse Services for the provision of residential treatment services to mentally ill, emotionally disturbed, mentally retarded, developmentally disabled and/or substance abusing children.

*"Mental disabilities licensure standards"* means, for those facilities that do not receive funding from the Department of Mental Health, Mental Retardation and Substance Abuse Services, those standards in addition to Core Standards which must be met in order for a facility to be licensed to provide care or treatment to mentally ill, emotionally disturbed, mentally retarded, developmentally disabled or substance abusing children.

*"On duty"* means that period of time during which a staff person is responsible for the supervision of one or more children.

*"Parent"* means a parent, guardian, or an individual acting as a parent in the absence of a parental guardian. The parent means either parent unless the facility has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as divorce, separation, or custody, which provides to the contrary. The term "parent" may include the natural mother or father, the adoptive mother or father, or the legally appointed guardian or committee who has custody of the child. The term "parent" also includes a surrogate parent appointed pursuant to provisions set forth in § II D of the Department of Education's "Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia." A child 18 years or older may assert any rights under these regulations in his own name.

*"Pat down"* means a thorough external body search of a clothed client.

*"Physical restraint"* means any act by the facility or staff which exercises the use of physical confrontation or force with residents as a method or technique of managing harmful resident behavior.

*"Placement"* means an activity by any person which provides assistance to a parent or guardian in locating and effecting the movement of a child to a foster home, adoptive home or to a residential facility for children.

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*"Premises"* means the tract(s) of land on which any part of a residential facility for children is located and any buildings on such tract(s) of land.

*"Professional child and family service worker"* means an individual providing social services to a child residing in a residential facility and his family. Such services are defined in Part V, Article 16.

*"Program"* means a combination of procedures and/or activities carried out in order to meet a specific goal or objective.

*"Public funding"* means funds paid by, on behalf of, or with the financial participation of the state Departments of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; or Social Services.

*"Resident"* means a person admitted to a residential facility for children for supervision, care, training or treatment on a 24-hour basis. For the purpose of these standards, the words, "resident," "child," "client" and "youth" are used interchangeably.

*"Residential facility for children"* means a publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their parents; that is subject to licensure, certification or approval pursuant to the provisions of the Code of Virginia cited in the Legal Base; and includes, but is not limited to, group homes, group residences, secure custody facilities, self-contained residential facilities, temporary care facilities and respite care facilities, except:

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and which receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as promulgated by the State Board of Social Services and in effect on January 1, 1987 (§ 63.1-196.4 of the Code of Virginia); and
2. Private psychiatric hospitals serving children will be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under its "Rules and Regulations for the Licensure of Private Psychiatric Hospitals."

*"Respite care facility"* means a facility that is specifically approved to provide short term, periodic residential care to children accepted into its program in order to give the parents/guardians temporary relief from responsibility for their direct care.

*"Responsible adult"* means an adult, who may or may not be a staff member, who has been delegated authority to make decisions and to take actions necessary to assume responsibility for the safety and well-being of children assigned to his care. The term implies that the facility has reasonable grounds to believe that the responsible adult has sufficient knowledge, judgment and maturity

commensurate to the demands of the situation for which he is assuming authority and responsibility.

*"Rest day"* means a period of not less than 32 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Two successive rest days shall consist of a period of not less than 48 consecutive hours during which a staff person has no responsibility to perform duties related to the facility. Each successive rest day immediately following the second shall consist of not less than 24 additional consecutive hours.

*"Right"* is something to which one has a natural, legal or moral claim.

*"Sanitize"* means to wash or rinse with water containing a laundry bleach with an active ingredient of 5.25% sodium hypochlorite. The amount of bleach used may be in accordance with manufacturer's recommendation on the package.

*"Seclusion"* means placing a child in a room with the door secured in any manner that will prohibit the child from opening it.

*"Secure custody facility"* means a facility designed to provide, in addition to the appropriate treatment and/or service programs, secure environmental restrictions for children who must be detained and controlled on a 24-hour basis.

*"Self-contained residential facility"* means a residential setting for 13 or more children in which program activities are systematically planned and implemented as an integral part of the facility's staff functions (e.g., services are self-contained rather than provided primarily through community resources). The type of program may vary in intensity according to the needs of the residents. Such settings include nonmedical as well as state-operated hospital based care.

*"Severe weather"* means extreme environment or climate conditions which pose a threat to the health, safety or welfare of residents.

*"Shall"* means an obligation to act is imposed.

*"Shall not"* means an obligation not to act is imposed.

*"Single license/certificate"* means a document which grants approval to operate a residential facility for children and which indicates the status of the facility with respect to compliance with applicable certification standards.

*"Standard"* means a statement which describes in measurable terms a required minimum performance level.

*"Strip search"* means a visual inspection of the body of a client when that client's clothing is removed and an

*inspection of the removed clothing including wigs, dentures, etc. except the performance of medical procedures by medical personnel.*

"Substantial compliance" means a demonstration by a facility of full compliance with sufficient applicable standards to clearly demonstrate that its program and physical plant can provide reasonably safe and adequate care, while approved plans of action to correct findings of noncompliance are being implemented.

"Team" means one or more representatives of the licensing certification authority(ies) designated to visit a residential facility for children to review its compliance with applicable standards.

"Temporary care facility" means a facility specifically approved to provide a range of services, as needed, on an individual basis for a period not to exceed 60 days except that this term does not include secure detention facilities.

"Timeout procedure" means a systematic behavior management technique designed to reduce or eliminate inappropriate behavior by temporarily removing a child from contact with people or other reinforcing stimuli through confining the child alone to a special timeout room that is unfurnished or sparsely furnished and, which contains few reinforcing environmental stimuli. The timeout room shall not be locked nor the door secured in any manner that will prohibit the child from opening it. (See the definitions of "Confinement Procedure," "Seclusion," "Behavior Management," and "Discipline.")

"Treatment" means any action which helps a person in the reduction of disability or discomfort, the amelioration of symptoms, undesirable conditions or changes in specific physical, mental, behavioral or social functioning.

"Visually impaired child" means one whose vision, after best correction, limits his ability to profit from a normal or unmodified educational or daily living setting.

"Wilderness camp" means a facility which provides a primitive camping program with a nonpunitive environment and an experience curriculum for children nine years of age and older who cannot presently function in home, school and community. In lieu of or in addition to dormitories, cabins or barracks for housing children, primitive campsites are used to integrate learning and therapy with real living needs and problems from which the child can develop a sense of social responsibility and self worth.

## Article 2. Legal Base.

§ 1.2. The Code of Virginia is the basis for the requirement that private residential facilities for children be licensed, certified and approved. It also authorizes the several departments to operate or reimburse certain public facilities. In addition, P. L. 94-63 and Title XX of the

Social Security Act require the establishment of quality assurance systems.

§ 1.3. The State Board of Corrections or the Department of Corrections is responsible for approval of facilities used for the placement of court-referred juveniles, as specified by § 16.1-286 and §§ 53.1-237 and 53.1-239 of the Code of Virginia, for promulgating a statewide plan for detention and other care facilities and for prescribing standards for such facilities pursuant to §§ 16.1-310 through 16.1-314 of the Code of Virginia; and for establishing and maintaining a system of community group homes or other residential care facilities pursuant to § 53.1-249 of the Code of Virginia.

§ 1.4. The State Board of Education is responsible for issuing certificates to operate (licenses) for residential schools for the handicapped in the Commonwealth of Virginia, as specified in Chapter 16 of of Title 22.1 (§§ 22.1-319 through 22.1-335) of the Code of Virginia. It is further responsible for the general supervision of the public school system for all school age residents of Virginia (for handicapped children, ages 2-21) and for approval of private nonsectarian education programs for the handicapped, as specified by § 22.1-218 of the Code of Virginia.

§ 1.5. The Department of Mental Health, Mental Retardation and Substance Abuse Services is responsible for licensure of facilities or institutions for the mentally ill, mentally retarded, and substance abusers within the Commonwealth of Virginia, as specified in Chapter 8 of Title 37.1 (§§ 37.1-179 through 37.1-189) of the Code of Virginia. It is also responsible for the certification of group homes as specified in § 37.1-199 of the Code of Virginia.

§ 1.6. The Department of Social Services is responsible for licensure of certain child welfare agencies and facilities in Virginia, as specified in Chapter 10 of Title 63.1 (§§ 63.1-195 through 63.1-219) of the Code of Virginia. It is also responsible for the certification of local welfare/social services department "agency operated" group homes, as specified in § 63.1-56.1 of the Code of Virginia.

## Article 3. Interdepartmental Agreement.

§ 1.7. An "Agreement for Interdepartmental Licensure and Certification of Children's Residential Facilities" was approved by the Director of the Department of Corrections; the Commissioners of the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Social Services; and the Superintendent of Public Instruction and was initially signed on January 8-9, 1979. The agreement was updated effective September 30, 1984.

This agreement commits the above departments to apply the same standards to both public and private facilities and provides a framework for:

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1. The joint development and application of licensure and certification standards;
2. A single coordinated licensure, certification and approval process that includes:
  - a. A single application for appropriate licensure, certification and/or approval;
  - b. A system for review of compliance with applicable standards;
  - c. A single license/certificate issued under the authority of the appropriate department(s) or board(s); and
  - d. Clear lines of responsibility for the enforcement of standards.
3. An Office of the Coordinator to provide central coordination and monitoring of the administration of the interdepartmental licensure/certification program.

## Article 4.

### General Licensing/Certification Requirements.

§ 1.8. All residential facilities for children must demonstrate an acceptable level of compliance with Core Standards and other applicable licensure requirements (e.g. Mental Disabilities Licensure Standards) and shall submit a plan of corrective action acceptable to the licensing authority for remedying within a specified time any noncompliance in order to be licensed to operate or be certified to receive children in Virginia. Facilities also shall demonstrate an acceptable level of compliance with other applicable standards, such as Education Standards, Mental Disabilities Certification Standards and Department of Corrections Standards for Youth Facilities, and submit a plan of corrective action acceptable to the certification authority for remedying within a specified time any noncompliance in order to be certified or approved.

§ 1.9. Investigations of applications for licensure/certification will be carried out by representatives of the licensure/certification authority with each representative participating in the evaluation of compliance with applicable standards. The decision to license or certify will be based primarily on the findings and recommendations of these representatives of the licensing/certification authority.

§ 1.10. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law. Corporations not organized and empowered solely to operate residential facilities for children shall provide for such operations in their charters.

## Article 5.

### The License/Certificate.

§ 1.11. The interdepartmental program will utilize a single licensure/certification process encompassing Core Standards and certification standards. A single document will be issued to each qualified facility which will, under appropriate statutory authority(ies), grant permission to operate a residential facility for children or certify approval for the placement of children using public funds and which will indicate the status of each facility with respect to compliance with applicable certification standards.

§ 1.12. The terms of any license/certificate issued shall include: (i) the operating name of the facility; (ii) the name of the individual, partnership, association or corporation or public agency to whom the license/certificate is issued; (iii) the physical location of the facility; (iv) the nature of the population; (v) the maximum number of persons to be accepted for care; (vi) the effective dates of the license; and (vii) other specifications prescribed within the context of the standards.

§ 1.13. The license/certificate is not transferable and automatically expires when there is a change of ownership, sponsorship, or location, or when there is a substantial change in services or clientele which would alter the evaluation findings and terms under which the facility was licensed/certified.

§ 1.14. Separate licenses/certificates are required for facilities maintained on separate pieces of property which do not have a common boundary, even though these may be operated under the same management and may share services and/or facilities.

§ 1.15. The current license/certificate shall be posted at all times in a place conspicuous to the public.

## Article 6.

### Types of Licenses/Certificates.

§ 1.16. An annual license/certificate may be issued to a residential facility for children that is subject to the licensure authority of the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services, or Social Services when its activities, services and requirements substantially meet the minimum standards and requirements set forth in Core Standards, applicable certification standards and any additional requirements that may be specified in relevant statutes. An annual license/certificate is effective for 12 consecutive months, unless it is revoked or surrendered sooner.

§ 1.17. A provisional license/certificate may be issued whenever an applicant is temporarily unable to comply with all of the requirements set forth in Core Standards or applicable certification standards and under the condition that the requirements will be met within a specified period of time. A facility with provisional licensure/certification is required to demonstrate that it is progressing toward compliance. A provisional

license/certificate shall not be issued where the noncompliance poses an immediate and direct danger to the health and safety of the residents.

A. For those facilities for which the Department of Mental Health, Mental Retardation and Substance Abuse Services is the licensing authority as specified in Chapter 8 of Title 37.1 of the Code of Virginia, at the discretion of the licensing authority a provisional license may be issued to operate a new facility in order to permit the applicant to demonstrate compliance with all requirements. Such a provisional license may be renewed, but such provisional licensure and any renewals thereof shall not exceed a period of six successive months. A provisional license also may be issued to a facility which has previously been fully licensed when such facility is temporarily unable to comply with all licensing standards. However, pursuant to § 37.1-183.2 of the Code of Virginia, such a provisional license may be issued for any period not to exceed 90 days and shall not be renewed.

B. For those facilities for which the Department of Social Services is the licensing authority as specified in Chapter 10 of Title 63.1 of the Code of Virginia, a provisional license may be issued following the expiration of an annual license. Such provisional licensure and any renewals thereof shall not exceed a period of six successive months. At the discretion of the licensing authority, a conditional license may be issued to operate a new facility in order to permit the applicant to demonstrate compliance with all requirements.

Such a conditional license may be renewed, but such conditional licensure and any renewals thereof shall not exceed a period of six successive months.

§ 1.18. An extended license/certificate may be issued following the expiration of an annual or an extended license/certificate provided the applicant qualifies for an annual license/certificate and, additionally, it is determined by the licensing/certification authority that (i) the facility has a satisfactory compliance history; and (ii) the facility has had no significant changes in its program, population, sponsorship, staffing and management, or financial status during the term of the previous annual or extended license. In determining whether a facility has a satisfactory compliance history, the licensing/certification authority shall consider the facility's maintenance of compliance as evidenced by licensing complaints; monitoring visits by staff of the licensing authority; reports of health, fire and building officials; and other sources of information reflecting on the facility's continued compliance with applicable standards. An extended license is effective for a specified period not to exceed 24 consecutive months, unless it is revoked or surrendered sooner.

§ 1.19. A residential facility for children operating under certification by the Department of Corrections may be issued a certificate indicating the status of the facility with respect to compliance with applicable certification

standards. Such a certificate is effective for a specified period not to exceed 24 consecutive months, unless it is revoked or surrendered sooner.

§ 1.20. The term of any certification(s) issued on an annual, provisional or extended license/certificate shall be coincident with the effective dates of the license.

§ 1.21. There shall be no fee to the licensee for licensure, certification or approval.

## Article 7.

### Preapplication Consultation Services.

§ 1.22. Upon receipt of an inquiry or a referral, preapplication consultation services will be made available by the Office of the Coordinator and the participating departments.

§ 1.23. Preapplication consultation may be designed to accomplish the following purposes:

1. To explain standards and statutes;
2. To help the potential applicant explore the operational demands of a licensed/certified/approved residential facility for children;
3. To provide assistance in locating sources of information and technical assistance;
4. To refer the potential applicant to appropriate agencies; such as, the Department of Health, the State Fire Marshal, local fire department, and local building officials; and
5. To comment, upon request, on plans for proposed construction or on existing property in terms of suitability for the purposes proposed. Such comments shall be limited to advice on basic space considerations.

## Article 8.

### The Initial Application.

§ 1.24. The application for a license to operate a residential facility for children shall be available from the Office of the Coordinator and the participating departments.

§ 1.25. All application forms and related information requests shall be designed to assure compliance with the provision of standards and relevant statutes.

§ 1.26. Completed applications along with other information required for licensure, certification or approval shall be submitted at least 60 days in advance of the planned opening date. Receipt shall be acknowledged.

## Article 9.

### The Investigation.

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§ 1.27. Following receipt and evaluation of each completed application, a team will be organized made up of representatives from the departments which will be participating in the review of that particular facility.

§ 1.28. The team will arrange and conduct an on-site inspection of the proposed facility; a thorough review of the proposed services; and investigate the character, reputation, status, and responsibility of the applicant.

## Article 10. Allowable Variance.

§ 1.29. The licensing/certification authority has the sole authority to waive a standard either temporarily or permanently when in its opinion:

1. Enforcement will create an undue hardship;
2. The standard is not specifically required by statute or by the regulations of another government agency; and
3. Resident care would not be adversely affected.

§ 1.30. Any request for an allowable variance shall be submitted in writing to the licensing/certification authority.

§ 1.31. The denial of a request for a variance is appealable through the normal appeals process when it leads to the denial or revocation of licensure/certification.

## Article 11. Decision Regarding Licensure/Certification.

§ 1.32. Within 60 days of receipt of a properly completed application, the investigation will be completed and the applicant will be notified in writing of the decision regarding licensure/certification.

## Article 12. Issuance of a License, Certificate or Approval.

§ 1.33. Private facilities.

If licensure/certification (either annual, provisional or extended) is granted, the facility will be issued a license/certificate with an accompanying letter citing any areas of noncompliance with standards. This letter will also include any specifications of the license and may contain recommendations.

§ 1.34. Public and out-of-state facilities.

If approval is granted, the facility will be issued a certificate of approval indicating that it has met standards required for it to operate and receive public funds.

## Article 13. Intent to Deny a License, Certificate or Approval.

§ 1.35. If denial of a license, certificate or approval is recommended, the facility will be notified in writing of the deficiencies and the proposed action.

§ 1.36. Private facilities.

The notification of intent to deny a license or certificate will be a letter signed by the licensing/certification authority(ies) and sent by certified mail to the facility. This notice will include:

1. A statement of the intent of the licensing/certification authorities to deny;
2. A list of noncompliances and circumstances leading to the denial; and
3. Notice of the facility's rights to a hearing.

§ 1.37. Locally-operated facilities.

The notification of intent to deny a license or certificate will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility and to the appropriate local governing body or official responsible therefore, stating the reasons for the action, as well as the applicable state board or departmental sanctions or actions to which they are liable.

§ 1.38. State-operated public facilities.

The notification of intent to deny an approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility, to the appropriate department head, and to the Secretary stating the reasons for the action and advising appropriate sanctions or actions.

§ 1.39. Out-of-state facilities.

The notification of denial of approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility and to each of the four departments stating the reasons for the action. Any department having children placed in such a facility shall be responsible for immediate removal of the children when indicated.

§ 1.40. The hearing.

An interdepartmental hearing will be arranged when necessary. Hearings will be conducted in accordance with the requirements of the Administrative Process Act, § 9-6.14:1 et seq., of the Code of Virginia. Each licensing/certification authority will be provided with the report of the hearing on which to base the licensing authority's final decision. The Office of the Coordinator will be notified of the licensing authority's decision within 30 days after the report of the hearing is submitted. When more than one licensing/certification authority is involved, they will coordinate the final decision.

## § 1.41. Final decision.

A letter will be sent by registered mail notifying the facility of the final decision of the licensing/certification authorities. This letter will be drafted for the signatures of those departmental authorities who are delegated responsibility for such actions by statute. In case of denial, the facility shall cease operation or change its program so that it no longer requires licensure/certification. This shall be done within 30 days.

## Article 14. Renewal of License/Certificate.

§ 1.42. Approximately 90 days prior to the expiration of a license/certificate, the licensee will receive notice of expiration and an application for renewal of the license/certificate. The materials to be submitted will be indicated on the application.

In order to renew a license/certificate, the licensee shall complete the renewal application and return it and any required attachments. The licensee should submit this material within 30 days after receipt in order to allow at least 60 days to process the application prior to expiration of the license.

§ 1.43. The process for review of the facility and issuance or denial of the license/certificate will be the same as for an initial application (See Part I, Articles 8, 9, 12, 13).

## Article 15. Early Compliance.

§ 1.44. A provisional or conditional license/certificate may be replaced with an annual license/certificate when all of the following conditions exist:

1. The facility complies with all standards as listed on the face of the provisional or conditional license/certificate well in advance of its expiration date and the facility is in substantial compliance with all other standards;
2. Compliance has been verified by an on-site observation by a representative(s) of the licensing/certification authority or by written evidence provided by the licensee; and
3. All other terms of the license/certificate remain the same.

§ 1.45. A request to replace a provisional license/certificate and to issue an annual license/certificate shall be made in writing by the licensee.

§ 1.46. If the request is approved, the effective date of the new annual license/certificate will be the same as the beginning date of the provisional license/certificate.

## Article 16. Situations Requiring a New Application.

§ 1.47. A new application shall be filed in the following circumstances:

1. Change of ownership and/or sponsorship;
2. Change of location; and/or
3. Substantial change in services provided and/or target population.

## Article 17. Modification of License/Certificate.

§ 1.48. The conditions of a license/certificate may be modified during the term of the license with respect to the number of children, the age range or other conditions which do not constitute substantial changes in the services or target population.

The licensee shall submit a written report of any contemplated changes in operation which would affect either the terms of the license/certificate or the continuing eligibility for a license/certificate.

A determination will be made as to whether changes may be approved and the license/certificate modified accordingly or whether an application for a new license/certificate must be filed. The licensee will be notified in writing within 30 days as to whether the modification is approved or a new license is required.

## Article 18. Visitation of Facilities.

§ 1.49. Representatives of the departments shall make announced and unannounced visits during the effective dates of the license/certificate. The purpose of these visits is to monitor compliance with applicable standards.

## Article 19. Investigation of Complaints and Allegations.

§ 1.50. The four departments are responsible for complete and prompt investigation of all complaints and allegations, and for notification of the appropriate persons or agencies when removal of children may be necessary. Suspected criminal violations shall be reported to the appropriate law-enforcement authority.

## Article 20. Revocation of License/Certificate.

§ 1.51. Grounds for revocation.

The license, certificate or approval may be revoked when the licensee:

1. Violates any provision of the applicable licensing

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laws or any applicable standards made pursuant to such laws;

2. Permits, aids or abets the commission of any illegal act in such facility;

3. Engages in conduct or practices which are in violation of statutes related to abuse or neglect of children; or

4. Deviates significantly from the program or services for which a license was issued without obtaining prior written approval from the licensing/certification authority and/or fails to correct such deviations within the time specified.

## § 1.52. Notification of intent to revoke.

If revocation of a license, certificate or approval is recommended, the facility will be notified in writing of the deficiencies and the proposed action.

## § 1.53. Private facilities.

The notification of intent to revoke a license or certificate will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility. This notice will include:

1. A statement of the intent of the licensing/certification authorities to revoke;
2. A list of noncompliances and circumstances leading to the revocation; and
3. Notice of the facility's rights to a hearing.

## § 1.54. Locally-operated facilities.

The notification of intent to revoke a license or certificate will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility and to the appropriate local governing body or official responsible therefore stating the reasons for the action as well as the applicable state board or departmental sanctions or actions to which they are liable.

## § 1.55. State-operated public facilities.

The notification of intent to revoke an approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility, to the appropriate department head, and to the appropriate Secretary in the Governor's Cabinet, stating the reasons for the action and advising appropriate sanctions or actions.

## § 1.56. Out-of-state facilities.

The notification of revocation of approval will be a letter signed by the licensing/certification authority(ies) sent by certified mail to the facility, and to each of the

four departments stating the reasons for the action. Any department having children placed in such a facility shall be responsible for immediate removal of the children when indicated.

## § 1.57. The hearing.

An interdepartmental hearing will be arranged, when necessary. Hearings will be conducted in accordance with the requirements of the Administrative Process Act, §9-6.14:1 et seq. of the Code of Virginia. Each licensing/certification authority will be provided with the report of the hearing on which to base the licensing authority's final decision. The Office of the Coordinator will be notified of the licensing authority's decision within 30 days after the report of the hearing is submitted. When more than one licensing/certification authority is involved, they will coordinate the final decision.

## § 1.58. Final decision.

A letter will be sent by registered mail notifying the facility of the final decision of the licensing/certification authorities. This letter will be drafted for the signatures of those departmental authorities who are delegated responsibility for such actions by statute. In case of revocation, the facility shall cease operation or change its program so that it no longer requires licensure/certification. This shall be done within 30 days.

## § 1.59. Suppression of unlicensed operations.

The suppression of illegal operations or activities involves action against a person or group operating without a license/certificate or operating after a license/certificate has expired or has been denied or revoked. All allegations of illegal operations shall be investigated promptly. After consultation with counsel, action may be initiated by the licensing/certification authority against illegally operating facilities by means of civil action, by injunction or by criminal action.

## § 1.60. Appeals.

A. Following receipt of the final order transmitting the decision of the licensing/certification authority(ies) after an administrative hearing, the applicant/licensee has the right to appeal pursuant to the applicable sections of the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

B. Continued operation of a facility during the appeal process shall conform to applicable sections of the Code of Virginia.

## PART II. ORGANIZATION AND ADMINISTRATION.

### Article I. Governing Body.

§ 2.1. The residential facility for children shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.

§ 2.2. The licensee shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the licensee.

## Article 2. Responsibilities of the Licensee.

§ 2.3. The licensee shall appoint a qualified chief administrative officer to whom it delegates in writing the authority and responsibility for the administrative direction of the facility.

§ 2.4. The licensee shall develop and implement written policies governing the licensee's relationship to the chief administrative officer that shall include, but shall not be limited to:

1. Annual evaluation of the performance of the chief administrative officer; and

2. Provision for the chief administrative officer to meet with the governing body or with the immediate supervisor to periodically review the services being provided, the personnel needs and fiscal management of the facility.

§ 2.5. The licensee shall develop a written statement of the philosophy and the objectives of the facility including a description of the population to be served and the program to be offered.

§ 2.6. The licensee shall review, at least annually, the program of the facility in light of the population served and the objectives of the facility.

§ 2.7. The licensee shall review, develop and implement programs and administrative changes in accord with the defined purpose of the facility.

## Article 3. Fiscal Accountability.

§ 2.8. The facility shall have a documented plan of financing which gives evidence that there are sufficient funds to operate.

§ 2.9. A new facility shall with the initial application document funds or a line of credit sufficient to cover at least 90 days of operating expenses unless the facility is operated by a state or local government agency, board or commission.

§ 2.10. A new facility operated by a corporation, unincorporated organization or association, an individual or a partnership shall submit with the initial application evidence of financial responsibility. This shall include:

1. A working budget showing projected revenue and expenses for the first year of operation; and

2. A balance sheet showing assets and liabilities.

§ 2.11. Facilities having an approved rate established in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include:

1. A copy of the facility's most recently completed financial audit;

2. A report on any changes in income, expenses, assets, and liabilities that significantly change the fiscal condition of the facility as reflected in the financial audit submitted or a statement that no such changes have occurred; and

3. A working budget showing projected revenue and expenses for the coming year.

§ 2.12. Facilities operated by state or local government agencies, boards and commissions that do not have an approved rate established in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include a working budget showing appropriated revenue and projected expenses for the coming year.

§ 2.13. Facilities operated by corporations, unincorporated organizations or associations, individuals or partnerships that do not have a rate set in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include:

1. An operating statement showing revenue and expenses for the past operating year;

2. A working budget showing projected revenue and expenses for the coming year;

3. A balance sheet showing assets and liabilities; and

4. A written assurance from the licensee that the documentation provided for in 1, 2, and 3 above presents a complete and accurate financial report reflecting the current fiscal condition of the facility.

§ 2.14. The facility shall provide additional evidence of financial responsibility as the licensing authority, at its discretion, may require.

## Article 4. Internal Operating Procedures.

§ 2.15. There shall be evidence of a system of financial record keeping that is consistent with generally accepted accounting principles unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

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§ 2.16. There shall be a written policy, consistent with generally accepted accounting principles, for collection and disbursement of funds unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

§ 2.17. There shall be a system of financial record keeping that shows a separation of the facility's accounts from all other records.

## Article 5. Insurance.

§ 2.18. A facility shall maintain liability insurance covering the premises and the facility's operations.

§ 2.19. There shall be liability insurance on vehicles operated by the facility.

## Article 6. Bonding.

§ 2.20. Those members of the governing body and staff who have been authorized responsibility for handling the funds of the facility shall be bonded.

## Article 7. Fund-Raising.

§ 2.21. The facility shall not use children in its fund-raising activities without written permission of parent, guardian or agency holding custody.

## Article 8. Relationship to Licensing Authority.

§ 2.22. The facility shall submit or make available to the licensing authority such reports and information as the licensing authority may require to establish compliance with these standards and the appropriate statutes.

§ 2.23. The governing body or its official representative shall notify the licensing authority(ies) within five working days of:

1. Any change in administrative structure or newly hired chief administrative officer; and
2. Any pending changes in the program.

§ 2.24. In the event of a disaster, fire, emergency or any other condition at the facility that may jeopardize the health, safety and well-being of the children in care, the facility shall:

1. Take appropriate action to protect the health, safety and well-being of the children in care;
2. Take appropriate actions to remedy such conditions as soon as possible, including reporting to and cooperating with local health, fire, police or other

appropriate officials; and

3. Notify the licensing authority(ies) of the conditions at the facility and the status of the children in care as soon as possible.

## Article 9. Participation of Children in Research.

§ 2.25. The facility shall establish and implement written policies and procedures regarding the participation of children as subjects in research that are consistent with Chapter 13 of Title 37.1 of the Code of Virginia, unless the facility has established and implemented a written policy explicitly prohibiting the participation of children as subjects of human research as defined by the above statute.

## Article 10. Children's Records.

§ 2.26. A separate case record on each child shall be maintained and shall include all correspondence relating to the care of that child.

§ 2.27. Each case record shall be kept up to date and in a uniform manner.

§ 2.28. Case records shall be maintained in such manner as to be accessible to staff for use in working with the child.

## Article 11. Confidentiality of Children's Records.

§ 2.29. The facility shall make information available only to those legally authorized to have access to that information under federal and state laws.

§ 2.30. There shall be written policy and procedures to protect the confidentiality of records which govern acquiring information, access, duplication, and dissemination of any portion of the records. The policy shall specify what information is available to the youth.

## Article 12. Storage of Confidential Records.

§ 2.31. Records shall be kept in areas which are accessible only to authorized staff.

§ 2.32. Records shall be stored in a metal file cabinet or other metal compartment.

§ 2.33. When not in use, records shall be kept in a locked compartment or in a locked room.

## Article 13. Disposition of Children's Records.

§ 2.34. Children's records shall be kept in their entirety

for a minimum of three years after the date of the discharge unless otherwise specified by state or federal requirements.

§ 2.35. Permanent information shall be kept on each child even after the disposition of the child's record unless otherwise specified by state or federal requirements. Such information shall include:

1. Child's name;
2. Date and place of child's birth;
3. Dates of admission and discharge;
4. Names and addresses of parents and siblings; and
5. Name and address of legal guardian.

§ 2.36. Each facility shall have a written policy to provide for the disposition of records in the event the facility ceases operation.

#### Article 14. Residential Facilities for Children Serving Persons Over the Age of 17 Years.

§ 2.37. Residential facilities for children subject to Interdepartmental licensure/certification which are also approved to maintain in care persons over 17 years of age, shall comply with the requirements of Core Standards for the care of all residents, regardless of age, except that residential programs serving persons over 17 years of age, shall be exempt from this requirement when it is determined by the licensing/certification authority(ies) that the housing, staff and programming for such persons is maintained separately from the housing, staff and programming for the children in care.

### PART III. PERSONNEL.

#### Article 1. Health Information.

§ 3.1. Health information required by these standards shall be maintained for the chief administrative officer, for all staff members who come in contact with children or handle food, and for any individual who resides in a building occupied by children including any such persons who are neither staff members nor children in care of the facility.

#### Article 2. Initial Tuberculosis Examination and Report.

§ 3.2. Within 30 days of employment or contact with children each individual shall obtain an evaluation indicating the absence of tuberculosis in a communicable form except that an evaluation shall not be required for an individual who (i) has separated from employment with

a facility licensed/certified by the Commonwealth of Virginia, (ii) has a break in service of six months or less, and (iii) submits the original statement of tuberculosis screening.

§ 3.3. Each individual shall submit a statement that he is free of tuberculosis in a communicable form including the type(s) of test(s) used and the test result(s).

§ 3.4. The statement shall be signed by licensed physician the physician's designee, or an official of a local health department.

§ 3.5. The statement shall be filed in the individual's record.

#### Article 3. Subsequent Evaluations for Tuberculosis.

§ 3.6. Any individual who comes in contact with a known case of tuberculosis or who develops chronic respiratory symptoms of four weeks duration or longer shall, within 30 days of exposure/development, receive an evaluation in accord with Part III, Article 2.

#### Article 4. Physical or Mental Health of Personnel.

§ 3.7. At the request of the licensee/administrator of the facility or the licensing authority a report of examination by a licensed physician shall be obtained when there are indications that the care of children may be jeopardized by the physical, mental, or emotional health of a specific individual.

§ 3.8. Any individual who, upon examination by a licensed physician or as result of tests, shows indication of a physical or mental condition which may jeopardize the safety of children in care or which would prevent the performance of duties:

1. Shall immediately be removed from contact with children and food served to children; and
2. Shall not be allowed contact with children or food served to children until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

#### Article 5. Qualifications.

§ 3.9. Standards in Part III, Articles 12-14 establishing minimum position qualifications shall be applicable to all facilities. In lieu of these minimum position qualifications, (i) facilities subject to the rules and regulations of the Virginia Department of Personnel and Training, or (ii) facilities subject to the rules and regulations of a local government personnel office may develop written minimum entry level qualifications in accord with the rules and regulations of the supervising personnel

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authority.

§ 3.10. Any person who assumes or is designated to assume the responsibilities of a staff position or any combination of staff positions described in these standards shall meet the qualifications of that position(s) and shall fully comply with all applicable standards for each function.

§ 3.11. When services or consultations are obtained on a contract basis they shall be provided by professionally qualified personnel.

## Article 6. Job Descriptions.

§ 3.12. For each staff position there shall be a written job description which, at a minimum, shall include:

1. The job title;
2. The duties and responsibilities of the incumbent;
3. The job title of the immediate supervisor; and
4. The minimum knowledge, skills and abilities required for entry level performance of the job.

§ 3.13. A copy of the job description shall be given to each person assigned to that position at the time of employment or assignment.

## Article 7. Written Personnel Policies and Procedures.

§ 3.14. The licensee shall approve written personnel policies.

§ 3.15. The licensee shall make its written personnel policies readily accessible to each staff member.

§ 3.16. The facility shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each staff position possess the knowledge, skills and abilities specified in the job description for that staff position.

§ 3.17. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include:

1. Acceptable methods for discipline and behavior management of children;
2. Procedures for handling accusations against staff; and
3. Procedures for promptly referring suspected cases of child abuse and neglect to the local protective service unit and for cooperating with the unit during any investigation. (See § 5.143)

§ 3.18. Each staff member shall demonstrate a working knowledge of those policies and procedures that are applicable to his specific staff position.

## Article 8. Personnel Records.

§ 3.19. A separate up-to-date personnel record shall be maintained for each staff member. The record shall include:

1. A completed employment application form or other written material providing:
  - a. Identifying information (name, address, phone number, social security number, and any names previously utilized);
  - b. Educational history; and
  - c. Employment history.
2. Written references or notations of oral references;
3. Reports of required health examinations;
4. Annual performance evaluations; and
5. Documentation of staff development activities.

§ 3.20. Each personnel record shall be retained in its entirety for two years after employment ceases.

§ 3.21. Information sufficient to respond to reference requests on separated employees shall be permanently maintained. Information shall minimally include name, social security number, dates of employment, and position(s) held.

## Article 9. Staff Development.

§ 3.22. New employees, relief staff, volunteers and students, within one calendar month of employment, shall be given orientation and training regarding the objectives and philosophy of the facility, practices of confidentiality, other policies and procedures that are applicable to their specific positions, and their specific duties and responsibilities.

§ 3.23. Provision shall be made for staff development activities, designed to update staff on items in § 3.22 and to enable them to perform their job responsibilities adequately. Such staff development activities include, but shall not necessarily be limited to, supervision and formal training.

§ 3.24. Regular supervision of staff shall be provided.

§ 3.25. Regular supervision of staff shall not be the only method of staff development.

§ 3.26. Participation of staff, volunteers and students in orientation, training and staff development activities shall be documented.

Article 10.  
Staff Supervision of Children.

§ 3.27. No person shall be scheduled to work more than six consecutive days between rest days *Maximum work periods* .

A. No member of the child care staff shall be on duty more than six consecutive days between rest days except in an emergency. Child care staff who attend training or are accompanying an excursion as permitted by §§ 3.27 A and 3.27 B shall not be in violation of this section.

B. A child care staff member may attend training following working at the facility without a rest day. However, the staff member shall not work more than 10 consecutive days between rest days including working at the facility and training.

C. A child care staff member may accompany an excursion following working at the facility without a rest day. However, the staff member shall not work more than 14 consecutive days between rest days including working at the facility and the excursion.

D. A child care staff member accompanying an excursion shall not work at the facility for more than two consecutive days prior to the excursion.

E. A child care staff member may return to work at the facility without a rest day after accompanying an excursion or attending training. However, the staff member shall not work more than six consecutive days between rest days including excursion and training days.

§ 3.28. Child care staff who have at least one 24 consecutive hour period on duty during a week shall have an average of not less than two days off rest days per week in any four-week period. This shall be in addition to vacation time and holidays.

§ 3.29. Child care staff who do not have at least one 24 consecutive-hour period on duty during a week shall have an average of not less than two days off per week in any four-week period. This shall be in addition to vacation time and holidays.

§ 3.30. § 3.29. Child care staff who do not have at least one 24 consecutive-hour period on duty during a week other than live in staff shall not be on duty more than 16 consecutive hours except in emergencies when relief staff are not available an emergency .

§ 3.31. § 3.30. There shall be at least one responsible adult on the premises and on duty at all times that one or more children are present.

§ 3.31. Each facility shall develop and implement written policies and procedures which address deployment of staff and supervision of children. The number of children being supervised may vary among staff members except that the total number of child care staff on duty shall not be less than the minimum number required by § 3.33 to supervise the total number of children on the premises and participating in off campus, facility sponsored activities.

§ 3.32. There shall be at least one child care staff member on duty in each living unit when one or more children are present. Written policies and procedures governing deployment of staff shall be reviewed and approved by the regulatory authority prior to implementation .

§ 3.33. During the hours that children normally are awake there shall be no less than one child care staff awake, on duty and responsible for supervision of every 10 children present who are two years of age or older, or portion thereof, on the premises or participating in off campus, facility sponsored activities except that the minimum number of child care staff for clients in care shall not be less than:

1. One child care staff for every 15 children on the premises or participating in off campus, facility sponsored activities of an approved independent living program; and
2. One child care staff for every three children three years of age or younger who are on the premises or participating in off campus, facility sponsored activities.

§ 3.34. During the hours that children normally are awake there shall be no less than one child care staff member awake, on duty, and responsible for supervision of every three children present under two years of age. *Supervision during sleeping hours* .

A. During the hours that children normally are sleeping, there shall be no less than one child care staff member on duty for every 16 children, or portion thereof, on the premises.

B. There shall be at least one child care staff member awake and on duty:

1. In each building where 30 or more children are sleeping,
2. On each floor where 30 or more children are sleeping, and
3. On each major wing of each floor where 30 or more children are sleeping.

§ 3.35. In buildings where 30 or more children are sleeping there shall be no less than one child care staff

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member awake and on duty during night hours:

§ 3.36. There shall be at least one child care staff member awake on each floor and on each major wing of each floor where 30 or more children are sleeping.

§ 3.37. § 3.35. Emergency telephone numbers.

A. When children are away from the facility they and the adults responsible for their care during that absence shall be furnished with telephone number where a responsible facility staff member or other responsible adult may be reached at all times except that this requirement shall not apply to secure detention facilities.

B. When children are on the premises of the facility, the staff on duty shall be furnished with a telephone number where the administrator or his designee may be reached at all times.

§ 3.36. Children shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This requirement shall not apply to medical personnel performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to children whose physical or mental disabilities dictate the need for assistance with these activities as justified in the client's record.

§ 3.37. Searches.

A. If a facility conducts pat downs it shall develop and implement written policies and procedures governing them. A facility that does not conduct pat downs shall have a written policy prohibiting them.

B. Written policies and procedures governing pat downs shall be reviewed and approved by the regulatory authority prior to implementation.

C. Written policies and procedures governing pat downs shall include:

1. A requirement that pat downs be limited to instances where they are necessary to prohibit contraband;

2. A listing of the specific circumstances when pat downs are permitted;

3. A statement that pat downs shall be conducted only in the specific circumstances enumerated in the written policies and procedures;

4. A requirement that pat downs be conducted by personnel of the same gender as the client(s) being searched;

5. A listing of the personnel authorized to conduct pat downs;

6. A statement that pat downs shall be conducted only by personnel authorized to conduct searches by the written policies and procedures;

7. A requirement that witnesses, if any, be of the same gender as the client(s) being searched; and

8. Provisions to ensure the client's privacy.

D. Strip searches and body cavity searches are prohibited except:

1. As permitted by other applicable state regulations, or

2. As ordered by a court of competent jurisdiction.

## Article 11.

### The Chief Administrative Officer.

§ 3.38. The chief administrative officer shall be responsible to the governing body for:

1. The overall administration of the program;

2. Implementation of all policies;

3. Maintenance of the physical plant; and

4. Fiscal management of the residential facility for children.

§ 3.39. Duties of the chief administrative officer may be delegated to qualified subordinate staff.

§ 3.40. Duties delegated by the chief administrative officer shall be reflected in the job description of the position assigned each delegated function.

§ 3.41. A qualified staff member shall be designated to assume responsibility for the operation of the facility in the absence of the chief administrative officer.

## Article 12.

### The Program Director.

§ 3.42. The program director shall be responsible for the development and implementation of the programs and services (See Part V) offered by the residential facility for children.

§ 3.43. A program director appointed after July 1, 1981, shall have:

1. A baccalaureate degree from an accredited college or university with two years of successful work experience with children in the field of institutional management, social work, education or other allied profession; or

2. A graduate degree from an accredited college or

university in a profession related to child care and development; or

3. A license or certification in the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism.

§ 3.44. Any qualified staff member, including the chief administrative officer, may serve as the program director.

§ 3.45. When a facility is licensed/certified to care for 13 or more children, a full-time, qualified staff member shall fulfill the duties of the program director.

## Article 13.

### Child and Family Service Worker(s).

§ 3.46. If not provided by external resources in accord with § 5.45, counseling and social services (see § 5.43), shall be provided by a staff member(s) qualified to provide such services.

§ 3.47. If employment begins after July 1, 1981, the Child and Family Service Worker shall have:

1. A graduate degree in social work, psychology, counseling or a field related to family services or child care and development; or

2. A baccalaureate degree and two years of successful experience in social work, psychology, counseling or a field related to family services or child care and development (In lieu of two years of experience, the person may work under the direct supervision of a qualified supervisor for a period of two years); or

3. A license or certificate in the Commonwealth of Virginia to render services as a drug abuse or alcoholism counselor/worker only in facilities which are certified to provide drug abuse or alcoholism counseling; or

4. A license or certificate when required by law issued in the Commonwealth of Virginia to render services in the field of:

- a. Social Work, or
- b. Psychology, or
- c. Counseling (individual, group or family).

## Article 14. Child Care Staff.

§ 3.48. In each child care unit a designated staff member shall have responsibility for the development of the daily living program within the child care unit.

§ 3.49. A designated staff member shall be responsible for

the coordination of all services offered to each child.

§ 3.50. A designated staff member(s) shall have responsibility for the orientation, training and supervision of child care workers.

§ 3.51. An individual employed after July 1, 1981, to supervise child care staff shall have:

1. A baccalaureate degree from an accredited college or university and two years experience in the human services field, at least one of which shall have been in a residential facility for children; or

2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years experience in the human service field with at least two years in a residential facility for children.

§ 3.52. The child care worker shall have direct responsibility for guidance and supervision of the children to whom he is assigned. This shall include:

1. Overseeing physical care;
2. Development of acceptable habits and attitudes;
3. Discipline; and
4. Helping to meet the goals and objectives of any required service plan.

§ 3.53. A child care worker shall be no less than 18 years of age.

§ 3.54. A child care worker shall:

1. Be a high school graduate or have a General Education Development Certificate (G.E.D.) except that individuals employed prior to the effective date of these standards shall meet this requirement by July 1, 1986; and

2. Have demonstrated, through previous life and work experiences, an ability to maintain a stable environment and to provide guidance to children in the age range for which the child care worker will be responsible.

## Article 15. Relief Staff.

§ 3.55. Sufficient qualified relief staff shall be employed to maintain required staff/child ratios during:

1. Regularly scheduled time off of permanent staff, and
2. Unscheduled absences of permanent staff.

## Article 16.

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## Medical Staff.

§ 3.56. Services of a licensed physician shall be available for treatment of children as needed.

§ 3.57. Any nurse employed shall hold a current nursing license issued by the Commonwealth of Virginia.

§ 3.58. At all times that youth are present there shall be at least one responsible adult on the premises who has received within the past three years a basic certificate in standard first-aid (Multi-Media, Personal Safety, or Standard First Aid Modular) issued by the American Red Cross or other recognized authority except that this requirement does not apply during those hours when a licensed nurse is present at the facility.

§ 3.59. At all times that youth are present there shall be at least one responsible adult on the premises who has received a certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority.

## Article 17. Recreation Staff.

§ 3.60. There shall be designated staff responsible for organized recreation who shall have:

1. Experience in working with and providing supervision to groups of children with varied recreational needs and interests;
2. A variety of skills in group activities;
3. A knowledge of community recreational facilities; and
4. An ability to motivate children to participate in constructive activities.

## Article 18. Volunteers and Students Receiving Professional Training.

§ 3.61. If a facility uses volunteers or students receiving professional training it shall develop written policies and procedures governing their selection and use. A facility that does not use volunteers shall have a written policy stating that volunteers will not be utilized.

§ 3.62. The facility shall not be dependent upon the use of volunteers/students to ensure provision of basic services.

§ 3.63. The selection of volunteers/students and their orientation, training, scheduling, supervision and evaluation shall be the responsibility of designated staff members.

§ 3.64. Responsibilities of volunteers/students shall be clearly defined.

§ 3.65. All volunteers/students shall have qualifications appropriate to the services they render based on experience and/or orientation.

§ 3.66. Volunteers/students shall be subject to all regulations governing confidential treatment of personal information.

§ 3.67. Volunteers/students shall be informed regarding liability and protection.

## Article 19. Support Functions.

§ 3.68. Facilities shall provide for support functions including, but not limited to, food service, maintenance of buildings and grounds, and housekeeping.

§ 3.69. All food handlers shall comply with applicable State Health Department regulations and with any locally adopted health ordinances.

§ 3.70. Child care workers and other staff may assume the duties of service personnel only when these duties do not interfere with their responsibilities for child care.

§ 3.71. Children shall not be solely responsible for support functions.

## PART IV. RESIDENTIAL ENVIRONMENT.

### Article 1. Location.

§ 4.1. A residential facility for children shall be located so that it is reasonably accessible to schools, transportation, medical and psychiatric resources, churches, and recreational and cultural facilities.

### Article 2. Buildings, Inspections and Building Plans.

§ 4.2. All buildings and installed equipment shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed/certified purposes.

§ 4.3. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by:

1. Local fire authorities with respect to fire safety and fire hazards, except in state operated facilities;
2. State fire officials, where applicable; and
3. State or local health authorities, whose inspection and approval shall include:

- a. General sanitation;
- b. The sewage disposal system;
- c. The water supply;
- d. Food service operations; and
- e. Swimming pools.

§ 4.4. The buildings shall be suitable to house the programs and services provided.

### Article 3.

#### Plans and Specifications for New Buildings and Additions, Conversions, and Structural Modifications to Existing Buildings.

§ 4.5. Building plans and specifications for new construction, conversion of existing buildings, and any structural modifications or additions to existing licensed buildings shall be submitted to and approved by the licensing/certification authority and the following authorities, where applicable, before construction begins:

1. Local building officials;
2. Local fire departments;
3. Local or state health departments; and
4. Office of the State Fire Marshal.

§ 4.6. Documentation of the approvals required by § 4.5 shall be submitted to the licensing authority(ies).

### Article 4.

#### Heating Systems, Ventilation and Cooling Systems.

§ 4.7. Heat shall be evenly distributed in all rooms occupied by the children such that a temperature no less than 65°F is maintained, unless otherwise mandated by state or federal authorities.

§ 4.8. Natural or mechanical ventilation to the outside shall be provided in all rooms used by children.

§ 4.9. All doors and windows capable of being used for ventilation shall be fully screened unless screening particular doors and windows is explicitly prohibited in writing by state or local fire authorities and those doors and windows are not used for ventilation.

§ 4.10. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by children when the temperature in those rooms exceeds 85°F.

### Article 5. Lighting.

§ 4.11. Artificial lighting shall be by electricity.

§ 4.12. All areas within buildings shall be lighted for safety.

§ 4.13. Night lights shall be provided in halls and bathrooms.

§ 4.14. Lighting shall be sufficient for the activities being performed in a specific area.

§ 4.15. Operable flashlights or battery lanterns shall be available for each staff member on the premises between dusk and dawn for use in emergencies.

§ 4.16. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

### Article 6.

#### Plumbing and Toilet Facilities.

§ 4.17. All plumbing shall be maintained in good operational condition.

§ 4.18. There shall be an adequate supply of hot and cold running water available at all times.

§ 4.19. Precautions shall be taken to prevent scalding from running water. In all newly constructed or renovated facilities mixing faucets shall be installed.

§ 4.20. There shall be at least one toilet, one hand basin and one shower or bathtub in each living unit, and there shall be at least one bathroom equipped with a bathtub in each facility.

§ 4.21. There shall be at least one toilet, one hand basin and one shower or tub for every eight children in care.

§ 4.22. In any facility constructed or reconstructed after July 1, 1981, except secure detention facilities there shall be one toilet, one hand basin and one shower or tub for every four children in care.

§ 4.23. When a separate bathroom is not provided for staff on duty less than 24 hours, the maximum number of staff members on duty in the living unit at any one time shall be counted in the determination of the number of toilets and hand basins.

§ 4.24. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located except in security rooms in hospitals, secure detention facilities and learning centers.

§ 4.25. At all times an adequate supply of personal necessities shall be available to the children for purposes of personal hygiene and grooming; such as, but not limited to, soap, toilet tissue, toothpaste, individual tooth brushes, individual combs and shaving equipment.

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§ 4.26. Clean, individual washclothes and towels shall be available once each week or more often if needed.

## Article 7.

### Facilities and Equipment for Residents with Special Toileting Needs.

§ 4.27. When residents are in care who are not toilet trained:

1. Provision shall be made for sponging, diapering and other similar care on a nonabsorbent changing surface which shall be cleaned with warm soapy water after each use.

2. A covered diaper pail, or its equivalent, with leakproof disposable liners shall be available. If both cloth and disposable diapers are used there shall be a diaper pail for each.

3. Adapter seats and toilet chairs shall be cleaned with warm soapy water immediately after each use.

4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting an individual resident or themselves with toileting.

## Article 8.

### Sleeping Areas.

§ 4.28. When children are four years of age or older, boys shall have separate sleeping areas from girls.

§ 4.29. No more than four children may share a bedroom or sleeping area.

§ 4.30. When a facility is not subject to the Virginia Public Building Safety Regulations or the Uniform Statewide Building Code, children who are dependent upon wheelchairs, crutches, canes or other mechanical devices for assistance in walking shall be assigned sleeping quarters on ground level and provided with a planned means of effective egress for use in emergencies.

§ 4.31. There shall be sufficient space for beds to be at least three feet apart at the head, foot and sides and five feet apart at the head, foot and sides for double-decker beds.

§ 4.32. In facilities previously licensed by the Department of Social Services and in facilities established, constructed or reconstructed after July 1, 1981, sleeping quarters shall meet the following space requirements:

1. There shall be not less than 450 cubic feet of air space per person;

2. There shall be not less than 80 square feet of floor area in a bedroom accommodating only one person;

3. There shall be not less than 60 square feet of floor

area per person in rooms accommodating two or more persons; and

4. All ceilings shall be at least 7-1/2 feet in height.

§ 4.33. Each child shall have a separate, clean, comfortable bed equipped with mattress, pillow, blanket(s), bed linens, and, if needed, a waterproof mattress cover.

§ 4.34. Bed linens shall be changed at least every seven days or more often, if needed.

§ 4.35. Mattresses and pillows shall be clean and those placed in service after July 1, 1981, shall also be fire retardant as evidenced by documentation from the manufacturer.

§ 4.36. Cribs shall be provided for children under two years of age.

§ 4.37. Each child shall be assigned drawer space and closet space, or their equivalent, accessible to the sleeping area for storage of clothing and personal belongings.

§ 4.38. The sleeping area environment shall be conducive to sleep and rest.

§ 4.39. Smoking by any person shall be prohibited in sleeping areas.

## Article 9.

### Privacy for Children.

§ 4.40. Where bathrooms are not designated for individual use, each toilet shall be enclosed for privacy except in secure detention facilities.

§ 4.41. Where bathrooms are not designated for individual use, bathtubs and showers, except in secure detention facilities, shall provide visual privacy for bathing by use of enclosures, curtains or other appropriate means.

§ 4.42. Windows in bathrooms shall provide for privacy.

§ 4.43. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily openable in case of fire or other emergency.

§ 4.44. Windows in sleeping and dressing areas shall provide for privacy.

## Article 10.

### Living Rooms/Indoor Recreation Space.

§ 4.45. Each living unit shall contain a living room or an area for informal use for relaxation and entertainment. The furnishings shall provide a comfortable, home-like environment that is age appropriate.

§ 4.46. In facilities licensed to care for more than 12 children there shall be indoor recreational space that

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contains recreational equipment appropriate to the ages and interests of the children in residence. Such indoor recreational space shall be distinct from the living room in each living unit required by § 4.45, but such space shall not be required in every living unit.

## Article 11. Study Space.

§ 4.47. Study space shall be provided in facilities serving a school age population and may be assigned in areas used interchangeably for other purposes.

§ 4.48. Study space shall be well lighted, quiet, and equipped with at least tables or desks and chairs.

## Article 12. Kitchen and Dining Areas.

§ 4.49. Meals shall be served in areas equipped with sturdy tables and benches or chairs of a size appropriate for the sizes and ages of the residents.

§ 4.50. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

§ 4.51. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

## Article 13. Laundry Areas.

§ 4.52. If laundry is done at the facility, appropriate space and equipment in good repair shall be provided.

## Article 14. Storage.

§ 4.53. Space shall be provided for safe storage of items such as first-aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

## Article 15. Staff Quarters.

§ 4.54. A separate (private) bathroom and bedroom shall be provided for staff and their families when staff are required to be in the living unit for 24-hours or more except, that when there are no more than four persons, including staff and family of staff, residing in and/or on duty in the living unit, a private bathroom is not required for staff.

§ 4.55. Off duty staff and members of their families shall not share bedrooms with children in care.

§ 4.56. When 13 or more children reside in one living unit a separate (private) living room shall be provided for child care staff who are required to be in the living unit for 24 hours or more.

§ 4.57. When child care staff are on duty for less than 24 hours, a bed shall be provided for use of each staff member on duty during night hours unless such staff member is required to remain awake.

## Article 16. Office Space.

§ 4.58. Space shall be provided for administrative activities including provision for storage of records and materials (See Part II, Article 12).

## Article 17. Buildings and Grounds.

§ 4.59. Buildings and grounds, including roads, pavements, parking lots, stairways, railings and other potentially hazardous areas, shall be safe, properly maintained and free of clutter and rubbish.

§ 4.60. There shall be outdoor recreational space appropriately equipped for the children to be served.

## Article 18. Equipment and Furnishings.

§ 4.61. All furnishings and equipment shall be safe, easy to clean, and suitable to the ages and number of residents.

§ 4.62. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

§ 4.63. The facility shall have a written policy governing the possession and use of firearms, pellet guns, air rifles and other weapons on the premises of the facility that shall provide that no firearms, pellet guns, air rifles, or other weapons, shall be permitted on the premises of the facility unless they are:

1. In the possession of licensed security personnel; or
2. Kept under lock and key; or
3. Used under the supervision of a responsible adult in accord with policies and procedures developed by the facility for their lawful and safe use.

## Article 19. Housekeeping and Maintenance.

§ 4.64. The interior and exterior of all buildings, including required locks and mechanical devices, shall be maintained in good repair.

§ 4.65. The interior and exterior of all buildings shall be kept clean and free of rubbish.

§ 4.66. All buildings shall be well-ventilated and free of stale, musty or foul odors.

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§ 4.67. Adequate provisions shall be made for the collection and legal disposal of garbage and waste materials.

§ 4.68. Buildings shall be kept free of flies, roaches, rats and other vermin.

§ 4.69. All furnishings, linens, and indoor and outdoor equipment shall be kept clean and in good repair.

§ 4.70. A sanitizing agent shall be used in the laundering of bed, bath, table and kitchen linens.

§ 4.71. Lead based paint shall not be used on any surfaces and items with which children and staff come in contact.

## Article 20. Farm and Domestic Animals.

§ 4.72. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping, living, eating, and food preparation areas.

§ 4.73. Stables and corrals shall be located so as to prevent contamination of any water supply.

§ 4.74. Manure shall be removed from stalls and corrals as often as necessary to prevent a fly problem.

§ 4.75. All animals maintained on the premises shall be tested, inoculated and licensed as required by law.

§ 4.76. The premises shall be kept free of stray domestic animals.

§ 4.77. Dogs and other small animal pets and their quarters shall be kept clean.

## Article 21. Primitive Campsites.

§ 4.78. The standards in Article 21 through Article 28 are applicable exclusively to the residential environment and equipment at primitive campsites. Permanent buildings and other aspects of the residential environment at a wilderness camp shall comply with the remaining standards in Part IV.

§ 4.79. All campsites shall be well drained and free from depressions in which water may stand.

§ 4.80. Natural sink-holes and other surface collectors of water shall be either drained or filled to prevent the breeding of mosquitoes.

§ 4.81. Campsites shall not be in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or other hazards.

§ 4.82. The campsite shall be free from debris, noxious plants, and uncontrolled weeds or brush.

## Article 22. Water in Primitive Campsites.

§ 4.83. Drinking water used at primitive campsites and on hikes away from permanent campsites shall be from a source known to be safe (free of coliform organisms) or shall be rendered safe before use in a manner approved by the Virginia Department of Health.

§ 4.84. An adequate supply of water, under pressure where possible, shall be provided at the cooking area for handwashing, dishwashing, food preparation and drinking.

## Article 23. Food Service Sanitation in Primitive Campsites.

§ 4.85. Food shall be obtained from approved sources and shall be properly identified.

§ 4.86. Milk products shall be pasteurized.

§ 4.87. Food and drink shall be maintained and stored so as to prevent contamination and spoilage.

§ 4.88. The handling of food shall be minimized through the use of utensils.

§ 4.89. Fruits and vegetables shall be properly washed prior to use.

§ 4.90. Food and food containers shall be covered and stored off the ground and on clean surfaces. Refrigerated food shall also be covered.

§ 4.91. Sugar and other condiments shall be packaged or served in closed dispensers.

§ 4.92. Poisonous and toxic materials shall be properly used, properly identified and stored separately from food.

§ 4.93. Persons with wounds or communicable diseases shall be prohibited from handling food.

§ 4.94. Persons who handle food and eating utensils for the group shall maintain personal cleanliness, shall keep hands clean at all times, and shall thoroughly wash their hands with soap and water after each visit to the toilet.

§ 4.95. Food contact surfaces shall be kept clean.

§ 4.96. All eating utensils and cookware shall be properly stored.

§ 4.97. Disposable or single use dishes, receptacles and utensils shall be properly stored, handled and used only once.

§ 4.98. Eating utensils shall not be stored with food or other materials and substances.

§ 4.99. The use of a common drinking cup shall not be

permitted.

§ 4.100. Only food which can be maintained in a wholesome condition with the equipment available shall be used at primitive camps.

§ 4.101. Ice which comes in contact with food or drink shall be obtained from an approved source and shall be made, delivered, stored, handled, and dispensed in a sanitary manner and be free from contamination.

§ 4.102. When ice and ice chests are used, meats and other perishable foods shall not be stored for more than 24-hours.

§ 4.103. Eating utensils and cookware shall be washed and sanitized after each use.

§ 4.104. No dish, receptacle or utensil used in handling food for human consumption shall be used or kept for use if chipped, cracked, broken, damaged or constructed in such a manner as to prevent proper cleaning and sanitizing.

§ 4.105. Solid wastes which are generated in primitive camps shall be disposed of at an approved sanitary landfill or similar disposal facility. Where such facilities are not available, solid wastes shall be disposed of daily by burial under at least two feet of compacted earth cover in a location which is not subject to inundation by flooding.

## Article 24.

### Toilet Facilities in Primitive Campsites.

§ 4.106. Where a water supply is not available sanitary type privies or portable toilets shall be provided. All such facilities shall be constructed as required by the Virginia Department of Health.

§ 4.107. All facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner to eliminate possible health or pollution hazards, to prevent access of flies and animals to their contents, and to prevent flybreeding.

§ 4.108. Privies shall be located at least 150 feet from a stream, lake or well and at least 75 feet from a sleeping or housing facility.

§ 4.109. Primitive campsites which are not provided with approved permanent toilet facilities shall have a minimum ratio of one toilet seat for every 15 persons.

§ 4.110. If chemical control is used to supplement good sanitation practices, proper pesticides and other chemicals shall be used safely and in strict accordance with label instructions.

## Article 25.

### Heating in Primitive Campsites.

§ 4.111. All living quarters and service structures at primitive campsites shall be provided with properly installed, operable, heating equipment.

§ 4.112. No portable heaters other than those operated by electricity shall be used.

§ 4.113. Any stoves or other sources of heat utilizing combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases.

§ 4.114. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, installed metal sheet, or other fireproof materials on the floor under each stove and extending at least 18 inches beyond the perimeter of the base of the stove.

§ 4.115. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stove-pipe shall be of fireproof material.

§ 4.116. A vented metal collar or other insulating device shall be installed around a stove pipe or vent passing through a wall, ceiling, floor or roof to prevent melting or combustion.

§ 4.117. A vented collar, insulating device, or chimney shall extend above the peak of the roof or otherwise be constructed in a manner which allows full draft of smoke.

§ 4.118. When a heating system has automatic controls the controls shall be of the type which will cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

§ 4.119. All heating equipment shall be maintained and operated in a safe manner to prevent the possibility of fire.

## Article 26.

### Sleeping Areas and Equipment in Primitive Campsites.

§ 4.120. Bedding shall be clean, dry, and sanitary.

§ 4.121. Bedding shall be adequate to ensure protection and comfort in cold weather.

§ 4.122. If used, sleeping bags shall be fiberfill and rated for 0°F.

§ 4.123. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

§ 4.124. Bedwetters shall have their bedding changed or dried as often as it is wet.

§ 4.125. If mattresses are used they shall be clean.

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§ 4.126. Mattresses placed in service after July 1, 1981, shall be fire retardant as evidenced by documentation from the manufacturer.

§ 4.127. A mattress cover shall be provided for each mattress.

§ 4.128. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitos.

§ 4.129. A separate bed, bunk, or cot shall be made available for each person.

## Article 27.

### Clothing in Primitive Campsites.

§ 4.130. Each child shall be provided with an adequate supply of clean clothing suitable for outdoor living appropriate to the geographic location and season.

§ 4.131. Sturdy, water-resistant, outdoor shoes or boots shall be provided for each child.

§ 4.132. An adequate personal storage area shall be available for each resident.

## Article 28.

### Fire Prevention in Primitive Campsites.

§ 4.133. With the consultation and approval of the local fire authority a written fire plan shall be established indicating the campsite's fire detection system, fire alarm and evacuation procedures.

§ 4.134. The fire plan shall be implemented through the conduct of fire drills at the campsite at least once each month.

§ 4.135. A record of all fire drills shall be maintained.

§ 4.136. The record for each fire drill shall be retained two years subsequent to the drill.

§ 4.137. An approved 2A 10BC fire extinguisher in operable condition shall be maintained immediately adjacent to the kitchen or food preparation area.

§ 4.138. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other combustion at the primitive campsite.

## PART V.

### PROGRAMS AND SERVICES.

## Article 1.

### Criteria for Admission.

§ 5.1. Each residential facility for children except secure detention facilities shall have written criteria for admission

that shall be made available to all parties when placement for a child is being considered. Such criteria shall include:

1. A description of the population to be served;
2. A description of the types of services offered; and
3. Intake and admission procedures including necessary referral documentation.

§ 5.2. No child with special needs shall be accepted for placement by a facility unless that facility has a program appropriate to meet those needs or arrangements are made for meeting those needs through community resources unless the child's admission is required by court order.

§ 5.3. The facility shall accept and maintain only those children whose needs are compatible with those services provided through the facility unless a child's admission is required by court order.

§ 5.4. A facility shall not knowingly accept into care a child whose health or behavior shall present a clear and present danger to the child or others residing in the facility unless the facility is licensed or certified to provide such care or a child's admission is required by court order. (See requirements for certification or special licensure.)

## Article 2.

### Admission of Blind or Visually Impaired Children.

§ 5.5. When a blind or visually impaired child is admitted to a residential facility for children, the facility shall obtain the services of the staff of the Virginia Department for the Visually Handicapped as consultants for assessment, program planning and prescribed teaching (if not previously obtained).

§ 5.6. Provision of the services of the Department for the Visually Handicapped shall be documented in the child's record.

§ 5.7. If the services of the Department for the Visually Handicapped are not obtained the child's placement shall be considered inappropriate.

## Article 3.

### Interstate Compact on the Placement of Children.

§ 5.8. No child shall be accepted for placement from outside of the Commonwealth of Virginia without the prior approval of the administrator of the Interstate Compact on the Placement of Children, Virginia Department of Social Services, except that this section shall not apply when the Interstate Compact Relating to Juveniles applies.

§ 5.9. Documentation of approval of the compact administrator shall be retained in the child's record.

## Article 4. Documented Study of the Child.

§ 5.10. Acceptance for care, other than emergency or diagnostic care, shall be based on an evaluation of a documented study of the child except that the requirements of this article shall not apply (i) to temporary care facilities, or (ii) to secure detention facilities.

§ 5.11. If a facility is specifically approved to provide residential respite care, the acceptance by the facility of a child as eligible for respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

§ 5.12. In facilities required to base their acceptance for care on a documented study of the child, at the time of a routine admission or 30 days after an emergency admission each child's record shall contain all of the elements of the documented study.

§ 5.13. The documented study of the child shall include all of the following elements (When information on the child is not available, the reason shall be documented in the child's record):

1. A formal request or written application for admission;
2. Identifying information documented on a face sheet (see § 5.14);
3. Physical examination as specified in § 5.59;
4. Medical history (see § 5.15);
5. A statement, such as a report card, concerning the child's recent scholastic performance, including a current Individual Education Plan (IEP), if applicable;
6. Results of any psychiatric or psychological evaluations of the child, if applicable;
7. Social and developmental summary (see § 5.16);
8. Reason for referral; and
9. Rationale for acceptance.

§ 5.14. Identifying information on a face sheet shall include:

1. Full name of resident;
2. Last known residence;
3. Birthdate;
4. Birthplace;

5. Sex of child;

6. Racial and national background;

7. Child's Social Security number;

8. Religious preference of child or parents;

9. Custody status indicating name and address of legal guardian, if any;

10. Names, addresses and telephone numbers for emergency contacts, parents, guardians or representative of the child-placing agency, as applicable; and

11. Date of admission.

§ 5.15. A medical history shall include:

1. Serious illnesses and chronic conditions of the child's parents and siblings, if known;
2. Past serious illnesses, infectious diseases, serious injuries, and hospitalizations of the child;
3. Psychological, psychiatric and neurological examinations, if applicable;
4. Name, address and telephone number of child's former physician(s), when information is available; and
5. Name, address and telephone number of child's former dentist(s), when information is available.

§ 5.16. A social and developmental summary shall include:

1. Description of family structure and relationships;
2. Previous placement history;
3. Current behavioral functioning including strengths, talents, and problems;
4. Documentation of need for care apart from the family setting;
5. Names, address(es), Social Security numbers, and marital status of parents; and
6. Names, ages, and sex of siblings.

## Article 5. Preplacement Activities Documentation.

§ 5.17. At the time of the admission, except emergency admissions, involuntary admissions to security settings or admissions by court order the facility shall provide evidence of its cooperation with the placing agency in preparing the child and the family for the child's

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admission by documenting the following:

1. A preplacement visit by the child accompanied by a family member, an agency representative or other responsible adult;
2. Preparation through sharing information with the child, the family and the placing agency about the facility, the staff, the children and activities; and
3. Written confirmation of the admission decision to the family or legal guardian and to the placing agency.

## Article 6. Authority to Accept Children.

§ 5.18. Children shall be accepted only by court order or by written placement agreement with parents, legal guardians or other individuals or agencies having legal authority to make such an agreement except that this requirement shall not apply to temporary care facilities when a voluntary admission is made according to Virginia law. (See Part V, Article 9)

## Article 7. Written Placement Agreement.

§ 5.19. At the time of admission the child's record shall contain the written placement agreement from the individual or agency having custody or a copy of the court order, or both, authorizing the child's placement.

§ 5.20. The written placement agreement shall:

1. Give consent for the child's placement in the facility designating the name and physical location of the facility and the name of the child;
2. Recognize the rights of each of the parties involved in the placement clearly defining areas of joint responsibility in order to support positive placement goals;
3. Include financial responsibility, where applicable;
4. Specify the arrangements and procedures for obtaining consent for necessary medical, dental and surgical treatment or hospitalization;
5. Address the matter of all absences from the facility and shall specify the requirements for notifying or obtaining approval of the party having legal responsibility for the child. If there are to be regular and routine overnight visits away from the facility without staff supervision the agreement must state that advance approval of the individual(s) or agency legally responsible for the child is required.

## Article 8. Emergency Admissions.

§ 5.21. Facilities other than temporary care facilities or secure detention facilities receiving children under emergency circumstances shall meet the following requirements:

1. Have written policies and procedures governing such admissions; and
2. Place in each child's record a written request for care or documentation of an oral request for care.

## Article 9. Temporary Care Facility.

§ 5.22. At the time of admission to a temporary care facility the following shall be documented in the child's record:

1. A written request for admission or documentation of an oral request for care;
2. A court order or a written placement agreement (see § 5.18), if the facility is licensed pursuant to Chapter 10 of Title 63.1 of the Code of Virginia as a Child Caring Institution;
3. Identifying information documented on a face sheet which shall include:
  - a. Full name of child,
  - b. Birthdate,
  - c. Sex of child,
  - d. Racial/ethnic background,
  - e. Last known address,
  - f. Names and addresses of persons or agencies to contact in case of emergency,
  - g. Date of admission, and
  - h. Child's social security number;
4. The child's health status including:
  - a. A statement of known or obvious illnesses and handicapping conditions;
  - b. A statement of medications currently being taken;
  - c. A statement of the child's general health status; and
  - d. Name, address and telephone number of the child's physician, if known; and
5. A statement describing the child's need for immediate temporary care.

§ 5.23. When identifying information is not available the reason shall be documented on the face sheet.

## Article 10. Discharge.

§ 5.24. If a facility is specifically approved to provide residential respite care a child will be discharged when the child and his parents/guardians no longer intend to use the facility's services.

§ 5.25. All facilities, except for secure detention facilities, shall have written criteria for termination of care that shall include:

1. Criteria for a child's completion of the program as described for compliance with § 2.5; and
2. Conditions under which a child may be discharged before completing the program.

§ 5.26. Except when discharge is ordered by a court of competent jurisdiction prior to the planned discharge date each child's record shall contain the following:

1. Documentation that the termination of care has been planned with the parent/guardian/child-placing agency and with the child; and
2. A written discharge plan and documentation that it was prepared and discussed with the child, when appropriate, prior to the child's discharge. The plan shall contain at least:
  - a. An assessment of the child's continuing needs; and
  - b. A recommended plan for services in the youth's new environment.

§ 5.27. No later than 10 days after any discharge, except those from secure detention, the child's record shall contain the following information:

1. Date of discharge;
2. Reason for discharge;
3. Documentation that the reason for discharge was discussed with the parent/guardian/child-placing agency and, when appropriate, with the child, except that this requirement does not apply to court ordered discharges;
4. Forwarding address of the child, if known;
5. Name and address of legally responsible party to whom discharge was made; and
6. In cases of interstate placement documentation that the Administrator of the Interstate Compact on the

Placement of Children was notified of the discharge.

§ 5.28. A comprehensive discharge summary shall be placed in the child's record no later than 30 days after discharge except in a secure detention facility.

§ 5.29. A comprehensive discharge summary shall include:

1. Length of a child's residence at the time of discharge;
2. The name of the child's designated case coordinator, if assigned;
3. Information concerning new or currently prescribed medication including when and why it was prescribed, the dosage, and whether it is to be continued;
4. Summary of the child's overall progress during placement;
5. Summary of family contracts during placement, if any; and
6. Reasons for discharge.

§ 5.30. Except in secure detention, children shall be discharged only to the legally responsible party from whom they were accepted except (i) in cases where legal responsibility has been transferred to another person or agency during the period of the child's stay in the facility or (ii) in cases where a child committed pursuant to a court order is given a direct discharge by the agents of the appropriate State Board in accordance with law and policy.

## Article 11. Placement of Children Outside the Facility.

§ 5.31. Except in a secure detention facility the facility shall not place a child away from the facility, including in staff residences regardless of location, without first having obtained a Child Placing Agency license from the Department of Social Services. Temporary absences for the purposes of medical care, attendance at day school, or vacations shall not be deemed to be placements.

## Article 12. Service Plan.

§ 5.32. A written individualized service plan, based on information derived from the documented study of the child and other assessments made by the facility, shall be developed for each child, within 30 days of admission and placed in the child's master file except that the requirements of this article do not apply (i) to secure detention facilities or (ii) to temporary care facilities.

§ 5.33. The following parties shall participate, unless clearly inappropriate, in developing the initial individualized service plan:

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1. The child;
2. The child's family or legally authorized representative;
3. The placing agency; and
4. Facility staff.

§ 5.34. The degree of participation, or lack thereof, of each of the parties listed in § 5.33 in developing the service plan shall be documented in the child's record.

§ 5.35. The individualized service plan shall include, but not necessarily be limited to, the following:

1. A statement of the resident's current level of functioning including strengths and weaknesses, and corresponding educational, residential and treatment/training needs;
2. A statement of goals and objectives meeting the above identified needs;
3. A statement of services to be rendered and frequency of services to accomplish the above goals and objectives;
4. A statement identifying the individual(s) or organization(s) that will provide the services specified in the statement of services;
5. A statement identifying the individual(s) delegated the responsibility for the overall coordination and integration of the services specified in the plan;
6. A statement of the timetable for the accomplishment of the resident's goals and objectives; and
7. The estimated length of the resident's stay.

## Article 13. Quarterly Progress Reports.

§ 5.36. For all facilities except secure detention facilities written progress summary reports completed at least every 90 days shall be included in each child's record and shall include:

1. Reports of significant incidents, both positive and negative;
2. Reports of visits with the family;
3. Changes in the child's family situation;
4. Progress made toward the goals and objectives described in the Service Plan required by § 5.32;
5. School reports;

6. Discipline problems in the facility and the community;

7. Summary of the child's social, emotional, and physical development during the previous three months including a listing of any specialized services and on-going medications prescribed;

8. Reevaluation of the placement including tentative discharge plans.

## Article 14. Annual Service Plan Review.

§ 5.37. For all facilities except secure detention facilities at least annually the following parties shall participate, unless clearly inappropriate, in formally reviewing and rewriting the service plan based on the child's current level of functioning and needs:

1. The resident;
2. The resident's family or legally authorized representative;
3. The placing agency; and
4. Facility staff.

§ 5.38. The degree of participation, or lack thereof, of each of the parties listed in § 5.37 in reviewing and rewriting the service plan shall be documented in the child's record except that this section does not apply to secure detention facilities.

§ 5.39. Staff responsible for the daily implementation of the child's individual service plan shall be represented on the staff team that evaluates adjustment and progress and makes plans for individual children except that this section does not apply to secure detention facilities.

§ 5.40. Staff responsible for daily implementation of the child's individualized service plan shall be able to describe resident behavior in terms of the objectives in the service plan except that this section does not apply to secure detention facilities.

## Article 15. Service Plan for Temporary Care Facilities.

§ 5.41. An individualized service plan including the elements required by § 5.42 shall be developed for each child admitted to a temporary care facility and placed in the child's master file within 72 hours of admission.

§ 5.42. The individualized service plan shall include:

1. The child's description of his situation/problem;
2. Documentation of contact with the child's parent or guardian to obtain his description of the child's

situation/problem;

3. The facility staff's assessment of the child's situation/problem;
4. A plan of action including:
  - a. Services to be provided,
  - b. Activities to be provided,
  - c. Who is to provide services and activities, and
  - d. When services and activities are to be provided;
5. The anticipated date of discharge, and
6. An assessment of the child's continuing need for services.

## Article 16. Counseling and Social Services.

§ 5.43. For all facilities except secure detention facilities the program of the facility shall be designed to provide counseling and social services which address needs in the following areas:

1. Helping the child and the parents or guardian to understand the effects on the child of separation from the family and the effect of group living;
2. Assisting the child and the family in maintaining their relationships and planning for the future care of the child;
3. Utilizing appropriate community resources in providing services and maintaining contacts with such resources;
4. Helping the child with problems affecting the ability to have satisfying personal relationships and use of the capacity for growth;
5. Conferring with the child care staff to help them understand the child's needs in order to promote adjustment to group living; and
6. Working with the child and with the family or any placing agency that may be involved in planning for the child's future and in preparing the child for return home, for independent living, or for other residential care.

§ 5.44. The provision of counseling and social services shall be documented in each child's record except that this section does not apply to secure detention facilities.

§ 5.45. For all facilities, except secure detention facilities, counseling and/or other social services consistent with the goals of the Service Plan shall be provided to meet the

specific needs of each child in one of the following ways:

1. By a qualified staff member;
2. By service staff of the agency that placed the child provided such staff is available on an as needed basis rather than on a limited basis (e.g. quarterly or semiannually);
3. On a contract basis by a professional child and family service worker licensed to practice in the Commonwealth of Virginia, other state(s) or the District of Columbia; or
4. On a contract basis by a professional child and family service worker who is working under the auspices of a public or private, nonprofit agency sponsored by a community based group.

## Article 17. Residential Services.

§ 5.46. There shall be evidence of a structured program of care that is designed to:

1. Meet the child's physical needs;
2. Provide protection, guidance and supervision;
3. Promote a sense of security and self-worth; and
4. Meet the objectives of any required service plan.

§ 5.47. There shall be evidence of a structured daily routine that is designed to assure the delivery of program services.

§ 5.48. A daily activity log shall be maintained as a means of informing staff of significant happenings or problems experienced by children including health and dental complaints or injuries.

§ 5.49. Entries in the daily activity log shall be signed or initialed by the person making the entry.

§ 5.50. Routines shall be planned to assure that each child shall have the amount of sleep and rest appropriate for his age and physical condition.

§ 5.51. Staff shall provide daily monitoring and supervision, and instruction, as needed, to promote the personal hygiene of the children.

## Article 18. Health Care Procedures.

§ 5.52. Facilities shall have written procedures for the prompt provision of:

1. Medical and dental services for health problems identified at admission;

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2. Routine ongoing and follow-up medical and dental services after admission; and

3. Emergency services for each child as provided by statute or by agreement with the child's parent(s) or legal guardian, or both.

§ 5.53. For all facilities except temporary care facilities written information concerning each child shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician or dentist, or both, to be notified;

2. Name, address, and telephone number of relative or other person to be notified;

3. Medical insurance company name and policy number or Medicaid number except that this requirement does not apply to secure detention facilities;

4. Information concerning:

a. Use of medication,

b. Medication allergies,

c. Any history of substance abuse except that this requirement does not apply to secure detention, and

d. significant medical problems; and

5. Written permission for emergency medical or dental care or a procedure and contacts for obtaining consent for emergency medical or dental care except that this section does not apply to secure detention facilities.

§ 5.54. Facilities specifically approved to provide respite care shall update the information required by § 5.53 at the time of each individual stay at the facility.

## Article 19.

### Physical Examinations.

§ 5.55. Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility, except that (i) the report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility licensed or certified by a state agency to another, (ii) a physical examination shall be conducted within 30 days after admission if a child is admitted on an emergency basis and a report of physical examination is not available, and (iii) this section does not apply if a child is admitted to a secure detention facility or to a temporary care facility.

§ 5.56. Following the initial examination, each child shall

have a physical examination annually except that this section does not apply to (i) security detention facilities, or (ii) temporary care facilities.

§ 5.57. In all facilities except (i) secure detention facilities, and (ii) temporary care facilities additional or follow-up examination and treatment shall be required when:

1. Prescribed by the examining physician; or

2. Symptoms indicate the need for an examination or treatment by a physician.

§ 5.58. Each physical examination report shall be included in the child's record.

§ 5.59. For all facilities except (i) secure detention facilities and (ii) temporary care facilities each physical examination report shall include:

1. Immunizations administered;

2. Visual acuity;

3. Auditory acuity;

4. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;

5. Allergies, chronic conditions, and handicaps, if any;

6. Nutritional requirements, including special diets, if any;

7. Restriction of physical activities, if any;

8. Recommendations for further treatment, immunizations, and other examinations indicated;

9. The date of the physical examination; and

10. The signature of a licensed physician, the physician's designee, or an official of a local health department.

§ 5.60. In all facilities except (i) secure detention facilities and (ii) temporary care facilities a child with a communicable disease, whose best interests would not be served by prohibiting admission, may be admitted only after a licensed physician certifies that:

1. The facility is capable of providing care to the child without jeopardizing other children in care and staff; and

2. The facility is aware of the required treatment for the child and procedures to protect other children in care and staff.

§ 5.61. Recommendations for follow-up medical observation

and treatment shall be carried out at the recommended intervals except that this section does not apply to (i) secure detention facilities or (ii) temporary care facilities.

§ 5.62. Except for (i) secure detention facilities, (ii) temporary care facilities, and (iii) respite care facilities, each facility shall provide written evidence of:

1. Annual examinations by a licensed dentist; and
2. Follow-up dental care as recommended by the dentist or as indicated by the needs of each child.

§ 5.63. Each child's record shall include notations of health and dental complaints and injuries showing symptoms and treatment given.

§ 5.64. Each child's record shall include a current record of ongoing psychiatric or other mental health treatment and reports, if applicable.

§ 5.65. Provision shall be made for suitable isolation of any child suspected of having a communicable disease.

§ 5.66. A well stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

## Article 20. Medication.

§ 5.67. All medication shall be securely locked and properly labeled.

§ 5.68. Medication shall be delivered only by staff authorized by the director to do so.

§ 5.69. Staff authorized to deliver medication shall be informed of any known side effects of the medication and the symptoms of the effect.

§ 5.70. A program of medication shall be instituted for a specific child only when prescribed in writing by a licensed physician.

§ 5.71. Medications that are classified as "controlled substances" as defined in § 54.1-3401 of the Code of Virginia shall only be obtained from a licensed physician or from a licensed pharmacist upon individual prescription of a licensed physician.

§ 5.72. A daily log shall be maintained of all medicines received by the individual child.

§ 5.73. The attending physician shall be notified immediately of drug reactions or medication errors.

§ 5.74. The telephone number of a Regional Poison Control Center shall be posted on or next to at least one nonpay telephone in each building in which children sleep or participate in programs.

§ 5.75. At least one 30cc bottle of syrup of Ipecac shall be available on the premises of the facility for use at the direction of the Poison Control Center or physician.

## Article 21. Nutrition.

§ 5.76. Provisions shall be made for each child to have three nutritionally balanced meals daily.

§ 5.77. Menus shall be planned at least one week in advance.

§ 5.78. Any deviation(s) from the menu shall be noted.

§ 5.79. The menus including any deviations shall be kept on file for at least six months.

§ 5.80. The daily diet for children shall be based on the generally accepted "Four Food Groups" system of nutrition planning. (The Virginia Polytechnic Institute and State University Extension Service is available for consultation.)

§ 5.81. The quantity of food served shall be adequate for the ages of the children in care.

§ 5.82. Special diets shall be provided when prescribed by a physician.

§ 5.83. The established religious dietary practices of the child shall be observed.

§ 5.84. Staff who eat in the presence of the children shall be served the same meals.

§ 5.85. There shall be no more than 15 hours between the evening meal and breakfast the following day.

## Article 22. Discipline and Management of Resident Behavior.

§ 5.86. The facility shall have written disciplinary and behavior management policies, including written rules of conduct, appropriate to the age and developmental level of the children in care.

§ 5.87. Disciplinary and behavior management policies and rules of conduct shall be provided to children, families and referral agencies prior to admission except that for court ordered or emergency admissions this information shall be provided within 72 hours after admission.

§ 5.88. There shall be written procedures for documenting and monitoring use of the disciplinary and behavior management policies.

§ 5.89. Control, discipline and behavior management shall be the responsibility of the staff.

## Article 23. Confinement Procedures.

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§ 5.90. When a child is confined to his own room as a means of discipline, the room shall not be locked nor the door secured in any manner that will prohibit the child from opening it, except that this section does not apply to secure custody facilities such as learning centers and secure detention facilities.

§ 5.91. Any child confined to his own room shall be able to communicate with staff.

§ 5.92. There shall be a staff check on the room at least every 30 minutes.

§ 5.93. The use of confinement procedures shall be documented.

## Article 24. Prohibitions.

§ 5.94. The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a client's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record;

2. Denial of contacts and visits with attorney, probation officer, or placing agency representative;

3. Denial of contacts and visits with family or legal guardian except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

4. Delay or withholding of incoming or outgoing mail except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

5. Any action which is humiliating, degrading, or abusive;

6. Corporal punishment except as permitted in a public school or a school maintained by the state pursuant to § 22.1-280 of the Code of Virginia ;

7. Subjection to unsanitary living conditions;

8. Deprivation of opportunities for bathing or access to toilet facilities except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record;

9. Deprivation of health care including counseling;

10. Intrusive aversive therapy except as permitted by other applicable state regulations;

11. Application of aversive stimuli except as part of an intrusive aversive therapy plan approved pursuant

to other applicable state regulations;

12. Administration of laxatives, enemas, or emetics except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record;

13. Deprivation of opportunities for sleep or rest except as ordered by a licensed physician for a legitimate medical purpose and documented in the client's record; and

14. Denial of contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to implement § 37.1-84.1 of the Code of Virginia and advocates employed by the Department for Rights of the Disabled to implement §§ 51.5-36 through 51.5-39 of the Code of Virginia, PL 99-319 § 201.42 USC 10841, and PL 98-527, 42 USC § 6000 et seq.

## Article 25. Chemical or Mechanical Restraints.

§ 5.95. The use of mechanical or chemical restraints is prohibited unless use is specifically permitted by a special license or certification module.

## Article 26. Physical Restraint.

§ 5.96. A child may be physically restrained only when the child's uncontrolled behavior would result in harm to the child or others and when less restrictive interventions have failed.

§ 5.97. The use of physical restraint shall be only that which is minimally necessary to protect the child or others.

§ 5.98. If the use of physical restraint or the use of other measures permitted by a certification module is unsuccessful in calming and moderating the child's behavior the child's physician, the rescue squad, the police or other emergency resource shall be contacted for assistance.

§ 5.99. Any application of physical restraint shall be fully documented in the child's record as to date, time, staff involved, circumstances, reasons for use of physical restraint, and extent of physical restraint used.

## Article 27. Seclusion.

§ 5.100. Secluding a child in a room with the door secured in any manner that will prohibit the child from opening it shall be prohibited unless it is specifically permitted by a special license or certification module.

## Article 28.

## Timeout Procedures.

§ 5.101. Timeout procedures may only be used at times and under conditions specified in the facility's disciplinary or behavior management policies.

§ 5.102. When a child is placed in a timeout room, the room shall not be locked nor the door secured in any manner that will prohibit the child from opening it.

§ 5.103. Any child in a timeout room shall be able to communicate with staff.

§ 5.104. The use of timeout procedures shall not be used for periods longer than 30 consecutive minutes.

§ 5.105. Written documentation shall be maintained verifying that each child placed in a timeout room has been checked by staff at least every 15 minutes.

§ 5.106. A child placed in a timeout room shall have bathroom privileges according to need.

§ 5.107. If a meal is scheduled while a child is in timeout, the meal shall be provided to the child at the end of the timeout procedure.

## Article 29. Education.

§ 5.108. Each child of compulsory school attendance age shall be enrolled in an appropriate educational program as provided in the Code of Virginia.

§ 5.109. The facility shall provide educational guidance and counseling for each child in selection of courses and shall ensure that education is an integral part of the child's total program.

§ 5.110. Facilities operating educational programs for handicapped children shall operate those programs in compliance with applicable state and federal regulations.

§ 5.111. When a handicapped child has been placed in a residential facility without the knowledge of school division personnel in the child's home locality, the facility shall contact the superintendent of public schools in that locality in order to effect compliance with applicable state and federal requirements relative to the education of handicapped children.

§ 5.112. When a facility has an academic or vocational program that is not certified or approved by the Department of Education, teachers in the program shall provide evidence that they meet the qualifications that are required in order to teach those specific subjects in the public schools.

## Article 30. Religion.

§ 5.113. The facility shall have written policies regarding the opportunities for the children to participate in religious activities.

§ 5.114. The facility's policies on religious participation shall be available to the child and any individual or agency considering the placement of a child in the facility.

§ 5.115. Children shall not be coerced to participate in religious activities.

## Article 31. Recreation.

§ 5.116. There shall be a written description of the recreation program for the facility showing activities which are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the children and which includes:

1. Opportunities for individual and group activities;
2. Free time for children to pursue personal interests which shall be in addition to a formal recreation program;
3. Except in secure detention facilities, use of available community recreational resources and facilities;
4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and
5. Regularly scheduled indoor and outdoor recreational activities that are specifically structured to develop skills and attitudes (e.g., cooperation, acceptance of losing, etc.).

§ 5.117. The recreational program provided indoors, outdoors (both on and off the premises), and on field trips shall be directed and supervised by adults who are knowledgeable in the safeguards required for the specific activities.

§ 5.118. Opportunities shall be provided for coeducational activities appropriate to the ages and developmental levels of the children.

## Article 32. Community Relationships.

§ 5.119. Opportunities shall be provided for the children in a group living situation to participate in activities and to utilize resources in the community except that this section does not apply to secure detention facilities.

§ 5.120. Community interest in children and efforts on their behalf (public parties, entertainment, invitations to visit families) shall be carefully evaluated to ascertain that these are in the best interest of the children.

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## Article 33. Clothing.

§ 5.121. Provisions shall be made for each child to have his own adequate supply of clean, comfortable, well-fitting clothes and shoes for indoor and outdoor wear.

§ 5.122. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities.

§ 5.123. Children shall have the opportunity to participate in the selection of their clothing except that this section does not apply to secure detention facilities.

§ 5.124. Each child's clothing shall be inventoried and reviewed at regular intervals to assure repair or replacement as needed.

§ 5.125. The child shall be allowed to take personal clothing when the child leaves the facility.

## Article 34. Allowances and Spending Money.

§ 5.126. The facility shall provide opportunities appropriate to the ages and developmental levels of the children for learning the value and use of money through earning, budgeting, spending, giving and saving except that this section does not apply to secure detention facilities.

§ 5.127. There shall be a written policy regarding allowances except that this section does not apply to secure detention facilities.

§ 5.128. The written policy regarding allowances shall be made available to parents or guardians, or both, at the time of admission except that this section does not apply to secure detention facilities.

§ 5.129. The facility shall provide for safekeeping and for record keeping of any money that belongs to children.

## Article 35. Work and Employment.

§ 5.130. Any assignment of chores, which are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the child.

§ 5.131. Chores shall not interfere with regular school programs, study periods, meals or sleep.

§ 5.132. Work assignments or employment outside the facility including reasonable rates of payment shall be approved by the program director with the knowledge and consent of the parent, guardian or placing agency except that this section does not apply to secure detention facilities.

§ 5.133. The facility shall ensure that any child employed

inside or outside the facility is paid at least at the minimum wage required by the applicable law concerning wages and hours and that such employment complies with all applicable laws governing labor and employment except that this section does not apply to secure detention facilities.

§ 5.134. Any money earned through employment of a child shall accrue to the sole benefit of that child.

## Article 36. Visitation at the Facility and to the Child's Home.

§ 5.135. The facility shall provide written visitation policies and procedures permitting reasonable visiting privileges and flexible visiting hours.

§ 5.136. Copies of the written visitation policies and procedures shall be made available to the parents, guardians, the child and other interested persons important to the child no later than the time of admission except that when parents or guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 12 hours after admission.

## Article 37. Use of Vehicles and Power Equipment.

§ 5.137. Any transportation provided for or used by children shall be in compliance with state, federal or international laws relating to:

1. Vehicle safety and maintenance;
2. Licensure of vehicles; and
3. Licensure of drivers.

§ 5.138. There shall be written safety rules for transportation of children, including handicapped children, appropriate to the population served.

§ 5.139. There shall be written safety rules for the use and maintenance of vehicles and power equipment.

## Article 38. Reports to Court.

§ 5.140. When the facility has received legal custody of a child pursuant to §§ 16.1-279 A or 16.1-279 B of the Code of Virginia copies of any foster care plans (required by §§ 16.1-281 and 16.1-282 of the Code of Virginia) submitted to the court shall be filed in the child's record except that this section does not apply to secure detention facilities.

## Article 39. Emergency Reports.

§ 5.141. Any serious incident, accident or injury to the child; any overnight absence from the facility without permission; any runaway; or any other unexplained

absence shall be reported to the parent/guardian/placing agency within 24 hours.

§ 5.142. The child's record shall contain:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name of the person who made the report to the parent/guardian or placing agency; and
6. The name of the person to whom the report was made.

#### Article 40. Suspected Child Abuse or Neglect.

§ 5.143. Any case of suspected child abuse or neglect shall be reported immediately to the local department of public welfare/social services as required by § 63.1-248.3 of the Code of Virginia.

§ 5.144. The child's record shall include:

1. Date and time the suspected abuse or neglect occurred;
2. Description of the incident;
3. Action taken as a result of the incident; and
4. Name of the person to whom the report was made at the local department.

#### PART VI. DISASTER OR EMERGENCY PLANS.

##### Article 1. Procedures for Meeting Emergencies.

§ 6.1. Established written procedures shall be made known to all staff and residents, as appropriate for health and safety, for use in meeting specific emergencies including:

1. Severe weather;
2. Loss of utilities;
3. Missing persons;
4. Severe injury; and
5. Emergency evacuation including alternate housing.

##### Article 2. Written Fire Plan.

§ 6.2. Each facility with the consultation and approval of the appropriate local fire authority shall develop a written plan to be implemented in case of a fire at the facility.

§ 6.3. Each fire plan shall address the responsibilities of staff and residents with respect to:

1. Sounding of fire alarms;
2. Evacuation procedures including assembly points, head counts, primary and secondary means of egress, evacuation of residents with special needs, and checking to ensure complete evacuation of the building(s);
3. A system for alerting fire fighting authorities;
4. Use, maintenance and operation of fire fighting and fire warning equipment;
5. Fire containment procedures including closing of fire doors, fire windows or other fire barriers;
6. Posting of floor plans showing primary and secondary means of egress; and
7. Other special procedures developed with the local fire authority.

§ 6.4. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations determined by the appropriate local fire authority.

§ 6.5. The written fire plan shall be reviewed with the local fire authority at least annually and updated, if necessary.

§ 6.6. The procedures and responsibilities reflected in the written fire plan shall be made known to all staff and residents.

##### Article 3. Posting of Fire Emergency Phone Number.

§ 6.7. The telephone number of the fire department to be called in case of fire shall be prominently posted on or next to each telephone in each building in which children sleep or participate in programs.

##### Article 4. Portable Fire Extinguishers.

§ 6.8. Portable fire extinguishers shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, on each floor there shall be installed and maintained at least one approved type ABC portable fire extinguisher having at least a 2A rating.

§ 6.9. Fire extinguishers shall be mounted on a wall or a

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post where they are clearly visible and so that the top is not more than five feet from the floor except that if a fire extinguisher weighs more than 140 pounds, it shall be installed so that the top is not more than 2-1/2 feet from the floor. They shall be easy to reach and remove and they shall not be tied down, locked in a cabinet, or placed in a closet or on the floor, except that where extinguishers are subject to malicious use, locked cabinets may be used provided they include a means of emergency access.

§ 6.10. All required fire extinguishers shall be maintained in operable condition at all times.

§ 6.11. Each fire extinguisher shall be checked by properly oriented facility staff at least once each month to ensure that the extinguisher is available and appears to be in operable condition. A record of these checks shall be maintained for at least two years and shall include the date and initials of the person making the inspection.

§ 6.12. Each fire extinguisher shall be professionally maintained at least once each year. Each fire extinguisher shall have a tag or label securely attached which indicates the month and year the maintenance check was last performed and which identifies the company performing the service.

## Article 5. Smoke Alarms.

§ 6.13. Smoke detectors or smoke detection systems shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, the facility shall provide at least one approved and properly installed smoke detector:

1. In each bedroom hallway;
2. At the top of each interior stairway;
3. In each area designated for smoking;
4. In or immediately adjacent to each room with a furnace or other heat source; and
5. In each additional location directed by the local building official, the local fire authority, or the state fire authority.

§ 6.14. Each smoke detector shall be maintained in operable condition at all times.

§ 6.15. If the facility is provided with single station smoke detectors each smoke detector shall be tested by properly oriented facility staff at least once each month and if it is not functioning, it shall be restored immediately to proper working order. A record of these tests shall be maintained for at least two years and shall include the date and initials of the person making the test.

§ 6.16. If the facility is provided with an automatic fire alarm system, the system shall be inspected by a qualified professional firm at least annually. A record of these inspections shall be maintained for at least two years and shall include the date and the name of the firm making the inspection.

## Article 6. Fire Drills.

§ 6.17. At least one fire drill (the simulation of fire safety procedures included in the written fire plan) shall be conducted each month in each building at the facility occupied by children.

§ 6.18. Fire drills shall include, as a minimum:

1. Sounding of fire alarms;
2. Practice in building evacuation procedures;
3. Practice in alerting fire fighting authorities;
4. Simulated use of fire fighting equipment;
5. Practice in fire containment procedures; and
6. Practice of other simulated fire safety procedures as may be required by the facility's written fire plan.

§ 6.19. During any three consecutive calendar months, at least one fire drill shall be conducted during each shift.

§ 6.20. False alarms shall not be counted as fire drills.

§ 6.21. The facility shall designate at least one staff member to be responsible for conducting and documenting fire drills.

§ 6.22. A record shall be maintained on each fire drill conducted and shall include the following information:

1. Building in which the drill was conducted;
2. Date of drill;
3. Time of drill;
4. Amount of time to evacuate building;
5. Specific problems encountered;
6. Staff tasks completed:
  - a. Doors and windows closed,
  - b. Head count,
  - c. Practice in notifying fire authority, and
  - d. Other;

7. Summary; and

8. Signature of staff member responsible for conducting and documenting the drill.

§ 6.23. The record for each fire drill shall be retained for two years subsequent to the drill.

§ 6.24. The facility shall designate a staff member to be responsible for the fire drill program at the facility who shall:

1. Ensure that fire drills are conducted at the times and intervals required by these standards and the facility's written fire plan;
2. Review fire drill reports to identify problems in the conduct of fire drills and in the implementation of the requirements of the written fire plan;
3. Consult with the local fire authority, as needed, and plan, implement and document training or other actions taken to remedy any problems found in the implementation of the procedures required by the written fire plan; and
4. Consult and cooperate with the local fire authority to plan and implement an educational program for facility staff and residents on topics in fire prevention and fire safety.

#### Article 7.

##### Staff Training in Fire Procedures.

§ 6.25. Each new staff member shall be trained in fire procedures and fire drill procedures within seven days after employment.

§ 6.26. Each new staff member shall be trained in fire procedures and fire drill procedures prior to assuming sole responsibility for the supervision of one or more children.

#### Article 8.

##### "Sighted Guide" Training for Emergency Use.

§ 6.27. When a blind or visually impaired child is admitted the facility shall obtain the services of an orientation and mobility specialist from the Department of Visually Handicapped to provide "sighted guide" training for use in emergencies except that this requirement shall not apply to secure detention facilities.

§ 6.28. "Sighted guide" training for use in emergencies shall be required of all personnel having responsibility for supervision of a blind or visually handicapped child except that this requirement shall not apply to secure detention facilities.

# 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.

## STATE AIR POLLUTION CONTROL BOARD

**NOTICE:** This regulation is excluded from Article 2 of the Administrative Process Act in accordance with (i) § 9-6.14:4.1 C 2 of the Code of Virginia, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority; (ii) § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors; and (iii) § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Air Pollution Control will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** VR 120-01. Regulations for the Control and Abatement of Air Pollution.

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

**Effective Date:** May 1, 1990

### Summary:

The amendments (i) prescribe the board's delegation of its authority to the department, (ii) update code references due to the recodification of Title 10 to 10.1 and correct technical errors, (iii) delete the severability provisions of § 120-02-08 because a blanket severability provision was added to the Administrative Process Act in 1987, and (iv) conform § 120-02-14 of the regulation to changes in § 10.1-1307 E of the Code.

VR 120-01. Regulations for the Control and Abatement of Air Pollution.

### PART I. GENERAL DEFINITIONS.

#### § 120-01-01. General.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in § 120-01-02.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in these regulations, terms used shall have the meanings commonly ascribed to them by recognized authorities.

C. In addition to the definitions given in this part, some other major divisions (i.e. parts, rules, etc.) of these regulations have within them definitions for use with that specific major division.

§ 120-01-02. Terms defined.

"Administrative Process Act" means Title 9, Chapter 1.1:1 of the Code of Virginia (1950), as amended.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or his authorized representative.

"Affected facility" means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Air quality" means the specific measurement in the ambient air of a particular air pollutant at any given time.

"Air quality control region" means any area designated as such in Appendix B.

"Air quality maintenance area" means any area which, due to current air quality and/or projected growth rate or both, may have the potential for exceeding any ambient air quality standard set forth in Part III within a subsequent 10-year period and designated as such in Appendix H.

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Ambient air quality standard" means any primary or secondary standard designated as such in Part III.

"Board" means the State Air Pollution Control Board or its designated representative.

*"Class I area"* means any prevention of significant deterioration area designated as such in Appendix L.

*"Class II area"* means any prevention of significant deterioration area designated as such in Appendix L.

*"Class III area"* means any prevention of significant deterioration area designated as such in Appendix L.

*"Consent agreement"* means an agreement that the owner will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with these regulations, by mutual agreement of the owner and the board.

*"Consent order"* means a consent agreement issued as an order. Such orders may be issued without a hearing.

*"Continuous monitoring system"* means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

*"Control program"* means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.
2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.
3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.
4. The date by which final compliance is to be achieved.

*"Criteria pollutant"* means any pollutant for which an ambient air quality standard is established under Part III.

*"Day"* means a 24-hour period beginning at midnight.

*"Delayed compliance order"* means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is

required to comply with any requirement contained in the applicable State Implementation Plan.

*"Dispersion technique"*

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

a. Using that portion of a stack which exceeds good engineering practice stack height;

b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. The preceding sentence does not include:

a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

b. The merging of exhaust gas streams where:

(1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

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c. Smoke management in agricultural or silvicultural prescribed burning programs;

d. Episodic restrictions on residential woodburning and open burning; or

e. Techniques under ~~paragraph~~ *subdivision 1 c* of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

*"Emergency"* means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

*"Emergency special order"* means any order of the board issued in a state of emergency without a hearing to owners who are permitting or causing air pollution, to cease such pollution. Such orders shall become invalid if an appropriate hearing is not held within 10 days after the effective date.

*"Emission limitation"* means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

*"Emission standard"* means any provision of Parts IV, V or VI which prescribes an emission limitation, or other requirements that control air pollution emissions.

*"Equivalent method"* means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

*"Excess emissions"* means emissions of air pollutant in excess of an emission standard.

*"Excessive concentration"* is defined for the purpose of determining good engineering practice (GEP) stack height under ~~paragraph~~ *subdivision 3* of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under ~~paragraph~~ *subdivision 2* of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and

which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of § 120-08-02, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under ~~paragraph~~ *subdivision 2* of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in ~~paragraph~~ *subdivision 1* of this definition, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

3. For sources seeking credit after January 12, 1979, for a stack height determined under ~~paragraph~~ *subdivision 2* of the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in ~~paragraph~~ *subdivision 2* of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

*"Executive director"* means the executive director of the State Department of Air Pollution Control Board or his designated representative.

*"Existing source"* means any stationary source other than a new source or modified source.

*"Facility"* means something that is built, installed or

established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means 42 USC 7401 et seq., 91 Stat 685.

"Good engineering practice" (GEP) stack height means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;
2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under Part VIII,

$$Hg = 2.5H,$$

provided the owner produces evidence that this equation was actually relied on in establishing an emission limitation;

- b. For all other stacks,

$$Hg = H + 1.5L,$$

where:

Hg = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

"Isokinetic sampling" means sampling in which the linear velocity of the gas entering the sampling nozzle is

equal to that of the undisturbed gas stream at the sample point.

"Locality" means a city, town, county or other public body created by or pursuant to state law.

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person.

"Metropolitan statistical area" means any area designated as such in Appendix G.

"Monitoring device" means the total equipment used to measure and record (if applicable) process parameters.

"Nearby" as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and

1. For purposes of applying the formulae provided in paragraph subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

2. For conducting demonstrations under paragraph subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in paragraph subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

"Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

"Nonattainment area" means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in Appendix K.

"Nonmethane" means, when used to modify volatile organic compounds, all volatile organic compounds except the following:

1. Methane

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2. Ethane
3. 1,1,1-trichloroethane (methyl chloroform)
4. Methylene chloride
5. Trichlorofluoromethane (CFC-11)
6. Dichlorodifluoromethane (CFC-12)
7. Chlorodifluoromethane (CFC-22)
8. Trifluoromethane (FC-23)
9. 1,1,2-trichlorotrifluoroethane (CFC-113)
10. 1,2-dichlorotetrafluoroethane (CFC-114)
11. Chloropentafluoroethane (CFC-115)

Inclusion of the above compounds in this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of Title I, Part A (Air Quality and Emission Limitations), Section 112 (National Emission Standards for Hazardous Air Pollutants); Title I, Part A (Air Quality and Emission Limitations), Section 111 (Standards of Performance for New Stationary Sources); and Title I, Part B (Ozone Protection), Section 157 (Regulations) of the federal Clean Air Act.

*"One hour"* means any period of 60 consecutive minutes.

*"One-hour period"* means any period of 60 consecutive minutes commencing on the hour.

*"Order"* means any decision or directive of the board, including special orders, emergency special orders and orders of all types, rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of these regulations. Unless specified otherwise in these regulations, orders shall only be issued after the appropriate hearing.

*"Organic compound"* means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

*"Owner"* means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

*"Particulate matter"* means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

*"Particulate matter emissions"* means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

*"PM10"* means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

*"PM10 emissions"* means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

*"Performance test"* means a test for determining emissions from new or modified sources.

*"Person"* as used in these regulations, shall have no connotation other than that customarily assigned to the term "person", but shall include bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals.

*"Pollutant"* means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

*"Prevention of significant deterioration area"* means any area not designated as a nonattainment area in Appendix K for a particular pollutant and designated as such in Appendix L.

*"Proportional sampling"* means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

*"Reference method"* means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in Part III: the applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been cancelled in accordance with 40 CFR 53.11 or 40 CFR 53.16.
2. For emission standards in Parts IV and V: Appendix A of 40 CFR Part 60.
3. For emission standards in Part VI: Appendix B of

40 CFR Part 61.

**"Regional director"** means the regional director of an air quality control administrative region of the Department of Air Pollution Control or his designated representative.

**"Reid vapor pressure"** means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials, Standard D323-82, Test Method for Vapor Pressure of Petroleum Products (Reid Method) (see Appendix M).

**"Run"** means the net period of time during which an emission sampling is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

**"Shutdown"** means the cessation of operation of an affected facility for any purpose.

**"Source"** means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

**"Special order"** means any order of the board issued after an appropriate hearing:

1. To owners who are permitting or causing air pollution to cease and desist from such pollution;
2. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the board, to construct such facilities in accordance with or otherwise comply with such approved plan;
3. To owners who have violated or failed to comply with the terms and provisions of any order or directive issued by the board to comply with such terms and provisions;
4. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from such contravention and to comply with such air quality standards and policies; and
5. To require any owner to comply with the provisions of this chapter and any decision of the board.

**"Stack"** means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or

duct, but not including flares.

**"Stack in existence"** means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or
2. Entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

**"Standard conditions"** means a temperature of 20° C (68° F) and a pressure of 760 mm of Hg (29.92 in. of Hg).

**"Standard of performance"** means any provision of Part V which prescribes an emission limitation or other requirements that control air pollution emissions.

**"Startup"** means the setting in operation of an affected facility for any purpose.

**"State Implementation Plan"** means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under Section 110 of the federal Clean Air Act, and which implements the requirements of Section 110.

**"Stationary source"** means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, as amended by the Supplement (see Appendix M).

**"Total suspended particulate"** (TSP) means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.

**"True vapor pressure"** means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) Publication 2517, Evaporation Loss from External Floating-Roof Tanks (see Appendix M). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

**"Urban area"** means any area consisting of a core city with a population of 50,000 or more plus any surrounding

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localities with a population density of 80 persons per square mile and designated as such in Appendix C.

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in API Publication 2517, Evaporation Loss from External Floating-Roof Tanks (see Appendix M).

"Variance" means the temporary exemption of an owner or other person from these regulations, or a temporary change in these regulations as they apply to an owner or other person.

"Virginia Air Pollution Control Law" means Title ~~10~~ 10.1, Chapter ~~1-2~~ 13 of the Code of Virginia (~~1950~~), as amended.

"Volatile organic compound" means any organic compound which has a vapor pressure of .0019 pounds per square inch absolute or greater at standard conditions.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well being.

## PART II. GENERAL PROVISIONS.

### § 120-02-01. Applicability.

A. The provisions of these regulations, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. The provisions of these regulations, unless specified otherwise, shall apply to only those pollutants for which ambient air quality standards are set forth in Part III ~~and/~~ or for which emission standards are set forth in Parts IV, V and VI or both.

C. No provision of these regulations shall limit the power of the board to take such appropriate action as necessary to control and abate air pollution in emergency situations.

D. By the adoption of these regulations, the board confers upon the department the administrative, enforcement and decisionmaking authority enumerated therein.

### § 120-02-02. Establishment of regulations and orders.

A. Regulations for the Control and Abatement of Air Pollution are established to implement the provisions of the Virginia Air Pollution Control Law and the federal

Clean Air Act.

B. Regulations for the Control and Abatement of Air Pollution shall be adopted, amended or repealed in accordance with the provisions of § ~~10-17.18~~ 10.1-1308 of the Virginia Air Pollution Control Law, Articles 1 and 2 of the Administrative Process Act and the Public Participation Guidelines in Appendix E.

C. Regulations, amendments and repeals shall become effective as provided in § 9-6.14:9.3 of the Administrative Process Act, except in no case shall the effective date be less than 60 days after adoption by the board.

D. If necessary in an emergency situation, the board may adopt, amend or stay a regulation as an exclusion under § 9-6.14:6 of the Administrative Process Act, but such rule or regulation shall remain effective no longer than 60 days unless readopted following the requirements of subsection B of this section. The provisions of this subsection are not applicable to emergency special orders; such orders are subject to the provisions of subsection F of this section.

E. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents. Additional information on the specific documents incorporated and their availability may be found in Appendix M.

F. Orders, special orders and emergency special orders may be issued pursuant to § ~~10-17.18(d)~~ 10.1-1307 D or § ~~10-17.18-1~~ 10.1-1309 of the Virginia Air Pollution Control Law.

### § 120-02-03. Enforcement of regulations and orders.

A. Whenever the executive director or his designated representative has reason to believe that a violation of any provision of these regulations or any order has occurred, notice shall be served on the alleged violator or violators, citing the applicable provision of these regulations or the order involved and the facts on which the violation is based. The executive director or his designated representative may act as the agent of the board to obtain compliance through either of the following enforcement proceedings:

1. Administrative proceedings. The executive director or his designated representative may negotiate to obtain compliance through administrative means. Such means may be a variance, control program, consent agreement or any other mechanism that mandates compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance. In cases where the use of an administrative means is expected to result in compliance within 90 days or less, preferential consideration shall be given to the use of a consent agreement. Unless specified otherwise in these regulations, the administrative means shall be approved by the board.

2. Judicial proceedings. The executive director or his designated representative may obtain compliance through legal means pursuant to § ~~10-17-23~~ 10.1-1316 or § ~~10-17-29~~ 10.1-1320 of the Virginia Air Pollution Control Law.

B. Nothing in this section shall prevent the executive director or his designated representative from making efforts to obtain voluntary compliance through conference, warning or other appropriate means.

C. Orders, consent orders, delayed compliance orders, special orders and emergency special orders are considered administrative means and the board reserves the right to use such means in lieu of or to provide a legal basis for the enforcement of any administrative means negotiated or approved by the executive director or his designated representative under subsection A of this section.

D. Any enforcement proceeding under this section may be used as a mechanism to ensure that the compliance status of any source is reasonably maintained by the owner.

## § 120-02-04. Hearings and proceedings.

A. Hearings and proceedings by the board may take any of the following forms:

1. The public hearing and informational proceeding required before considering regulations or variances, in accordance with § ~~10-17-18(b)~~ and (e) §§ 10.1-1307 C and 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § 9-6.14:7 of the Administrative Process Act, except as modified by § ~~10-17-18(b)~~, (e) and (h) §§ 10.1-1307 C and F and 10.1-1308 of the Virginia Air Pollution Control Law.

2. The informal fact finding proceeding which, with all parties consenting, may be used to ascertain facts upon which decisions of the board are based, in accordance with § 9-6.14:11 of the Administrative Process Act. The procedure for an informal fact

finding proceeding shall conform to § 9-6.14:11 of the Administrative Process Act.

3. The formal hearing for the determination of violations, and for the enforcement or review of its orders and regulations, in accordance with § ~~10-17-18(d)~~ 10.1-1307 D of the Virginia Air Pollution Control Law. The procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § ~~10-17-18(d)~~ and (h) 10.1-1307 D and F of the Virginia Air Pollution Control Law.

4. The special order hearing or emergency special order hearing for the determination of violations, and for the enforcement or review of its orders and regulations, in accordance with § ~~10-17-18-1~~ 10.1-1309 of the Virginia Pollution Control Law. The procedures for the special order hearing or emergency special order hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § ~~10-17-18-1~~ 10.1-1309 of the Virginia Air Pollution Control Law.

B. Records of hearings by the board may be kept in either of the following forms:

1. Oral statements or testimony at any public hearing or informational proceeding will be stenographically or electronically recorded, and may be transcribed to written form.

2. Formal hearings and hearings for the issuance of special orders or emergency special orders will be recorded by a court reporter, or electronically recorded for transcription to written form.

C. Availability of record of hearings by the board.

1. A copy of the transcript of a public hearing or informational proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. Any person desiring a copy of the transcript of a special order, emergency special order or formal hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

## § 120-02-05. Variances.

A. General.

1. Pursuant to § ~~10-17-18(e)~~ 10.1-1307 C of the Virginia Air Pollution Control Law, the board at its discretion may grant variances to any provision of these regulations after a public hearing in accordance with

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§ 120-02-04 A 1.

2. Notices of public hearings on applications for variances shall be advertised in at least one major newspaper of general circulation in the affected air quality control region at least 30 days prior to the date of the hearing.

## B. Fuel variance.

1. Regardless of any other provision of this section, the executive director may grant a fuel variance for fuel burning equipment from applicable provisions of these regulations if, after a thorough investigation and public hearing, he finds that:

a. The owner, in good faith and prior to the request for the fuel variance, has attempted to comply with applicable provisions of these regulations.

b. The owner has substantial cause to believe he will be unable to obtain the fuel to operate the equipment in compliance with applicable provisions of these regulations.

c. The maximum particulate and sulfur dioxide emissions from fuels permitted in the fuel variance would be the lowest that the available fuels will permit.

d. The need for the requested fuel variance could not have been avoided by the owner.

e. The period of the fuel variance will not exceed the reasonably predicted shortage of fuel which would allow compliance with these regulations, or 120 days, whichever is less.

2. The owner requesting the fuel variance shall submit the following, where appropriate, to the executive director:

a. The requested commencement and termination dates of the fuel variance.

b. The type and quantity of fuel to be used under the requested fuel variance, along with the maximum ash and sulfur content, if any.

c. An affidavit stating why the owner is unable to, or has substantial cause to believe that he will be unable to, obtain fuel which would allow compliance with applicable provisions of these regulations.

d. An estimate of the amount of fuel to be conserved.

e. An estimate of the increased air pollutants that might cause violations of the ambient air quality standards.

f. An estimate, with reasons given, of the duration of the shortage of fuel which would allow compliance with applicable provisions of these regulations.

g. Such other information as the executive director may require to make his findings as provided in subsection *subdivision* B 1 of this section.

3. Notice of public hearings on applications for fuel variances shall be advertised at least 10 days prior to the date of the hearing, in at least one major newspaper of general circulation in the air quality control region in which the affected source is located.

4. Fuel variances may be granted only for individual sources, and not for categories or classes.

5. No fuel variance shall be granted for more than 120 days. Any request for a variance for a period beyond 120 days shall be governed by the provisions of subsection A of this section, except that the board, where appropriate, may require compliance with any of the conditions and requirements herein.

C. Nothing in this section shall be construed to limit, alter or otherwise affect the obligation of any person to comply with any provision of these regulations not specifically affected by this section.

§ 120-02-06. Local ordinances.

## A. Establishment/approval.

1. Any local governing body proposing to adopt or amend an ordinance, relating to air pollution shall first obtain the approval of the board as to the provisions of the ordinance or amendment. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.

b. Adequate local resources will be committed to enforcing the proposed local ordinance.

c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § ~~10-17-18(b)~~ 10.1-1308 of the Virginia Air Pollution Control Law.

2. Approval of any local ordinance shall be withdrawn if the board determines that the local ordinance is less strict than state regulations, or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months.

## B. Reports.

Local ordinances shall provide for reporting such information as may be required by the board to fulfill its responsibilities under the Virginia Air Pollution Control Law and the federal Clean Air Act. Such reports shall include, but are not limited to: monitoring data, surveillance programs, procedures for investigation of complaints, variance hearings and status of control programs and permits.

## C. Relationship to state regulations.

Local ordinances are a supplement to state regulations. Any provisions of local ordinances which have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. It is the intention of the board to coordinate activities among the enforcement officers of the various localities in the enforcement of local ordinances and state regulations. The board will also provide technical and other assistance to local authorities in the development of ambient air quality or emission standards, in the investigation and study of air pollution problems, and in the enforcement of local ordinances and state regulations. The board emphasizes its intention to assist in the local enforcement of local ordinances. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

## D. Variances.

A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

1. A public hearing is held prior to granting the variance;
2. The public is notified of the application for a variance by advertisement in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and
3. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

### § 120-02-07. Circumvention.

A. No owner or other person shall cause or permit the installation or use of any device or any means which, without resulting in reduction in the total amount of air pollutants emitted, conceals or dilutes an emission of air pollutants which would otherwise violate these regulations. Such concealment includes, but is not limited to, either of

the following:

1. The use of gaseous diluents to achieve compliance with a visible emissions standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.
2. The piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

B. This section does not prohibit the construction of a stack.

### § 120-02-08. Severability Reserved .

If any provision of these regulations or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other provision of these regulations which can be given effect without the invalid provisions or application, and to this end the provisions of these regulations and the various applications thereof are declared to be severable.

### § 120-02-09. Appeals.

A. Any owner or other person aggrieved by any action of the board taken without a formal hearing, or by inaction of the board, may demand a formal hearing in accordance with § 9-6.14:12 of the Administrative Process Act, provided a petition requesting such hearing is filed with the board. In cases involving actions of the board, such petition shall be filed within 30 days after notice of such action is mailed or delivered to such owner or other person.

B. Prior to any formal hearing, the board shall, provided all parties consent, ascertain the fact basis for its decision in accordance with § 9-6.14:11 of the Administrative Process Act.

C. Any decision of the board resultant from a formal hearing shall constitute the final decision of the board.

D. Any owner or other person aggrieved by a final decision of the board may appeal such decision in accordance with § ~~10-17.23:2~~ 10.1-1318 of the Virginia Air Pollution Control Law and § 9-6.14:16 of the Administrative Process Act. Any petition for appeal shall be filed within 30 days after the date of such final decision.

E. Nothing in this section shall prevent disposition of any case by consent.

F. Any petition for a formal hearing or for an appeal by itself shall not constitute a stay of decision or action.

### § 120-02-10. Right of entry.

Whenever it is necessary for the purposes of these

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regulations the board may at reasonable times enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigation as authorized by § ~~10-17-22~~ 10.1-1315 of the Virginia Air Pollution Control Law.

## § 120-02-11. Conditions on approvals.

A. The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with these regulations. Except as specified herein, nothing in these regulations shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to such conditions, the board may automatically cancel such permit or approvals. Without limiting the generality of this section, this section shall apply to: approval of variances, approval of control programs, granting of new or modified source permits and granting of open burning permits.

B. An owner may consider any condition imposed by the board as a denial of the requested approval or permit, which shall entitle the applicant to appeal the decision of the board pursuant to § 120-02-09.

## § 120-02-12. Procedural information and guidance.

A. The board may adopt detailed procedures which:

1. Require data and information in addition to and in amplification of the provisions of these regulations;
2. Are reasonably designed to determine compliance with applicable provisions of these regulations; and
3. Set forth the format by which all data and information shall be submitted.

B. In cases where these regulations specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing, the owner may request information and guidance concerning the proper procedures and methods and the board shall furnish in writing such information on a case-by-case basis.

## § 120-02-13. Delegation of authority.

In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act, the board confers upon the executive director such administrative, enforcement and decision making powers as are set forth in Appendix F.

## § 120-02-14. Considerations for approval actions.

Pursuant to the provisions of § ~~10-17-18(e)~~ and ~~(f)~~ 10.1-1307 E of the Virginia Air Pollution Control Law the following considerations shall be followed in approvals:

A. The board, in making regulations ; and in approving

variances, control programs, or permits, shall take into consideration such relevant ~~consider~~ facts and circumstances as may be presented bearing upon relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with safety, health or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability or unsuitability of such ~~the~~ activity to the area in which it is located; and
4. The practicability, both scientific and economic, ~~scientific and economic practicality~~ of reducing or eliminating the discharge resulting from such activity.

B. In all cases the board shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the area involved and to any lawful business, occupation or activity involved resulting from requiring compliance with the specific requirements of any order, rule or regulation.

§ 120-02-15 - § 120-02-29. Reserved.

## § 120-02-30. Availability of information.

A. Emission data provided to, or otherwise obtained by, the board in accordance with the provisions of these regulations shall be available to the public.

B. Except as provided in subsection A of this section, any records, reports or information provided to, or otherwise obtained by, the board in accordance with provisions of these regulations shall be available to the public, except that:

1. Upon a showing satisfactory to the board by any owner that such records or information, or particular part thereof (other than emission data), if made public, would divulge methods or processes entitled to protection as trade secrets of such owner, the board shall consider such records, reports or information, or particular part thereof, confidential in accordance with the purposes of § ~~10-17-21~~ 10.1-1314 of the Virginia Air Pollution Control Law except that such records, reports or information, or particular part thereof, may be disclosed to other officers, employees or authorized representatives of the Commonwealth of Virginia and the U.S. Environmental Protection Agency concerned with carrying out the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act; and

2. Information received by the board in accordance with § 120-02-31, § 120-02-32, Part VII and Part VIII of

these regulations shall not be disclosed if it is identified by the owner as being a trade secret or commercial or financial information which such owner considers confidential.

## § 120-02-31. Registration.

The owner of any stationary source to which permits are issued under Part VIII or for which emission standards are given in Parts IV, V or VI shall, upon request of the board, register such source operations with the board and update such registration information. The information required for registration shall be determined by the board and shall be provided in the manner specified by the board. Owners should review the emission standard for their respective source type to identify the exemption levels for purposes of this section.

## § 120-02-32. Control programs.

A. Under the provisions of § 120-02-03 A, the board may require an owner of a stationary source to submit a control program, in a form and manner satisfactory to the board, showing how compliance shall be achieved as quickly as possible.

B. The board shall act within 90 days of receiving an acceptable control program. A public hearing will be held within this period. The hearing shall be held only after reasonable notice, at least 30 days prior to the hearing date, which shall include:

1. Notice given to the public by advertisement in at least one major newspaper of general circulation in the affected air quality control region;
2. Availability of the information in the control program (exclusive of confidential information under the provisions of § 120-02-30) for public inspection in at least one location in the affected air quality control region; and
3. Notification to all local air pollution control agencies having State Implementation Plan responsibilities in the affected air quality control region, all states sharing the affected air quality control region, and the regional administrator of the U.S. Environmental Protection Agency.

C. When acting upon control programs, the board shall be guided by the provisions of the federal Clean Air Act.

D. The board may require owners submitting a control program to submit periodic progress reports in the form and manner acceptable to the board.

E. The board normally will take action on all control programs within 30 days after the date of the public hearing unless more information is required. The board shall notify the applicant in writing of its decision on the control program and shall set forth its reasons therefor.

F. The owner may appeal the decision pursuant to § 120-02-09.

## § 120-02-33. Reserved.

## § 120-02-34. Facility and control equipment maintenance or malfunction.

A. At all times, including periods of startup, shutdown and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment or monitoring equipment, in a manner consistent with good air pollution control practice of minimizing emissions.

B. In case of shutdown ~~and/~~ or bypassing or both of air pollution control equipment for necessary scheduled maintenance which results in excess emissions for more than 1 hour, the intent to shut down such equipment shall be reported to the board and local air pollution control agency, if any, at least 24 hours prior to the planned shutdown. Such prior notice shall include, but is not limited to, the following:

1. Identification of the specific facility to be taken out of service as well as its location and permit ~~and/~~ or registration number.
2. The expected length of time that the air pollution control equipment will be out of service.
3. The nature and quantity of emissions of air pollutants likely to occur during the shutdown period.
4. Measures that will be taken to minimize the length of the shutdown or to negate the effect of the outage of the air pollution control equipment.

C. In the event that any affected facility or related air pollution control equipment fails or malfunctions in such a manner that may cause excess emissions for more than 1 hour, the owner shall, as soon as practicable but no later than 4 daytime business hours, notify the board by telephone or telegraph of such failure or malfunction and shall then provide a written statement giving all pertinent facts, including the estimated duration of the breakdown. Owners subject to the requirements of § 120-04-05 C and § 120-05-05 C are not required to provide the written statement prescribed in this ~~paragraph~~ subsection for facilities subject to the monitoring requirements of § 120-04-04 and § 120-05-04. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the board.

D. In the event that the breakdown period cited in subsection C of this section exists or is expected to exist for 30 days or more, the owner shall, within 30 days of the failure or malfunction and semimonthly thereafter until the failure or malfunction is corrected, submit to the board a written report containing the following:

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1. Identification of the specific facility that is affected as well as its location and permit ~~and~~ or registration number.

2. The expected length of time that the air pollution control equipment will be out of service.

3. The nature and quantity of air pollutant emissions likely to occur during the breakdown period.

4. Measures to be taken to reduce emissions to the lowest amount practicable during the breakdown period.

5. A statement as to why the owner was unable to obtain repair parts or perform repairs which would allow compliance with the provisions of these regulations within 30 days of the malfunction or failure.

6. An estimate, with reasons given, of the duration of the shortage of repairs or repair parts which would allow compliance with the provisions of these regulations.

7. Any other pertinent information as may be requested by the board.

E. The procedural requirements of subsection D of this section shall not apply beyond 3 months of the date of the malfunction or failure. Should the breakdown period exist past the 3-month period, the owner may apply for a variance in accordance with § 120-02-05 A.

F. The following special provisions govern facilities which are subject to the provisions of Rule 4-3, Rule 5-3 or Rule 6-1:

1. Nothing in this section shall be understood to allow any such facility to operate in violation of applicable emission standards, except that all such facilities shall be subject to the reporting and notification procedures in this section.

2. Any facility which is subject to the provisions of Rule 6-1 shall shut down immediately if it is unable to meet the applicable emission standards, and it shall not return to operation until it is able to operate in compliance with the applicable emission standards.

3. Regardless of any other provision of this section, any facility which is subject to the provisions of Rule 4-3 or 5-3 shall shut down immediately upon request of the board if its emissions increase in any amount because of a bypass, malfunction, shutdown or failure of the facility or its associated air pollution control equipment; and such facility shall not return to operation until it and the associated air pollution control equipment are able to operate in a proper manner.

G. No violation of applicable emission standards or monitoring requirements shall be judged to have taken place if the excess emissions or cessation of monitoring activities is due to a malfunction, provided that:

1. The procedural requirements of this section are met ~~and~~ or the owner has submitted an acceptable application for a variance, which is subsequently granted;

2. The owner has taken expedient and reasonable measures to minimize emissions during the breakdown period;

3. The owner has taken expedient and reasonable measures to correct the malfunction and return the facility to a normal operation; and

4. The source is in compliance at least 90% of the operating time over the most recent 12-month period.

H. Nothing in this section shall be construed as giving an owner the right to increase temporarily the emission of pollutants or to circumvent the emission standards or monitoring requirements otherwise provided in these regulations.

I. Regardless of any other provision of this section, the owner of any facility subject to the provisions of these regulations shall, upon request of the board, reduce the level of operation at the facility if the board determines that this is necessary to prevent a violation of any primary ambient air quality standard. Under worst case conditions, the board may order that the owner shut down the facility, if there is no other method of operation to avoid a violation of the primary ambient air quality standard. The board reserves the right to prescribe the method of determining if a facility will cause such a violation. In such cases, the facility shall not be returned to operation until it and the associated air pollution control equipment are able to operate without violation of any primary ambient air quality standard.

## APPENDIX F. DELEGATION OF AUTHORITY.

### I. Restrictions upon delegation of authority.

The delegation of authority specified within this appendix is subject to the following restrictions:

A. The board by its own motion has reserves the right to exercise its authority in any of the following delegated powers should it choose to do so.

B. Any person has the right to appeal a decision of the executive director or a regional director to the board or the executive director as appropriate. A party significantly affected by any decision of the executive director may request that the board exercise its authority for direct consideration of the issue. The appeal must request shall

be filed within 30 days after the decision is rendered and should *shall* contain reasons or grounds for appeal *the* request .

C. The notice of appeal *submittal of the request* by itself does *shall* not constitute a stay of decision. A stay of decision must *shall* be sought through appropriate legal channels.

## II. Substance of delegation of authority.

The following administrative and decision making powers are conferred upon the executive director by the board.

A. Maintain the offices and keep the records and files of the board.

B. Provide for all of the necessary administrative support required by the board in conducting regular or special meetings; holding public hearings; issuing orders; granting variances or performing any other duties prescribed by the Virginia Air Pollution Control Law or these regulations.

C. Provide for all of the necessary administrative support required by the Technical Advisory Committee of the board in carrying out its advisory duties.

D. Prepare and submit reports required by state and federal authorities.

E. Prepare and submit budget requests or applications for grants, as directed by the board.

F. Supervise and direct the activities of other staff personnel; and provide for a continuing training program in the field of air pollution for employees of the board.

G. Conduct a public relations program to make the people of the Commonwealth Virginia aware of the problems of air pollution within the state and cognizant of the activities of the board to solve the problems .

H. Represent the board at conferences, seminars or other similar activities, either intrastate or interstate, in matters pertaining to air pollution.

I. Cooperate with other agencies of local, state and federal governments in the control of air pollution, as authorized under the Code of Virginia (1950), as amended.

J. Administer the program established by the board for the effective control of air pollution throughout the Commonwealth of Virginia. In the performance of this duty, the executive director or his designated representative shall have the authority to:

1. Investigate complaints of violations of these regulations.
2. Establish and maintain a state-wide air sampling

network and make observations or take measurements of air pollution in any area of the state for the purpose of determining the air quality in the state as well as evaluating the effectiveness of air pollution controls.

3. Take action necessary to abate or control air pollution in accordance with these regulations.

4. Approve or disapprove control programs in accordance with these regulations.

5. Provide assistance to localities in regard to local air pollution control; particularly in regard to development of air pollution ordinances and programs.

6. Act on applications for federal grants made by localities.

7. Approve or disapprove applications for permits in accordance with these regulations.

8. Certify facilities for the control of air pollution with respect to applications for tax relief made by owners in accordance with the applicable provisions of state or federal laws.

9. Establish and maintain a source registration system and emission inventory of air pollutants discharged into the atmosphere as provided for in these regulations.

10. Conduct hearings and proceedings provided for in the Virginia Air Pollution Control Law and the Administrative Process Act.

11. Determine, after thorough study of available data and information available from other states and federal agencies, emission standards and make recommendations to the board concerning the adoption of emission standards.

12. Approve or disapprove open burning permits in accordance with these regulations. Further delegation by the executive director to the regional directors is authorized.

13. Approve consent agreements and consent orders. In cases where compliance is expected to result within 90 days or less; further delegation by the executive director of approval of consent agreements to the regional directors is authorized.

K. Perform all such additional duties as may be required to carry out the policies and directives of the board.

L. Whenever the executive director is away for three or more days, the Assistant Executive Director (Operations) may sign official correspondence as "Acting Executive Director" and have the same delegation of authority as

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outlined above:

A. The executive director is delegated the authority to act within the scope of the Virginia Air Pollution Control Law and these regulations and for the board when it is not in session except for the authority to:

1. Control and regulate the internal affairs of the board;
2. Approve proposed regulations for public comment and adopt final regulations;
3. Grant variances to regulations;
4. Issue orders and special orders, except for consent orders and emergency special orders;
5. Determine significant ambient air concentrations under §§ 120-04-0303 D and 120-05-0303 D;
6. Appoint persons to the State Advisory Board on Air Pollution;
7. Create local air pollution control districts and appoint representatives; and
8. Approve local ordinances.

B. The board may exercise its authority for direct consideration of permit applications in cases where one or more of the following issues is involved in the evaluation of the application: (i) the stationary source generates public concern relating to air quality issues; (ii) the stationary source is precedent setting; or (iii) the stationary source is a major stationary source or major modification expected to impact on any nonattainment area or class I area.

C. The executive director shall notify the board chairman of permit applications falling within the categories specified in subsection B of this section and the board chairman shall advise the executive director of those permits the board wishes to consider directly.

D. The executive director has final authority to adjudicate contested decisions of subordinates delegated powers by him prior to appeal of such decisions to the circuit court or consideration by the board.

## VIRGINIA HEALTH PLANNING BOARD

**Title of Regulation:** VR 359-01-01. Guidelines for Public Participation in Developing Regulations.

**Statutory Authority:** § 32.1-122.02 of the Code of Virginia.

**Effective Date:** April 26, 1990

**Summary:**

This regulation sets forth, as required by the Administrative Process Act, the mechanism by which interested parties may assist the Virginia Health Planning Board in developing its regulations. No changes were made as a result of public comment.

VR 359-01-01. Guidelines for Public Participation in Developing Regulations.

### PART I. GENERAL INFORMATION.

#### Article 1. 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:

"Department" means the Virginia Department of Health.

"Developmental process" means those activities with respect to a particular regulation occurring between the Planning Board's dissemination of a notice of intent on that regulation and either its release of the proposed new or modified regulation for public comment or its decision not to take the regulatory action described in that notice.

"Notice of intent" means a Notice of Intended Regulatory Action as set forth in Form RR01 of the Virginia Code Commission.

"Planning Board" means the Virginia Health Planning Board.

"Regional agency" means a regional health planning agency as defined in § 32.1-122.01 of the Code of Virginia.

#### Article 2.

##### Background, Authority, and Applicability.

##### § 1.2. Background.

The Planning Board was created in 1989 to supervise and provide leadership for the statewide health planning system; to provide technical expertise in the development of state health policy; to receive data and information from the regional agencies and consider regional planning interests in its deliberations; to review and assess critical health care issues; and to make recommendations to the Secretary of Health and Human Resources of the Commonwealth of Virginia, the Governor, and the General Assembly concerning health policy, legislation, and resource allocation. The department provides principal staff and administrative support services to the Planning Board.

##### § 1.3. Authority.

In addition to its general duties and responsibilities, the Planning Board is required by § 32.1-122.02 C of the Code of Virginia to promulgate such regulations as may be necessary to effectuate the purposes of Article 4.1 (§ 32.1-122.01 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia including, but not limited to, the designation of health planning regions, the designation of regional agencies, and the composition and method of appointment of members of regional health planning boards.

As required by § 9-6.14:7.1 A of the Code of Virginia, these guidelines set forth the process by which the Planning Board shall solicit the input of interested parties in the formation and development of its regulations.

## § 1.4. Applicability.

These guidelines apply to all regulations promulgated by the Planning Board except for emergency regulations adopted in accordance with § 9-6.14:9 of the Code of Virginia and such regulations as may be otherwise excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act pursuant to § 9-6.14:4.1 C of the Code of Virginia.

## PART II. GUIDELINES FOR PUBLIC PARTICIPATION.

### Article 1.

#### Identification of Interested Parties.

#### § 2.1. Interested parties list.

The department shall prepare and maintain a list of parties who have demonstrated an interest in the Planning Board's regulations. Such list shall include, but not be limited to, the chief executive officer of each regional agency.

#### § 2.2. Updating of list.

Periodically, but not less than once each biennium, the department shall publish in the Virginia Register a notice requesting that any party interested in participating in the Planning Board's development of regulations so notify the department. Respondents to such notices shall be incorporated within the interested parties list; in addition, the department may at any time revise that list based upon other information regarding parties desiring inclusion or evidence that they are no longer interested.

### Article 2.

#### Notifications to Interested Parties.

#### § 2.3. Preparation of notice.

When the Planning Board determines that specific regulations within its purview need to be created or modified it shall execute a notice of intent, and may include in that notice the date by which the Planning Board must be advised of any party interested in

participating in the developmental process regarding the specified regulations.

#### § 2.4. Dissemination of notice.

The notice of intent shall be published in the Virginia Register and shall be sent to each party then on the interested parties list. It may also be published in such newspapers of general circulation in Virginia as deemed appropriate by the Planning Board.

### Article 3.

#### Soliciting Input from Interested Parties.

#### § 2.5. Use of input received.

Information received through the developmental process is intended to assist the Planning Board in determining what, if any, proposed regulatory material it will offer for public comment. Failure of any party to receive information during the developmental process or to participate in that process for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). The Planning Board has sole discretion over the use of any input received.

#### § 2.6. Advisory panels.

Upon its review of responses to a notice of intent, the Planning Board may choose to form one or more advisory panels from among those respondents and others for the specific, limited purpose of assisting it during the relevant developmental process. There shall be at least three and no more than seven members on any such advisory panel. In the interest of stimulating open participation by advisory panel members, there shall be no official transcript of those panels' meetings; however, minutes shall be recorded as required by the Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia).

#### § 2.7. Other input.

Each respondent to a notice of intent who indicates a desire to participate in the developmental process for the specified regulations shall be provided a copy of any relevant draft materials prepared by the Planning Board's staff for review by the Planning Board or its designated committee during that process. They shall be invited to forward written comments within a specified time period from the date of material's dissemination. The Planning Board may establish and charge reasonable fees to cover duplication and distribution expenses attributable to the dissemination of such materials to persons who are not members of the Planning Board or its staff.

### Article 4.

#### Additional Opportunities for Public Input.

#### § 2.8. Administrative Process Act procedures.

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After proposed regulations have been developed by the Planning Board in accordance with these guidelines, they shall be submitted for public comment and adoption in final form in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). Prior to its consideration for adoption, the Planning Board shall be provided a summary description of the nature of the oral and written data, views, or arguments presented during the public comment period. This may include written or oral responses of the department and may also include the department's recommendations for changes.

## § 2.9. Petitions for regulatory action.

Notwithstanding the public's right to bring regulatory issues or other matters to the attention of any member of the Planning Board, any interested person may at any time formally petition the Planning Board with respect to reconsideration or revision of existing regulations or the development of new regulations. The petition must be submitted in writing to the chairman of the Planning Board, who shall arrange for distribution to the Planning Board. The chairman shall advise the petitioner of any formal action taken by the Planning Board thereon.

\* \* \* \* \*

## Title of Regulations: VR 359-02-01. Regulations for Designating Health Planning Regions.

Statutory Authority: § 32.1-122.02 of the Code of Virginia.

Effective Date: April 26, 1990

### Summary:

This regulation establishes the process for designating health planning regions and sets forth the topographic and demographic characteristics that are required as a condition of such designation. As a result of public comments, these regulations now establish the initial health planning regions, require the department and the regional agencies be informed of any request to change the designations, and provide for comment on such requests prior to a decision by the Planning Board.

VR 359-02-01. Regulations for Designating Health Planning Regions.

### PART I. GENERAL INFORMATION.

#### Article 1. 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:

"Department" means the Virginia Department of Health.

"Health planning region" means a geographic area of the Commonwealth identified for the purpose of regional health planning in accordance with these regulations and § 32.1-122.01 et seq. of the Code of Virginia.

"Planning Board" means the Virginia Health Planning Board.

"Planning district" means a contiguous area within the boundaries established by the Department of Planning and Budget pursuant to the Virginia Area Development Act, Chapter 34 (§ 15.1-1400 et seq.) of Title 15.1 of the Code of Virginia.

"Regional agency" means a regional health planning agency designated by the Planning Board pursuant to § 32.1-122 et seq. of the Code of Virginia to perform health planning activities within a health planning region.

"Tertiary care" means tertiary care as defined in § 32.1-122.01 of the Code of Virginia; namely, health care delivered by facilities that provide specialty acute care including, but not limited to, trauma care, neonatal intensive care and cardiac services.

### Article 2.

#### Background and Authority.

##### § 1.2. Background.

The Planning Board was created in 1989 to supervise and provide leadership for the statewide health planning system; to provide technical expertise in the development of state health policy; to receive data and information from the regional agencies and consider regional planning interests in its deliberations; to review and assess critical health care issues; and to make recommendations to the Secretary of Health and Human Resources of the Commonwealth of Virginia, the Governor, and the General Assembly concerning health policy, legislation, and resource allocation. The department provides principal staff and administrative support services to the Planning Board.

##### § 1.3. Authority.

In addition to its general duties and responsibilities, the Planning Board is required by § 32.1-122.02 C of the Code of Virginia to promulgate such regulations as may be necessary to effectuate the purposes of, Article 4.1 (§ 32.1-122.01 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia including, but not limited to, the designation of health planning regions.

### PART II. REQUIRED CHARACTERISTICS OF THE HEALTH PLANNING REGIONS.

#### Article 1.

Topography.

§ 2.1. Coverage.

Each area of Virginia shall be included in a health planning region; no area of Virginia shall be included in more than one health planning region. A health planning region shall not include any area outside Virginia [ , but cooperation is encouraged with regional agencies concerned with health planning in contiguous states ] .

§ 2.2. Congruence with planning districts.

Each health planning region shall consist of one or more planning districts, and shall not contain any part of a planning district unless it also contains all other parts of that planning district.

§ 2.3. Contiguous and compact geographic area.

If a health planning region consists of more than one planning district, those planning districts shall be interconnected and shall not as a group substantially surround any planning district that is not part of that health planning region.

Article 2.  
Demographics.

§ 2.4. Resident population.

Each health planning region shall contain a resident population of at least 500,000 persons according to the most current official state estimates as of the time of its designation.

§ 2.5. Medical care resources.

A. As of the time of its designation, each health planning region shall have available within its boundaries multiple levels of medical care services and shall be characterized by reasonable travel time for tertiary care.

B. Unless necessitated by other requirements of these regulations, a health planning region shall not include a planning district whose residents predominantly rely upon the medical care resources of a neighboring health planning region. Evidence of such reliance shall exist if the most recent hospital patient origin survey data acceptable to the department show that, among all residents of the planning district discharged from acute inpatient care units located in Virginia, more than 50% were discharged from units located in the neighboring health planning region.

PART III.  
DESIGNATION OF HEALTH PLANNING REGIONS.

[ Article 1.  
Initial Regions. ]

§ 3.1. [ ~~Transitional~~ Initial ] regions.

Until otherwise designated by the Planning Board, the health planning regions shall be the five geographic regions designated by the department for purposes of administering community health services [ as follows: the Northwestern Virginia Health Planning Region shall consist of Planning District 6 (Central Shenandoah), Planning District 7 (Lord Fairfax), Planning District 9 (Rappahannock-Rapidan), Planning District 10 (Thomas Jefferson), and Planning District 16 (RADCO); the Northern Virginia Health Planning Region shall consist of Planning District 8 (Northern Virginia); the Southwest Virginia Health Planning Region shall consist of Planning District 1 (LENOWISCO), Planning District 2 (Cumberland Plateau), Planning District 3 (Mount Rogers), Planning District 4 (New River Valley), Planning District 5 (Fifth), Planning District 11 (Central Virginia), and Planning District 12 (West Piedmont); the Central Virginia Health Planning Region shall consist of Planning District 13 (Southside), Planning District 14 (Piedmont), Planning District 15 (Richmond Regional), and Planning District 19 (Crater); the Eastern Virginia Health Planning Region shall consist of Planning District 17 (Northern Neck), Planning District 18 (Middle Peninsula), Planning District 20 (Southeastern Virginia), Planning District 21 (Peninsula), and Planning District 22 (Accomack-Northampton) ] .

[ § 3.2. Initial designation.

Prior to its designation of any regional agency the Planning Board, in consultation with the department and any affected regional agencies or transitional regional health planning agencies, shall designate the health planning region for that regional agency consistent with § 22.1-122.01 et seq. of the Code of Virginia and these regulations.

Article 2.  
Subsequent Designation. ]

[ § 3.3. § 3.2. ] Documentation of basis for change.

Any request for a change in health planning region designations shall be directed to the Planning Board and shall be accompanied by appropriate documentation of the rationale for that request including, but not limited to, a comparison of the existing designations and the proposed designations with respect to Part II of these regulations. [ The requester shall simultaneously provide a copy of the request, including all accompanying documentation, to the department and to each regional agency. ] The department shall advise the Planning Board regarding the adequacy of such documentation and may offer additional information to assist the Planning Board in its evaluation of the request. [ Before rendering its decision the Planning Board shall afford each regional agency and other interested parties at least 60 calendar days to comment on the request. ]

[ § 3.4. § 3.3. ] Implementation of change.

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Upon its decision to change the health planning region designations, the Planning Board shall so notify each affected regional agency and the administrative office of each affected county and independent city of the nature and effective date of the change, and shall also arrange for such notice to be published in the Virginia Register at least 60 days prior to the effective date.

\*\*\*\*\*

**Title of Regulation:** VR 359-02-02. Regulations Governing the Regional Health Planning Boards.

**Statutory Authority:** § 32.1-122.02 of the Code of Virginia.

**Effective Date:** April 26, 1990

**Summary:**

This regulation establishes the required characteristics of a regional health planning board, including such factors as composition, method of appointment, term of office, and tenure of members. As a result of public comment, these regulations are in several instances more easily understood, less verbose, and less burdensome to the regulated parties than was originally proposed.

VR 359-02-02. Regulations Governing the Regional Health Planning Boards.

**PART I.  
GENERAL INFORMATION.**

**Article 1.  
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:

"Consumer" means a person who is not a provider of health care services.

"Department" means the Virginia Department of Health.

"Planning Board" means the Virginia Health Planning Board.

"Provider" means a licensed or certified health care practitioner, a licensed health care facility or service administrator, or an individual who has a personal interest in a health care facility or service as defined in [ the Virginia Conflict of Interest Act, Chapter 40.1 (§ 2.1-639.1 et seq.) of Title 2.1 § 2.1-639.2 ] of the Code of Virginia.

"Region" means a health planning region designated by the Planning Board.

"Regional agency" means a regional health planning agency designated by the Planning Board pursuant to § 32.1-122.01 et seq. of the Code of Virginia to perform health planning activities within a region.

"Regional board" means the governing body of a regional agency.

**Article 2.  
Background and Authority.**

§ 1.2. Background.

The Planning Board was created in 1989 to supervise and provide leadership for the statewide health planning system; to provide technical expertise in the development of state health policy; to receive data and information from the regional agencies and consider regional planning interests in its deliberations; to review and assess critical health care issues; and to make recommendations to the Secretary of Health and Human Resources of the Commonwealth of Virginia, the Governor, and the General Assembly concerning health policy, legislation, and resource allocation. The department provides principal staff and administrative support services to the Planning Board.

§ 1.3. Authority.

In addition to its general duties and responsibilities, the Planning Board is required by § 32.1-122.02 C of the Code of Virginia to promulgate such regulations as may be necessary to effectuate the purposes of Article 4.1 (§ 32.1-122.01 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia including, but not limited to, the composition and method of appointment of members of regional boards.

**PART II.  
REQUIRED CHARACTERISTICS OF THE REGIONAL  
BOARDS.**

**Article 1.  
Composition.**

§ 2.1. Size.

Each regional board shall consist of no more than 30 residents of the region.

§ 2.2. Representation.

A. The membership of each regional board shall consist of major consumer members and provider members, with a majority consumers.

B. Among its consumer and provider members each regional board shall contain at least one director of a local health department, at least one director of a local department of social services or welfare, at least one director of a community services board, at least one

director of an area agency on aging, at least one representative of health care insurers, at least one representative of local governments, at least one representative of the business community, and at least one representative of the academic community.

Article 2.  
Method of Appointment.

§ 2.3. General requirements.

A. Appointments shall be made in a manner that assures that the regional board is not self-perpetuating. [ This may be accomplished through selection by vote of the members from nominations made by persons who are not members; appointments by governmental bodies, professional associations, or other organized groups of constituents to be represented by membership; or other methods acceptable to the Planning Board. The same approach need not be taken for each category of member. ]

B. Consumer members shall be appointed in a manner that ensures the equitable geographic and demographic representation of the region.

C. Provider members' nominations, or their appointments, shall be solicited from professional organizations, service, and educational institutions, and associations of service providers and health care insurers, in a manner that assures equitable representation of provider interest.

Article 3.  
Tenure.

§ 2.4. Standard term for membership positions.

The standard term for membership positions shall be no more than four years.

§ 2.5. Limitation on terms served.

[ The maximum number of consecutive terms that may be served by any individual shall be two. Any partial term served amounting to more than half the standard term shall be counted toward this maximum. No individual shall serve more than two consecutive standard terms. For the purposes of this section, any partial or nonstandard term served that is more than half the regional board's standard term shall be considered a standard term. ]

§ 2.6. Vacancies.

Any appointment to fill a vacated but unexpired term shall have the same expiration date as that unexpired term.

Article 4.  
Staggered Terms.

§ 2.7. General provisions.

[ Each regional board shall establish, if necessary, and maintain staggered terms for its membership positions such that the number of consumer member terms expiring in a given year is approximately equal to its total number of consumer member positions divided by the number of years contained in its standard term, and the number of provider member terms expiring in a given year is approximately equal to its total number of provider member positions divided by the number of years contained in its standard term. Membership terms for each regional board shall be staggered in such a manner as to avoid disproportionate turnover of either consumer members or provider members in any given year. ]

[ § 2.8. Establishment of staggered terms.

A regional board created anew shall establish staggered terms for membership positions by specifying initial terms in the following manner (subsequent terms would be for the standard term): If the standard term is two years approximately half of the initial consumer member terms and approximately half of the initial provider member terms shall be for one year, and the remaining initial terms shall be for two years. If the standard term is three years approximately one-third of the initial consumer member terms and approximately one-third of the initial provider member terms shall be for one year, similar numbers of initial consumer member terms and initial provider member terms shall be for two years, and the remaining initial member terms shall be for three years. If the standard term is four years approximately one-fourth of the initial consumer member terms and approximately one-fourth of the initial provider member terms shall be for one year, similar numbers of initial consumer member terms and initial provider member terms shall be for two years and for three years, and the remaining initial member terms shall be for four years.

A regional board derived from one or more previously existing governing bodies shall have in place a mechanism, acceptable to the Planning Board, for establishing staggered terms consistent with § 2.7 of these regulations. ]

\* \* \* \* \*

Title of Regulation: VR 359-02-03. Regulations for Designating Regional Health Planning Agencies.

Statutory Authority: § 32.1-122.02 of the Code of Virginia.

Effective Date: April 26, 1990

Summary:

This regulation establishes the process for designating regional health planning agencies and sets forth the characteristics that are required as a condition of such designation. As a result of public comments, several changes were made to render these regulations clearer, more consistent with the Code of Virginia, and less burdensome to the regulated parties. In addition,

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the regulation now clarifies how the department may serve in the absence of a designated agency, expands upon the process for revoking designation, and advises that the Planning Board's decisions may be appealed pursuant to the Administrative Process Act.

VR 359-02-03. Regulations for Designating Regional Health Planning Agencies.

## PART I. GENERAL INFORMATION.

### Article 1. 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:

"Commissioner" means the State Health Commissioner.

"Department" means the Virginia Department of Health.

"Planning Board" means the Virginia Health Planning Board.

"Region" means an area of the Commonwealth designated by the Planning Board as a health planning region.

"Regional agency" means a regional health planning agency, including the regional board, its staff, and any component thereof, designated by the Planning Board pursuant to § 32.1-122.01 et seq. of the Code of Virginia to perform health planning activities within a region.

"Regional board" means the governing body of a regional agency.

"State Health Plan" means the State Health Plan as defined in § 32.1-122.01 of the Code of Virginia; its contents include, but are not limited to, analysis of priority health issues, policies, needs, and methodologies for assessing statewide health care needs.

### Article 2. Background and Authority.

#### § 1.2. Background.

The Planning Board was created in 1989 to supervise and provide leadership for the statewide health planning system; to provide technical expertise in the development of state health policy; to receive data and information from the regional agencies and consider regional planning interests in its deliberations; to review and assess critical health care issues; and to make recommendations to the Secretary of Health and Human Resources of the Commonwealth of Virginia, the Governor, and the General

Assembly concerning health policy, legislation, and resource allocation. The department provides principal staff and administrative support services to the Planning Board.

#### § 1.3. Authority.

In addition to its general duties and responsibilities, the Planning Board is required by § 32.1-122.02 C of the Code of Virginia to promulgate such regulations as may be necessary to effectuate the purposes of Article 4.1 (§ 32.1-122.01 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia including, but not limited to, the designation of regional agencies.

## PART II. REQUIRED CHARACTERISTICS OF THE REGIONAL AGENCIES.

### Article 1. General.

#### § 2.1. Corporate structure.

Each regional agency shall be a Virginia not-for-profit corporation and shall maintain [ ~~§ 501(c)(3) federal tax exemption status~~ exemption from federal tax liability as provided for in § 501(c)(3) of the Internal Revenue Code ]

#### § 2.2. [ Independence Limited purpose ] .

[ Each regional agency shall be organizationally independent of any other entity. Each regional agency shall function only for the purpose of effectuating § 32.1-122.05 D of the Code of Virginia. ]

### Article 2. Administration.

#### § 2.3. Governance.

Each regional agency shall be governed by a regional board that meets the requirements of such boards as set forth in regulations of the Planning Board. [ Each regional agency shall keep the Planning Board informed of the name, address, consumer or provider status, interest group represented (if applicable), and date of term expiration of each current member of its regional board. ]

#### § 2.4. Staff.

Each regional agency shall employ, on a full-time basis, a chief executive officer whose background includes [ ~~relevant post-baccalaureate education~~ appropriate education, training ] and experience, and shall in general maintain staff expertise in the gathering of, objective analysis of, and effective communication of information pertinent to health system planning. No person shall at the same time be an employee of a regional agency and a member of its regional board.

## § 2.5. Location.

Each regional agency shall operate from one or more offices located within its designated region.

[ Article 3.  
Documentation.

## § 2.6. Regional board membership.

Each regional agency shall keep the department informed of the name, address, consumer or provider status, interest group represented (if applicable), and date of term expiration of each current member of its regional board.

## § 2.7. Nonclerical staff.

Each regional agency shall keep the department informed of the name, title, and relevant credentials of each current member of its nonclerical staff and the address and telephone number of the regional agency office from which they operate. ]

## PART III. DESIGNATION OF REGIONAL AGENCIES.

### Article 1. Initial Regional Agencies.

## § 3.1. Transitional regional agencies.

Regional health planning agencies in existence as of July 1, 1989, shall be retained as transitional regional agencies until July 1, 1990, or until a regional agency for that region is designated by the Planning Board, whichever occurs first.

### Article 2. Evaluation and Designation.

## § 3.2. Applications for designation.

Upon its determination that a regional agency needs or will soon need to be designated for any region [ , ] the Planning Board, through publication of a notice in the Virginia Register, shall solicit applications for designation as the regional agency for that region. Applicants shall be required to submit to the department, within 30 days of such notice, written information from which the Planning Board may judge the applicants' [ relative capacity ability ] and willingness to comply with these regulations and, through execution of a formal agreement with the commissioner, to undertake the following on behalf of the Planning Board: (i) conducting data collection, research, and analyses as required by the Planning Board, including assistance to the Planning Board in developing and revising the State Health Plan; (ii) preparing reports and studies in consultation and cooperation with the Planning Board; (iii) reviewing and commenting on the components of the State Health Plan; (iv) conducting needs

assessments as appropriate and serving as a technical resource to the Planning Board; (v) identifying gaps in services, inappropriate use of services or resources, and assessing accessibility of critical services; (vi) reviewing applications for certificates of public need and making recommendations to the department thereon, as provided for in § 32.1-102.6 [ of the Code of Virginia ] ; and (vii) conducting [ other such other ] functions as directed by their respective regional boards.

The information submitted shall include at least: (i) documentation of the applicant's existing or proposed compliance with Articles 1 and 2 of Part II of these regulations, including a description of each existing [ nonclerical health planning and executive ] staff member's qualifications and a description of the minimum qualifications for each vacant [ nonclerical health planning and executive ] position; (ii) a general plan for the applicant's relative commitment of financial and human resources among the functions specified in the preceding paragraph; and (iii) examples of planning documents previously developed by the applicant.

## § 3.3. Certification required.

The following statement, signed by an authorized agent of the applicant, shall accompany the application.

"I understand that this application for designation may result in the awarding of a public contract to the applicant and, by my signature below, I certify that this application is made without prior understanding, agreement, or connection with any other corporation, firm, or person submitting an application for such designation and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of the Virginia Governmental Frauds Act and federal law, and can result in fines, prison sentences, and civil damage awards. I certify and warrant that neither I nor the applicant has offered or received any kickback from any other applicant, supplier, manufacturer, or subcontractor in connection with this application (a kickback is defined as an inducement for the award of a contract, subcontracts, or order, in the form of any payment, loan, subscription, advance, deposit of money, services, or anything of value, present or promised, unless consideration of substantially equal or greater value is exchanged). I understand that no person shall demand or receive any payment, loan, subscription, advance, deposit of money, services, or anything of value in return for an agreement [ to not to ] compete on a public contract. I agree to abide by all conditions of this application and certify that I am authorized to sign this application for the applicant."

## § 3.4. Review and action.

The department shall perform a preliminary review of each application and shall notify each applicant of any further information required to allow for a fair and accurate evaluation by the Planning Board, and shall allow at least 10 days for such information to be submitted as

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an amendment of or addendum to the application. [ The application may be rejected if the required information is not submitted as requested. ] The department may make such reasonable investigations as deemed proper and necessary to determine and advise the Planning Board of the ability of the applicant to serve as a regional agency, and reserves the right to inspect the applicant's physical plant prior to action by the Planning Board.

Each applicant shall be required to have a representative come before the Planning Board to discuss the application and respond to pertinent inquiries. Based upon its evaluation of all competing applications, the Planning Board shall render and, through publication of a notice in the Virginia Register, announce its decision. Following the transitional period that ends July 1, 1990, [ should the Planning Board designate no regional agency for one or more regions, the department shall serve as the regional agency within the limitations of its resources in the event that no regional agency has been designated to serve a given area, or at any time upon the Planning Board's revocation of a regional agency's designation, the department shall provide within the limitations of its resources the services described in items (i) through (vi) within § 32.1-122.05 D of the Code of Virginia on behalf of that area for a period of 180 days during which time the Planning Board shall solicit and act upon applications for designation in accordance with these regulations. This period may be extended or the procedure may be repeated as the Planning Board in its discretion deems necessary. ]

## Article 3.

### Terminating Designations.

#### § 3.5. Request of designated regional agency.

In the event a designated regional agency no longer wishes to serve in that capacity, its regional board shall so notify the Planning Board in writing [ at least 60 days prior to the anticipated date of termination ] . The Planning Board shall then solicit, review, and act upon applications for designation of a new regional agency for that region following the provisions of §§ 3.2 through 3.4 of these regulations.

#### § 3.6. Request of Planning Board.

In the event the Planning Board [ ~~contemplates revocation of the designation of any regional agency, it shall so notify that agency and its regional board. The notification shall set forth the Planning Board's rationale and shall invite the submission, within a period of at least 30 days from notification, of relevant information such as a plan to correct specified deficiencies. Among the reasons that the Planning Board may revoke the designation of a regional agency is the lack, for any consecutive 90-day period, of an agreement being in effect with respect to that agency pursuant to § 32.1-122.06 of the Code of Virginia. Should the Planning Board wish to revoke the designation after consideration of the submitted~~

~~information, it shall so notify the agency and its regional board of that decision and the effective date of revocation. The Planning Board shall then solicit, review, and act upon applications for designation of a new regional agency for that region following the provisions of §§ 3.2 through 3.4 of these regulations. determines that a designated regional agency is not in compliance with applicable laws or regulations, it shall so notify that agency and its regional board and shall invite the submission, within a period of at least 30 days from notification, of relevant information such as a plan to correct specified deficiencies. Should the Planning Board decide to revoke the designation after consideration of the submitted information, it shall so notify the agency and its regional board of that decision at least 30 days in advance of the date of revocation. Such decision may be appealed as provided for in § 3.7 of these regulations.~~

## Article 4.

### Appeals.

#### § 3.7. Appeals.

The decisions of the Planning Board with respect to the designation of regional agencies may be appealed pursuant to the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). ]

\* \* \* \* \*

Title of Regulation: VR 359-03-01. Administration of State Funding for Regional Health Planning.

Statutory Authority: §§ 32.1-122.02 and 32.1-122.06 of the Code of Virginia.

Effective Date: April 26, 1990

#### Summary:

This regulation establishes administrative rules for the application for, distribution of, and use of state funds appropriated for regional health planning. As a result of public comments, several changes were made to improve clarity. In addition, the regulation now provides more specific language regarding steps to be taken in the event there is breach of agreement.

VR 359-03-01. Administration of State Funding for Regional Health Planning.

## PART I.

### GENERAL INFORMATION.

#### Article 1.

##### 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:

"Commissioner" means the State Health Commissioner.

"Department" means the Virginia Department of Health.

"Planning Board" means the Virginia Health Planning Board.

"Region" means an area of the Commonwealth designated by the Planning Board as a health planning region.

"Regional agency" means a regional health planning agency designated by the Planning Board pursuant to § 32.1-122.01 et seq. of the Code of Virginia to perform health planning activities within a region.

"Regional board" means the governing body of a regional agency.

"State funding" means moneys appropriated by the Virginia General Assembly pursuant to § 32.1-122.06 of the Code of Virginia.

Article 2.  
Background and Authority.

§ 1.2. Background.

The Planning Board was created in 1989 to supervise and provide leadership for the statewide health planning system; to provide technical expertise in the development of state health policy; to receive data and information from the regional agencies and consider regional planning interests in its deliberations; to review and assess critical health care issues; and to make recommendations to the Secretary of Health and Human Resources of the Commonwealth of Virginia, the Governor, and the General Assembly concerning health policy, legislation, and resource allocation. The department provides principal staff and administrative support services to the Planning Board.

§ 1.3. Authority.

Section 32.1-122.06 of the Code of Virginia establishes funding for regional health planning and requires the Planning Board to promulgate such regulations as are necessary and relevant to administer the funding.

PART II.  
GENERAL REQUIREMENTS.

Article 1.  
Conditions on the Distribution of State Funding.

§ 2.1. Recipients.

State funding shall be administered by the department and shall be distributed only to (i) regional agencies, or

(ii) the department if the department is performing regional agency functions as provided for in regulations of the Planning Board and if such distribution is not otherwise prohibited.

§ 2.2. Application required.

Each regional agency shall apply to the department for state funding, which shall be distributed as grants. All applications for such funding shall be accompanied by letters of assurance that the applicant shall comply with all state requirements. [ The time period covered by the applications and their related grants shall be no more than two years. ]

Article 2.  
Other Conditions.

§ 2.3. Agreements required.

An agreement shall be executed between the commissioner, in consultation with the Planning Board, and each regional board to delineate the work plan and products to be developed with state funding. Funding for the regional agencies shall be contingent upon meeting these obligations.

§ 2.4. Allowable uses of state funding.

State funding may be used for the administration of the regional agency, the analysis of issues, and such other health planning purposes as may be requested [ by the Planning Board pursuant to § 32.1-122.05 D of the Code of Virginia ] .

PART III.  
ADMINISTRATION OF GRANTS.

§ 3.1. Planning products.

The Planning Board shall develop and maintain descriptions of planning products that it desires to have developed with state funding. The Planning Board shall establish, and revise as necessary, the relative priority among these desired products. The descriptions and priorities shall be made available to each regional agency as a basis for developing the applications required by Part II of these regulations.

§ 3.2. Minimum contents of application.

Each application shall include at least the following information:

1. Name and principal office address of applicant.
2. Region served.
3. Name and telephone number of the applicant's official contact person.

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## 4. Description of services to be provided by use of state funding, including:

- a. Planning products to be developed;
- b. Work plan for developing planning products, including for each:
  - (1) Schedule of activities, including work to be completed by the end of each quarter,
  - (2) Number of [ ~~nonclerical~~ health planning and executive ] staff days required,
  - (3) Number of clerical staff days required, and
  - (4) Nature of technical assistance required from the department;
- c. Regulatory services to be provided, in particular those pursuant to § 32.1-102.6 of the Code of Virginia, with estimates of clerical and [ ~~nonclerical~~ health planning and executive ] staff days required;
- d. Other services to be provided, with estimates of clerical and [ ~~nonclerical~~ health planning and executive ] staff days required.

## 5. Description of services to be provided other than by use of state funding.

## 6. Budget projection for each year of the requested grant period, with:

- a. Detailed information by type expenditure for each service to be provided, and
- b. A summary of available and expected financing by major source including requested state funding.

## 7. Proposed staff complement by job title, with salary or wages for each year of the requested grant period and clarification regarding full-time or part-time status.

## 8. Current bylaws of the applicant's regional board [ , or proposed bylaws if the applicant is new and has not yet organized a board ] .

## 9. Letter of assurance as required by Part II of these regulations.

### § 3.3. Awarding of grants.

In consultation with the Planning Board, the commissioner shall award grants based upon his evaluation of the relevant [ responsive ] applications [ with respect to the scope of proposed products and services, their consistency with both § 32.1-122.05 D of the Code of Virginia and the expressed priorities of the Planning Board, and the ability of the agency to complete its tasks efficiently and effectively ] . Grants to regional agencies

shall not exceed the maximum specified in § 32.1-122.06 of the Code of Virginia, and shall be contingent upon the execution of agreements as required by Part II of these regulations. The extent to which grants are awarded to regional agencies shall be dependent upon the amount of money appropriated for state funding and, within that constraint and consistent with § 32.1-122.06 of the Code of Virginia, shall be commensurate with the products and services specified in the agreements.

### § 3.4. Distribution of funds.

[ State funding shall be distributed to regional agencies by the commissioner in accordance with the related agreements; but in no instance shall a regional agency receive funding more than six months in advance. The commissioner shall authorize the distribution of funds to regional agencies in accordance with the related agreements and in accordance with the Commonwealth's rules and procedures for disbursing and accounting for state funds, including those of the State Comptroller. ]

### § 3.5. Accountability.

Each regional agency shall demonstrate and document accountability for state funding through quarterly expenditure and activity reports which shall be submitted to the commissioner. Such reports shall include, but are not limited to, quarterly and year-to-date experience compared with the corresponding projections and work plans as set forth in the related agreement. The commissioner may delay or deny state funding payments in the absence of timely submittal of these reports.

### § 3.6. Amending of agreements.

The agreements pursuant to Part II of these regulations may be amended upon mutual consent [ in writing ] of the parties involved. The commissioner shall notify the Planning Board of any such amendments.

### § 3.7. Breach of agreements.

[ In addition to other remedies that may be available, breach of any agreement pursuant to Part II of these regulations shall constitute grounds for termination of state funding, recovery by the commissioner of previously distributed but unexpended state funding, revocation of the planning agency's designation, or a combination of such actions. If the commissioner determines that a breach of agreement exists that endangers the health, safety or welfare of the population to be served or jeopardizes the financial or programmatic provision of functions and services, he shall suspend the agreement immediately and its termination shall become final within 30 days, unless good cause is shown by clear and convincing evidence. Under other circumstances should the commissioner, in consultation with the Planning Board, have cause to believe that a substantive breach of agreement exists, he shall provide notice to the regional agency of his intent to terminate the agreement within 30 days, stating the bases,

and shall provide an opportunity for a hearing if requested within 15 days of receipt of the notice by the regional agency. Failure to request a hearing shall result in termination of the agreement at the end of the 30th day after receipt of the notice by the regional agency. The hearing, if timely requested, shall be provided consistent with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), and the commissioner's decision as a result of such hearing shall be communicated to the regional agency and the Planning Board. ]

**BOARD OF HOUSING AND COMMUNITY DEVELOPMENT**

**REGISTRAR'S NOTICE:** This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations so not differ materially from those required by federal law or regulation. The Department of Housing and Community Development will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 394-01-200. Virginia Private Activity Bond Regulations.

Statutory Authority: §§ 15.1-1399.15 and 15.1-1399.16 of the Code of Virginia

Effective Date: April 25, 1990

Summary:

The Virginia Private Activity Bond Regulations provide the specific administrative policies and procedures for the private activity bond program in Virginia. The private activity bond is established to provide allocations of tax-exempt bond financing to projects for the development of single family and multifamily housing, manufacturing and exempt facilities and for student loans pursuant to the limitations established by the Internal Revenue Code of 1986 together with rulings issued pursuant to federal law. The regulations specify application, allocation, and reporting requirements for the private activity bond program in the Commonwealth.

The 1990 amendments extend from December 31, 1989, through September 30, 1990, the eligibility to use private activity bond financing for single family housing purposes and for manufacturing facilities.

VR 394-01-200. Virginia Private Activity Bond Regulations.

**PART I.  
DEFINITIONS.**

§ 1.1. Definitions.

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

"Allocation" or "award" means the notice given by the Commonwealth to provide a project with a specified amount from the state ceiling for a specific issue of bonds.

"Carryforward purpose" means certain projects that are eligible to receive an allocation during a calendar year and issue the bonds from the allocation in a later year pursuant to § 146 of the Internal Revenue Code of 1986 .

"Code" means the Internal Revenue Code of 1986, as amended, together with the regulations and rulings issued pursuant thereto.

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

"Exempt project" means a project requiring allocation from the state ceiling for financing of any of the following:

1. Sewage, solid waste, and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas;
2. Facilities for the furnishing of water (including irrigation systems);
3. Mass commuting facilities; and
4. Local district heating and cooling facilities.

"Governing body" means the board of supervisors of each county and the council of each city and of each town.

"Housing bonds" means multifamily housing bonds and single family housing bonds requiring allocation from the state ceiling.

"Industrial development bond" means any obligation requiring allocation from the state ceiling for financing any of the following:

1. Manufacturing facility,
2. Exempt project.

"Issued" means that the private activity bonds have been issued within the meaning of § 103 of the Code.

"Issuing authority" means any political subdivision, governmental unit, authority, or other entity of the Commonwealth which is empowered to issue private activity bonds.

"Local housing authority" means any issuer of multifamily housing bonds or single family housing bonds,

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created and existing under the laws of the Commonwealth, excluding the Virginia Housing Development Authority.

“*Localit(y) (ies)*” means the individual and collective cities, towns and counties of the Commonwealth.

“*Manufacturing facility*” means any facility which is used in the manufacturing or production of tangible personal property, including the processing resulting in a change of condition of such property.

“*Multifamily housing bond*” means any obligation which constitutes an exempt facility bond under federal law for the financing of a qualified residential rental project within the meaning of § 142 of the Code.

“*Population*” means the most recent estimate of resident population for Virginia and the counties, cities, and towns published by the United States Bureau of the Census or the ~~Tayloe Murphy Institute~~ *Center for Public Service* of the University of Virginia before January 1 of each calendar year.

“*Private activity bond*” means a part or all of any bond (or other instrument) required to obtain an allocation from the Commonwealth’s volume cap pursuant to § 146 of the Code in order to be tax exempt, including but not limited to the following:

1. Exempt project bonds;
2. Manufacturing facility bonds;
3. Industrial development bonds;
4. Multifamily housing bonds;
5. Single family housing bonds;
6. Student loan bonds; and
7. Any other bond eligible for a tax exemption as a private activity bond pursuant to § 141 of the Code.

“*Project*” means the facility (as described in the application) proposed to be financed, in whole or in part, by an issue of bonds.

“*Qualified mortgage bond*” means any obligation described as a qualified mortgage bond in § 143 of the Code.

“*Qualified redevelopment bond*” means any bond requiring an allocation from the state ceiling to be used for one or more redevelopment purposes in any designated blighted area in accordance with § 144(c) of the Code.

“*State allocation*” means the portion of the state ceiling set aside for projects of state issuing authorities and for projects of state or regional interest as determined by the Governor.

“*State ceiling*” means the amount of private activity bonds that the Commonwealth may issue in any calendar year under the provisions of the Code.

“*Student loan bond*” means an issue to finance student loans as defined in § 144(b) of the Code.

## PART II. ADMINISTRATION.

### § 2.1. Department of Housing and Community Development.

The department shall administer the private activity bond program in the Commonwealth. In administering the program, the department’s activities shall include, but are not limited to, the following:

A. To determine the state ceiling on private activity bonds each year based on the federal per capita limitation on private activity bonds and the population.

B. To set aside the proper amount of the state ceiling on private activity bonds for each project type as specified in state legislation, Chapter 33.2 (§§ 15.1-1399.10 through 15.1-1399.17) of Title 15.1 of the Code of Virginia.

C. To receive and review project applications for private activity bond authority to be awarded from the portion of the state ceiling not distributed to the state allocation or , the Virginia Housing Development Authority or the Virginia Education Loan Authority .

D. To allocate private activity bond authority to projects requesting bond authority from the portion of the state ceiling not distributed to the state allocation or , the Virginia Housing Development Authority or the Virginia Education Loan Authority .

### § 2.2. State allocation.

Pursuant to Title 15.1, Chapter 33.2, of the Code of Virginia, a portion of the annual state ceiling on private activity bonds will be reserved for allocations to projects of state issuing authorities and projects of state or regional interest as determined by the Governor. Requests for private activity bond authority from the state allocation may be made through direct correspondence with the Governor’s office. The Governor may transfer any portion of the state allocation to the department for allocation in accordance with the provisions of these regulations.

### § 2.3. Virginia Housing Development Authority.

A portion of the annual state ceiling on private activity bonds shall be allocated to the Virginia Housing Development Authority to be used to finance multifamily or single family residential projects, or both, pursuant to the restrictions provided by federal law. The Virginia Housing Development Authority shall develop project allocation criteria and housing bond authority carryforward

procedures that will assure compliance with federal regulations.

## § 2.4. Program dates.

The following is a listing of important application and allocation dates and deadlines concerning the portion of the state ceiling administered by the department:

### January 1 - December 15

Specified amounts of the state ceiling will be set-aside are reserved for different project types in the Commonwealth as required by either state law or Governor's Executive Order in each calendar year. Allocations of private activity bond authority will be awarded - by the department - to projects in accordance with state law or Governor's Executive Order and these regulations. The set-aside for specified project types ends on December 15 of each calendar year; however, no allocation of private activity bond authority awarded for single family housing purposes or for manufacturing facilities may be used after September 30.

### September 1

Last day for the issuance of private activity bonds by a local housing authority for single family housing.

### September 30

Last day for the issuance of private activity bonds by an authority for single family housing or for manufacturing facility projects.

### November 1 - December 15

The \$10 million limitation on allocations from the state ceiling for exempt projects will be removed during this period of time to allow financing these projects in the calendar year the allocation is made.

### December 1

Last day applications will be accepted for year-end carryforward purposes.

### December - 15

Last day for the issuance of private activity bonds for projects that received allocations from the state ceiling prior to this date ; except for single family housing and manufacturing facility projects, as provided above .

### December 20 - 31

Allocations shall be made to year-end carryforward purposes in accordance with the priority system

established by these regulations.

## § 2.5. Weekend and holiday deadline dates.

If any deadline dates specified are on a weekend or a holiday, the deadline shall be moved to the next following regular state working day ; except where federal law precludes such extension .

## PART III.

### ALLOCATIONS TO INDIVIDUALS BY THE DEPARTMENT.

## § 3.1. State private activity bond legislation.

Chapter 33.2 (§§ 15.1-1399.10 through 15.1-1399.17) of Title 15.1 of the Code of Virginia sets aside specified amounts of the Commonwealth's limited private activity bond issuing authority for different types of projects.

A portion of the private activity bond state ceiling is reserved each calendar year pursuant to §§ 15.1-1399.12 through 15.1-1399.14 of the Code of Virginia for the issuance of tax-exempt housing bonds. The primary purpose of providing a set-aside of private activity bond authority for these bonds is to increase the availability and affordability of housing opportunities in Virginia. Private activity housing bonds will be issued by local housing authorities and by the Virginia Housing Development Authority.

A portion of the private activity bond state ceiling is also reserved by state legislation to provide economic development in the Commonwealth and to provide facilities needed in the Commonwealth to improve public health, safety, and convenience. A separate amount of the state ceiling is reserved each year pursuant to §§ 15.1-1399.12 through 15.1-1399.14 of the Code of Virginia for manufacturing and exempt facility projects.

A portion of the private activity bond state ceiling is reserved for the issuance of student loan bonds by the Virginia Education Loan Authority.

## § 3.2. Order in which allocations shall be awarded.

Bond allocations shall be made by the department in chronological order of receipt of complete applications (including documentation specified in § 5.3 of these regulations) until the bond authority reserved for the project type is completely allocated. Applications of projects that do not receive allocations will be maintained by the department during the year and allocations will be made to the projects in chronological order of receipt of applications as bond authority is returned to the department from projects that received allocation awards but were unable to issue bonds.

## § 3.3. Limitation on size of allocations.

All industrial development bond allocations awarded by

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the department prior to November 1 of each year shall be limited to \$10 million per project. There shall be no limitation on the size of allocations awarded for housing bond projects during a calendar year. If the Code federal law terminates the eligibility of manufacturing facilities for private activity bond financing at the end of calendar year 1980, then beginning January 1, 1980 an exempt project facility projects may receive an allocation allocations in excess of \$10 million prior to November 1 of each calendar year upon approval by the Board of Housing and Community Development.

## § 3.4. Effective period of allocations.

An allocation for each project, other than single family housing and manufacturig facility projects, shall be effective 90 days after the allocation award date or until December 15, whichever is earlier. An allocation of private activity bond authority for single family housing shall be effective for 90 days after the allocation award date or until September 1, whichever is earlier. An allocation of private activity bond activity for manufacturing facility projects shall be effective for 90 days after the allocation award date or until September 30, whichever is earlier.

## § 3.5. Reapplying for a second allocation for the same project.

A project that receives an allocation and is unable to issue bonds within the effective period of the award may reapply for another allocation upon the expiration or return of the original allocation. The reapplication will be dated by the department as received on the date the reapplication request is submitted and no portion of the original allocation is outstanding. Each project shall be limited to two allocations during any calendar year. An exempt project that receives an allocation in excess of \$10 million prior to December 15 shall not be eligible to receive a carryforward purpose allocation at the end of the calendar year.

### PART IV.

#### YEAR-END ALLOCATIONS TO CARRYFORWARD PURPOSES.

## § 4.1. Local housing authorities.

In order to allow the Commonwealth to effectively utilize all of its annual private activity bond capacity, any bond issuing authority remaining in the portion of the state ceiling reserved for local housing authorities after December 15 September 1 shall be transferred to the Virginia Housing Development Authority upon their written request after notification by the department on the amount of bond authority available. Any bond authority that remains with the department shall be allocated to other carryforward purposes.

## § 4.2. Virginia Housing Development Authority.

Any portion of the state ceiling reserved for the Virginia Housing Development Authority during the year that has not been issued by December 15 shall be retained by the Virginia Housing Development Authority to carryforward pursuant to the Code, or shall be transferred by the Virginia Housing Development Authority on December 15 to the department to be allocated to other carryforward purposes.

### § 4.2.1. Virginia Education Loan Authority.

Any portion of the state ceiling reserved for the Virginia Education Loan Authority during the year that has not been issued by December 15 may be retained by the Virginia Education Loan Authority for student loan bond carryforward purposes or transferred by the Virginia Education Loan Authority to the department to be allocated to other carryforward purposes.

## § 4.3. Department of Housing and Community Development.

Any bond issuing authority remaining after December 15 will be awarded beginning December 20 to applications (including all documentation specified in § 5.3 of this regulation) on file with the department before December 1 in the following priority order:

A. Local government projects for the following exempt facilities:

1. Sewage, solid waste and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas;
2. Facilities for the furnishing of water, including irrigation facilities.

B. Governmental bond projects in which the private use portion of the issue exceeds \$15 million.

C. Public utility projects for the following facilities:

1. Sewage, solid waste, and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas;
2. Facilities for the furnishing of water, including irrigation facilities.

D. Private sector projects for the following facilities:

1. Sewage, solid waste, and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas.
2. Facilities for the furnishing of water, including irrigation facilities.

E. All other eligible exempt projects, and qualified redevelopment bonds.

F. Student loan bonds.

G. Virginia Housing Development Authority bonds.

## PART V. APPLICATION PROCEDURE.

### § 5.1. Project approval.

All projects must be approved by the governing body of the locality in which the project is to be located prior to submitting an application to the department for bond authority. Any local housing authority, after the approval of the local governing body, may file an application with the department to request an allocation of housing bond authority. A city or town manager or county administrator, after the approval of the local governing body, may file an application for bond authority with the department for any private activity bond project to be located within the jurisdiction of the requesting locality. Any state issuing authority, after the approval of the Governor, may file an application with the department for an industrial development bond project prior to December 15 or for a year-end carryforward purpose allocation prior to December 1.

### § 5.2. Where to apply.

Projects of state issuing authorities and projects of state or regional interest may request private activity bond authority from the state allocation through direct correspondence with the Governor's office. Housing projects to be financed by the Virginia Housing Development Authority shall request private activity bond authority from the state ceiling through direct correspondence with the Virginia Housing Development Authority. All other project allocations shall be submitted to the department.

### § 5.3. Application forms.

All projects seeking an allocation of private activity bond authority from the department must file an application. Application forms are available from the Department of Housing and Community Development, Office of Policy Analysis and Research, Community Financial Assistance Office, 205 North Fourth Street, Richmond, Virginia 23219.

A. The application forms to be used are as follows:

1. Local housing authorities seeking an allocation of bond authority for housing projects shall file Form HB.
2. Manufacturing and exempt facility projects, allocation requests for the private use portion of a governmental bond in excess of \$15 million, student loan bonds, and qualified redevelopment bonds shall file Form IDB.

B. All applications and requests for private activity bond authority from the department shall be accompanied by the following documentation for each project:

1. Inducement resolutions or other preliminary approvals;
2. Documentation of the appropriate elected body's or official's approval of such projects;
3. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Code and that an allocation of bond issuing authority from the state ceiling is required;
4. A definite and binding financial commitment agreement from a buyer of the bonds or a firm commitment from a financial institution to provide a letter of credit for the project.

### § 5.4. When to apply.

Project applications may be submitted to the department during each calendar year at any time prior to December 15 of each year, except for single family housing and manufacturing facilities as provided in § 2.4 of these regulations. Applications for year-end allocations to carryforward purposes will be accepted by the department through December 1 of each calendar year.

## PART VI. REPORTING REQUIREMENTS FOR ALLOCATIONS BY DEPARTMENT.

### § 6.1. Reporting bond issuance.

For all private activity bonds issued in the Commonwealth from the portion of the state ceiling not allocated to the state allocation or the Virginia Housing Development Authority or the Virginia Education Loan Authority during any calendar year, a copy of the federal Internal Revenue Service (IRS) Form 8038 must be received by the department by 5 p.m. on the expiration date of the allocation award. Bond authority that has not been documented as having been issued by the filing of IRS Form 8038 with the department by this deadline will revert to the department for reallocation to other projects.

### § 6.2. When to file IRS Form 8038.

IRS 8038 forms shall not be filed with the department prior to the date of issuance of the bonds.

PROJECT INFORMATION SHEET  
REQUEST FOR INDUSTRIAL DEVELOPMENT BOND ALLOCATION



COMMONWEALTH of VIRGINIA

JOAN W SMITH  
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION  
General Assembly Building

POST OFFICE BOX 3 AG  
RICHMOND VIRGINIA 23288  
204 796-3381

March 13, 1990

Neal J. Barber, Director  
Department of Housing and Community Development  
Fourth Street Office Building  
205 North Fourth Street  
Richmond, Virginia 23219

Re: VR 394-01-200. Virginia Private Activity Bond Regulations

Dear Mr. Barber:

This will acknowledge receipt of the above-referenced regulations from the Department of Housing and Community Development.

As required by § 9-5.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by Federal law.

Sincerely,

*Joan W. Smith*  
Joan W. Smith  
Registrar of Regulations

JWS:sll

1. GENERAL INFORMATION

A. Issuing Authority \_\_\_\_\_

B. Name of Project \_\_\_\_\_

C. Use of Bond Proceeds

- Manufacturing
- Exempt Facility
- Private use portion of Governmental Bond  
over \$15 million threshold
- Student loan bond
- Qualified redevelopment bond

2. DESCRIPTION OF THE PROJECT

A. General Description of the Project.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

B. Location of Project (City, County or Town) \_\_\_\_\_

C. Name, address, phone number and tax ID number of each proposed borrower and developer.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Name, address and phone number of bond counsel.

\_\_\_\_\_  
\_\_\_\_\_

E. Bond allocation requested \$ \_\_\_\_\_

F. Projected closing date for issuance of the bonds \_\_\_\_\_

3. PROJECT INFORMATION

Number of jobs to be created (net) or retained \_\_\_\_\_.

4. ATTACHMENTS

ALL FOUR ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM.  
ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE BEEN RECEIVED.

A. Copy of inducement resolution or other preliminary approval.

B. Copy of Governing Body's formal approval of the project.

C. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Internal Revenue Code of 1986, as amended, and that an allocation of bond issuing authority from the state ceiling on private activity bonds is required.

D. A definite and binding financial commitment agreement from a bond purchaser(s) agreeing to purchase the bond(s), or a firm commitment from a financial institution to issue a letter of credit. The purchase agreement or letter of credit shall be for an amount equal to or greater than the amount of bond authority requested by this application.

5. CERTIFICATION

I hereby certify that the information filed herewith is accurate to the best of my knowledge.

Signature of City Manager, Town Manager or County Administrator \_\_\_\_\_

Date \_\_\_\_\_

PROJECT INFORMATION SHEET  
REQUEST FOR HOUSING BOND ALLOCATION

1. GENERAL INFORMATION

- A. Issuing Authority \_\_\_\_\_
- B. Name of Project \_\_\_\_\_
- C. Type of Project
  - Single Family                       Multifamily
  - \_\_\_\_\_ Number of Units              \_\_\_\_\_ Number of Units

2. DESCRIPTION OF THE PROJECT

- A. General Description of the Project
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_
  - \_\_\_\_\_

Please check the appropriate response for the low income set aside requirement if the project is a multifamily rental project.

- 40 % of the units will be occupied by persons having incomes of 60% of area median income or less.
- 20% of the units will be occupied by persons having incomes of 50% of area median income or less.

B. Location of Project (City, County or Town) \_\_\_\_\_

C. Name, address, phone number and tax ID number of each proposed borrower and developer.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

D. Name, address and phone number of bond counsel.  
\_\_\_\_\_  
\_\_\_\_\_

E. Housing Bond allocation requested \$ \_\_\_\_\_

F. Projected closing date for issuance of the housing bonds \_\_\_\_\_

3. ATTACHMENTS

ALL FOUR ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM. ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE BEEN RECEIVED.

- A. Copy of inducement resolution or other preliminary approval.
- B. Copy of Governing Body's formal approval of the project.
- C. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Internal Revenue Code of 1986, as amended, and that an allocation of bond issuing authority from the state ceiling on private activity bonds is required.
- D. A definite and binding financial commitment agreement from a bond purchaser(s) agreeing to purchase the bond(s), or a firm commitment from a financial institution to issue a letter of credit for the project. The purchase agreement or letter of credit should be for an amount equal to or greater than the amount of bond authority requested by this application.

4. CERTIFICATION

I hereby certify that the information filed herewith is accurate to the best of my knowledge.

Signature of Chairman or Director of Issuing Authority

\_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## VIRGINIA RACING COMMISSION

### Title of Regulation: VR 622-01-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering.

Statutory Authority: § 59.1-364 of the Code of Virginia.

Effective Date: April 25, 1990

#### Summary:

*These final amendments (i) set forth the procedure for requesting racing days, (ii) establish procedures for approving racing days, (iii) establish procedures for transferring a license and acquiring an interest in a license, (iv) establish procedures for appealing a licensing decision, (v) specify the conditions under which pari-mutuel wagering will be conducted and (vi) establish procedures for the distribution of purse moneys.*

VR 622-01-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering.

### 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:

"Act" means Chapter 29 (§§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia.

"Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of \$ .10

"Commission" means the Virginia Racing Commission.

"Enclosure" means all areas of the property of a track to which admission can be obtained only by payment of an admission fee or upon presentation of authorized credentials, and any additional areas designated by the commission.

"Horse owner" means a person owning an interest in a horse.

"Horse racing" means a competition on a set course involving a race among horses on which pari-mutuel wagering is permitted.

"Licensee" includes any person holding an owner's, operator's, limited or unlimited license, or any other license issued by the commission.

"Limited license" means a license issued by the commission allowing the holder to conduct a race meeting

or meetings, with pari-mutuel wagering privileges, for a period not exceeding 14 days in any calendar year.

"Member" includes any person designated a member of a nonstock corporation, and any person who by means of a pecuniary or other interest in such corporation exercises the power of a member.

"Owner's license" means a license issued by the commission allowing the holder to construct a horse racing facility for the purpose of conducting a limited or unlimited race meeting with pari-mutuel wagering privileges.

"Operator's license" means a license issued by the commission allowing the holder to conduct a horse race meeting with pari-mutuel wagering privileges.

"Pari-mutuel wagering" means the system of wagering on horse racing in which those who wager on horses that finish in the position or positions for which wagers are taken share in the total amounts wagered, less deductions required or permitted by law.

"Permit holder" includes any person holding a permit to participate in horse racing subject to the jurisdiction of the commission or in the conduct of a race meeting where pari-mutuel wagering is offered thereon as provided in the Act.

"Person" includes a natural person, partnership, joint venture, association or corporation.

"Pool" means the amount wagered during a race meeting in straight wagering, in multiple wagering, or during a specified period thereof.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members, owns or controls, directly or indirectly, 5.0% or more of the stock of any person who is a licensee, or who in concert with his spouse and immediate family members has the power to vote or cause the vote of 5.0% or more of any such stock.

"Race meeting" means the whole consecutive period of time during which horse racing with pari-mutuel wagering is conducted by a licensee.

"Retainage" means the total amount deducted, from the pari-mutuel wagering pool in the percentages designated by statute for the Commonwealth of Virginia, purse money for the participants, Virginia Breeders Fund, and the operators.

"Stock" includes all classes of stock of an applicant or licensee corporation, and any debt or other obligation of such corporation or stockholder thereof or stock of any affiliated corporation if the commission finds that the holder of such obligation or stock derives therefrom such control of or voice in the operation of the applicant or

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licensee corporation that he should be deemed a stockholder. "Totalizator" means an electronic data processing system for registering wagers placed on the outcomes of horse racing, deducting the retainage, calculating the mutuel pools and returns to ticket holders, and displaying approximate odds and payouts, including machines utilized in the sale and cashing of wagers.

"Unlimited license" means a license issued by the commission allowing the holder to conduct a race meeting or meetings, with pari-mutuel wagering privileges, for periods of 15 days or more in any calendar year.

"Virginia Breeders Fund" means the fund established to foster the industry of breeding racehorses in the Commonwealth of Virginia.

## PART II LICENSURE.

§ 2.1. Identification of applicant for owner's, owner-operator's, operator's license.

An application shall include, on a form prepared by the commission, the name, address, and telephone number of the applicant and the name, position, address, telephone number, and authorized signature of an individual to whom the commission may make inquiry.

§ 2.2. Applicant's affidavit.

An application shall include, on a form prepared by the commission, an affidavit from the chief executive officer or a major financial participant in the applicant setting forth:

1. That application is made for a license to own, own-operate, or operate a horse racing facility at which pari-mutuel wagering is conducted;
2. That the affiant is the agent of the applicant, its owners, partners, members, directors, officers, and personnel and is duly authorized to make the representations in the application on their behalf. Documentation of the authority shall be attached;
3. That the applicant seeks a grant of a privilege from the Commonwealth of Virginia, and the burden of proving the applicant's qualifications rests at all times with the applicant;
4. That the applicant consents to inquiries by the Commonwealth of Virginia, its employees, the commission members, staff and agents, into the financial, character, and other qualifications of the applicant by contacting individuals and organizations;
5. That the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which

may result from action with respect to the application and expressly waive any claim which otherwise could be made against the Commonwealth of Virginia, its employees, the commission, staff, or agents;

6. That the affiant has read the application and knows the contents; the contents are true to affiant's own knowledge, except matters therein stated as information and belief; as to those matters, affiant believes them to be true;

7. That the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, suspension or conditioning of a license or imposition of a fine, or any or all of the foregoing;

8. That the applicant will comply with all applicable state and federal statutes and regulations, all regulations of the commission and all other local ordinances;

9. The affiant's signature, name, organization, position, address, and telephone number; and

10. The date.

§ 2.3. Disclosure of ownership and control.

An applicant must disclose:

1. The type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other;
2. If the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, any aliases and business or trade names currently or previously used by the applicant, and copies of all state and federal tax returns for the past five years;
3. If the applicant is a corporation:
  - a. The applicant's full corporate name and any trade names currently or previously used by the applicant;
  - b. The jurisdiction and date of incorporation;
  - c. The date the applicant began doing business in Virginia and a copy of the applicant's certificate of authority to do business in Virginia;
  - d. Copies of the applicant's articles of incorporation, bylaws, and all state and federal corporate tax returns for the past five years;

- e. The general nature of the applicant's business;
- f. Whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;
- g. The classes of stock of the applicant. As to each class, the number of shares authorized, number of shares subscribed to, number issued, number outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;
- h. Whether the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;
- i. The names, in alphabetical order, and addresses of the directors and, in a separate list, officers of the applicant. The number of shares held of record directly or indirectly by each director and officer as of the application date of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;
- j. The names, in alphabetical order, and addresses of each recordholder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the number and class or type of shares or units shall be disclosed;
- k. Whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of the most recent registration statement and annual report filed with the Securities and Exchange Commission;
- l. Whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met, and a copy of the most recent registration statement filed with the securities regulator in that jurisdiction; and
- m. Whether the securities registration and filing requirements of the Commonwealth of Virginia have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with Virginia's State Corporation Commission during the past five years.
4. If the applicant is an organization other than a corporation:
- a. The applicant's full name and any aliases, business, or trade names currently or previously used by the applicant;
- b. The jurisdiction of organization of the applicant;
- c. The date the applicant began doing business in Virginia;
- d. Copies of any agreements creating or governing the applicant's organization and all of the applicant's state and federal tax returns for the past five years;
- e. The general nature of the applicant's business;
- f. The names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policy-making authority. As to each, the applicant must disclose the nature and extent of any ownership interest, direct or indirect, including options, or other voting interest, whether absolute or contingent, in the applicant; and
- g. The names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, direct or indirect, including options, as of the date of the application, or other voting interest, whether absolute or contingent, in the applicant. As to each, the applicant must disclose the nature and extent of the interest.
5. If a nonindividual record or beneficial holder of an ownership or other voting interest of 5.0% or more in the applicant is identified pursuant to subdivision 3, i or j or subdivision 4, f and g, the applicant must disclose the information required by those subdivisions as to record or beneficial holders of an ownership or other voting interest of 5.0% or more in that nonindividual holder. The disclosure required by those subdivisions must be repeated, in turn, until all other voting interests of 5.0% or more in the applicant or any nonindividual holder are identified. When an applicant is unable to provide the information required, it shall explain fully and document its inability to do so;
6. Whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;
7. Any agreements or understandings which the applicant or any individual or entity identified pursuant to this part has entered into regarding ownership or operation of applicant's horse racing

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facility, and copies of any such agreements in writing;

8. Any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation concerning the proposed horse racing facility by the applicant, and copies of any such agreements in writing; and

9. Whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of 5.0% or more has held or holds a license or permit issued by a governmental authority to own or operate a horse racing facility, pari-mutuel wagering facility or any other form of gambling or has a financial interest in such an enterprise or conducts any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

## § 2.4. Disclosure of character information.

An applicant for a license must disclose and furnish particulars as follows whether the applicant or any individual or other entity identified pursuant to subdivisions 3 and 4 of § 2.3 and subdivisions 2 and 3 of § 2.10 of these regulations:

1. Been charged in any criminal proceeding other than a traffic violation. If so, the applicant must disclose nature of the charge, the date charged, court and disposition;

2. Had a horse racing, gambling, business, professional, or occupational license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances and disposition;

3. Been accused in an administrative or judicial proceeding of violating a statute or regulation relating to horse racing or gambling;

4. Been charged in an administrative or judicial proceeding of violating a statute or regulation relating to unfair labor practices or discrimination;

5. Begun an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances and disposition;

6. Been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision and disposition;

7. Failed to satisfy any judgment, decree or order of

an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances; and

8. Been delinquent in filing a tax return required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

## § 2.5. Disclosure of sites and facilities.

An application for a license must disclose with respect to the pari-mutuel horse racing facility it will own, operate, or own and operate:

1. The address of the facility, ownership of site for the last five years, legal description, mortgages, proof of title insurance, its size, and geographical location, including reference to county and municipal boundaries;

2. A site map showing existing highways and streets adjacent to the facility, and separately showing any proposed highways and streets adjacent to the facility, including their scheduled completion dates;

3. The type or types of racing for which the facility is designed, whether thoroughbred, harness standard bred, quarterhorse, or other;

4. Racetrack dimensions for each racetrack operated by the facility by:

a. Circumference;

b. Width;

c. Banking;

d. Location of chutes;

e. Length of stretch;

f. Distance from judges' stand to first turn;

g. Type of surface; and

h. Description of safety rail.

5. A description of the backstretch area, giving:

a. Dimensions and number of barns, whether open or enclosed;

b. Location and interval of barns;

c. Dimensions and number of stalls per barn;

d. Location of offices for veterinarians;

e. Location of facilities for emergency care for horses;

- f. Location of facilities for feed, tack, and other vendors;
  - h. Location, description and number of housing units for backstretch employees;
  - i. Location and description of commissary, lavatory and recreational facilities for backstretch employees; and
  - j. Location and description of training track, if any.
6. A description of the grandstand, giving:
- a. Total seating capacity;
  - b. Total reserved seating capacity;
  - c. Indoor and outdoor seating capacity;
  - d. Configuration of grandstand seating and pari-mutuel and concession facilities within the grandstand;
  - e. The number and location of men's and women's restrooms, drinking fountains and medical facilities available to patrons; and
  - f. Description of public pedestrian traffic patterns throughout the grandstand.
7. A description of the post-race detention barn, giving:
- a. Distance from the post-race detention barn to track and paddock;
  - b. Number of sampling stalls;
  - c. Placement of viewing ports on each;
  - d. Location of post-mortem floor;
  - e. Number of wash stalls with hot and cold water and drains;
  - f. Availability of video monitors and other security measures; and
  - g. The walking ring.
8. A description of the paddock and saddling area, giving:
- a. Number of stalls in the paddock;
  - b. Height from the floor to lowest point of the stall ceiling and entrance;
  - c. Paddock public address and telephone services; and
  - d. Public viewing area.
9. A description of the jockeys' and drivers' quarters, giving:
- a. Changing areas;
  - b. A listing of equipment to be installed in each; and
  - c. The location of the jockeys' or drivers' quarters in relation to the paddock.
10. A description of the pari-mutuel totalizator, giving:
- a. Approximate location of bettors' windows and cash security areas; and
  - b. A description of the equipment, including vendor and manufacturer if known.
11. A description of the parking, giving:
- a. Detailed attention to access to parking from surrounding streets and highways;
  - b. Number of parking spaces available, distinguishing between public and other;
  - c. A description of the road surface on parking areas and the distance between parking and grandstand; and
  - d. A road map of the area showing the relationship of parking to surrounding, existing and proposed streets and highways.
12. A description of the height, type of construction and materials of perimeter fence;
13. A description of improvements and equipment at the horse racing facility for security purposes in addition to perimeter fence, including the vendor and manufacturer of equipment if known;
14. A description of starting, timing, photo finish, and photo-patrol or video equipment, including the vendor and manufacturer if known;
15. A description of work areas for the commission members, officers, employees, stewards, and agents;
16. A description of the facility's access to public transportation, the types of public transportation and schedules and road maps of area which show pick-up and drop-off points; and
17. A description of manure and other refuse containers and plans for their prompt and proper removal.

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## § 2.6. Disclosure of development process.

An applicant for a license must disclose with regard to development of its horse racing facility:

1. The total cost of construction of the facility, distinguishing between known costs and projected costs;
2. Separate identification of the following costs, distinguishing between known costs and projected costs:
  - a. Facility design;
  - b. Land acquisition;
  - c. Site preparation;
  - d. Improvements and equipment, separately identifying the costs of subdivisions 4 through 17 of § 2.5, and other categories of improvements and equipment; and
  - e. Organization, administrative, accounting, and legal.)
3. Documentation of the nature of interim financing and the nature of permanent financing;
4. Documentation of fixed costs;
5. The schedule for construction of the facility, giving:
  - a. Acquiring land;
  - b. Soliciting bids;
  - c. Zoning and construction permit approval;
  - d. Awarding construction contracts;
  - e. Beginning construction;
  - f. Completing construction;
  - g. Training staff; and
  - h. Beginning of racing.
6. Schematic drawings;
7. Copies of any contracts with and performance bonds from the:
  - a. Architect or other design professional;
  - b. Project engineer;
  - c. Construction engineer;

d. Contractors and subcontractors; and

e. Equipment procurement personnel.

8. Whether the site has been acquired or leased by applicant. If so, the applicant must provide the documentation. If not, the applicant must state which actions must be taken in order to obtain the site; and

9. Whether present construction planning envisions future expansion of the facilities and, if so, a general description of the nature of such expansion.

## § 2.7. Disclosure of financial resources.

An applicant for license must provide the following with regard to financial resources:

1. The most recent independently audited financial statement showing:

a. The applicant's current assets, including investments in affiliated entities, loans and accounts receivable;

b. Fixed assets;

c. Current liabilities, including loans and accounts payable; and

d. Long-term debt and equity; and

e. Statement of income and expenses, and statement of cash flow;

2. Equity and debt sources of funds to develop, own and operate the horse racing facility:

a. With respect to each source of equity:

(1) Contribution;

(2) Identification of the source;

(3) Amount;

(4) Form;

(5) Method of payment;

(6) Nature and amount of present commitment; and

(7) Documentation, copies of agreements and actions which the applicant will take to obtain commitments for additional amounts;

b. With respect to each source of debt:

(1) Contribution;

(2) Identification of the source;

- (3) Amount;
- (4) Terms of debt;
- (5) Collateral;
- (6) Identity of guarantors;
- (7) Nature and amount of commitments; and
- (8) Documentation, copies of agreements and actions which the applicant will take to obtain commitments for additional amounts; and

3. Identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other cause.

## § 2.8. Disclosure of financial plan.

An applicant for a license must disclose with regard to its financial plan the financial projections for the development period and for each of the first five racing years, with separate schedules based upon the number of racing days, types of racing, and types of pari-mutuel wagering the applicant requires to break even and the optimum number of racing days and types of wagering the applicant seeks each year. The commission will utilize financial projections in deciding whether to issue licenses.

Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and approval of types of permissible pari-mutuel pools.

The disclosure must include:

### 1. The following assumptions and support for them:

- a. Average daily attendance;
- b. Average daily per capita handle and average bet;
- c. Retainage;
- d. Admissions to track, including ticket prices and free admissions;
- e. Parking volume, fees and revenues;
- f. Concessions, gift shop and program sales;
- g. Cost of purses;
- h. Pari-mutuel expenses;
- i. State taxes;
- j. Local taxes;

- k. Federal taxes;
- l. Virginia Breeders Fund;
- m. Payroll;
- n. Operating supplies and services;
- o. Utilities;
- p. Repairs and maintenance;
- q. Insurance;
- r. Travel expenses;
- s. Membership expenses;
- t. Security expenses;
- u. Legal and audit expenses; and
- v. Debt service;

### 2. The following profit and loss elements:

- a. Total revenue, including projected revenues from retainage, breakage, uncashed tickets, admissions, parking, and concessions, gift and program operations;
- b. Total operating expenses, including anticipated expenses for:
  - (1) Purses;
  - (2) Pari-mutuel;
  - (3) Sales tax;
  - (4) Local taxes;
  - (5) Admissions tax;
  - (6) Virginia Breeders Fund;
  - (7) Special assessments;
  - (8) Cost of concession goods, gifts and programs;
  - (9) Advertising and promotion;
  - (10) Payroll;
  - (11) Operating supplies and service;
  - (12) Maintenance and repairs;
  - (13) Insurance;
  - (14) Security;

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(15) Legal and audit; and

(16) Federal and state taxes.

c. Nonoperating expenses, including anticipated expenses for debt service, facility depreciation and identification of method used, and equipment depreciation and identification of method used;

3. Projected cash flow, including assessment of:

a. Income, including equity contributions, debt contributions, interest income and operating revenue; and

b. Disbursements, including land, improvements, equipment, debt service, operating expense and organizational expense.

4. Projected balance sheets as of the end of the development period and of each of the first five racing years setting forth:

a. Current, fixed and other noncurrent assets;

b. Current and long-term liabilities; and

c. Capital accounts.

5. The applicant must also disclose an accountant's review report of the financial projections.

## § 2.9. Disclosure of governmental actions.

An applicant for a license must disclose with regard to actions of government agencies:

1. The street and highway improvements necessary to ensure adequate access to applicant's horse racing facility, and the cost of improvements, status, likelihood of completion and estimated date of completion;

2. The sewer, water and other public utility improvements necessary to serve applicant's facility, and the cost of improvements, status, likelihood of completion and estimated date of completion;

3. The status of any required government approvals for development, ownership and operation of its horse racing facility:

a. A description of the approval, unit of government, date and documentation;

b. Whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held; and

c. Whether the unit of government attached any

conditions to approval. If so, the applicant must disclose these conditions, including documentation. In addition, the applicant must summarize its plans to meet these conditions.

4. Whether any required governmental approvals remain to be obtained, as well as a description of the approval, unit of government, status, likelihood of approval and estimated date of approval;

5. Whether an environmental assessment or environmental impact statement of the facility has been or will be prepared. If so, the applicant must disclose its status and the governmental unit with jurisdiction, and provide a copy of any statement; and

6. Whether the applicant is in compliance with all state statutes, local charter provisions, local ordinances, and state and local regulations pertaining to the development, ownership and operation of its horse racing facility. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance and summarize plans to obtain compliance.

## § 2.10. Disclosure of management.

An applicant for a license must disclose with regard to the development, ownership and operation of its pari-mutuel horse racing facility:

1. A description of the applicant's management plan, with budget and identification of management personnel by function, job descriptions and qualifications for each management position, and a copy of the organization chart;

2. Management personnel to the extent known and with respect to each:

a. Legal name, alias(es) and previous name(s);

b. Current residence and business addresses and telephone numbers;

c. Qualifications and experience in the following areas:

(1) General business;

(2) Marketing, promotion and advertising;

(3) Finance and accounting;

(4) Horse racing;

(5) Pari-mutuel wagering;

(6) Security; and

(7) Human and animal health and safety.

- d. Description of the terms and conditions of employment and a copy of each type of agreement;
3. Consultants and other contractors who have provided or will provide management-related services to applicant with respect to each:
  - a. Full name;
  - b. Current address and telephone number;
  - c. Nature of services;
  - d. Qualifications and experience; and
  - e. Description of terms and conditions of each contractor's agreement and a copy of the agreement.
4. Memberships of the applicant, management personnel and consultants in horse racing organizations.
5. Description of the applicant's marketing, promotion and advertising plans;
6. A description of the applicant's plan for concessions, including whether the licensee will operate concessions and, if not, who will;
7. A description of training of the applicant's personnel; and
8. A description of plans for compliance with all laws pertaining to discrimination, equal employment and affirmative action; policies regarding recruitment, use and advancement of minorities; policies with respect to minority contracting; and a copy of Equal Employment Opportunity Statement.

## § 2.11. Disclosure of safety and security plans.

An application for a license must disclose with regard to the development of its horse racing facility:

1. A description of the local emergency services available to the horse racing facility, including fire fighting, law enforcement and medical emergency services;
2. A description of the security equipment, such as fences, locks, alarms and monitoring equipment, for the horse racing facility, including:
  - a. Perimeter fence and its construction;
  - b. Stables;
  - c. Paddock;
  - d. Cash room and the vault;
  - e. Pari-mutuel ticket windows;
  - f. Totalizator room;
  - g. Post-race detention barn; and
  - h. Parking lot.
3. A description of the security procedures to be used:
  - a. To admit individuals to restricted areas of the horse racing facility;
  - b. To secure areas where money and mutuel tickets are vaulted, and daily transfers of cash via armored trucks;
  - c. To provide security for patrons and employees; and
  - d. Specific plans to discover persons at the facility who have been convicted of a felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction or are a threat to the integrity of racing in Virginia.
4. A description of the security personnel to be employed at the facility, giving:
  - a. Whether personnel will be employees of the licensee or employees of an independent contractor;
  - b. If the personnel are employed by an independent contractor, describe the organization and qualifications of the contractor as well as meeting applicable state licensing requirements;
  - c. State the number of individuals to be employed and the area of the racetrack where each will serve;
  - d. Provide an organizational chart of the security force with a job description of each level; and
  - e. State whether or not the security personnel are bonded and if so, state amount and conditions of the bond and the name and address of the surety company that issued the bond.
5. A description of the fire safety and emergency procedures, giving:
  - a. Evacuating the patrons and controlling traffic in an emergency;
  - b. Inspecting the facility for fire and safety hazards;
  - c. Restricted smoking areas; and
  - d. Coordinating the facility's security, fire and safety procedures with the state police, the commission

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and other local agencies.

6. A description of the first aid facilities available at the horse racing facility during racing hours and the facilities available to employees during non-racing hours;

7. Whether the applicant will be a member of the Thoroughbred Racing Protective Bureau or other security organization; and

8. A description of the internal accounting controls to create cross checks and balances in order to safeguard assets and detect fraud and embezzlement.

## § 2.12. Disclosure of public service.

An applicant for a license must disclose its plans for promotion of the orderly growth of horse racing in Virginia and education of the public with respect to horse racing and pari-mutuel wagering.

## § 2.13. Disclosure of impact of facilities.

An applicant for a license must disclose and document the projected impact of its horse racing facility, including:

### 1. Economic impact, giving:

- a. Number of jobs created, whether permanent or temporary, type of work, compensation, employer and how created;
- b. Purchases of goods and services, types of purchases and projected expenditures;
- c. Public and private investment; and
- d. State and local tax revenues generated.

### 2. Environmental impact;

3. Impact on energy conservation and development of alternative energy sources; and

4. Social impact on the community in which the horse racing facility would be located.

## § 2.14. Effects on competition.

An applicant must disclose the anticipated short- and long-range effects of its ownership and operation of its horse racing facility on competition within the horse racing industry.

## § 2.15. Disclosure of assistance in preparation of application.

An applicant must disclose the names, addresses and telephone numbers of individuals and businesses who assisted the applicant in the writing of its application and

supply copies of all studies completed for the applicant.

## § 2.16. Personal information and authorization for release.

In an application for a license, the applicant shall include the following with respect to each individual identified as an applicant, partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to subdivisions 2 and 3 of § 2.10:

1. Full name, business and residence addresses and telephone numbers, residence addresses for past five years, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references; and

2. An authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he:

a. Authorizes a review by, and full disclosure to, an agent of the Virginia State Police, of all records concerning the individual;

b. Recognizes the information reviewed or disclosed may be used by the Commonwealth of Virginia, its employees, the commission, members, staff and agents to determine the signer's qualifications for a license; and

c. Releases authorized providers and users of the information from any liability under state or federal data privacy statutes.

## § 2.17. License criteria.

A. The commission may issue a license if it determines on the basis of all the facts before it that:

1. The applicant is financially able to operate a racetrack;

2. Issuance of a license will not adversely affect competition within the horse racing industry and the public interest;

3. The racetrack will be operated in accordance with all applicable state and federal statutes and regulations, regulations of the commission and all local ordinances; and

4. The issuance of the license will not adversely affect the public health, safety and welfare.

B. In making the required determinations, the commission must consider the following factors:

1. The integrity of the applicant, including:

- a. Criminal record;
  - b. Involvement in litigation over business practices;
  - c. Involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;
  - d. Involvement in proceedings in which unfair labor practices, discrimination or government regulation of horse racing or gambling was an issue;
  - e. Involvement in bankruptcy proceedings;
  - f. Failure to satisfy judgments, orders or decrees;
  - g. Delinquency in filing of tax reports or remitting taxes; and
  - h. Any other factors related to integrity which the commission deems crucial to its decision making, as long as the same factors are considered with regard to all applicants.
2. The types and variety of pari-mutuel horse racing, pari-mutuel wagering, and other uses of the facility when racing or wagering is not offered;
  3. The quality of physical improvements and equipment in applicant's facility, including:
    - a. Racetrack or tracks and provisions, if any, for a turf course;
    - b. Stabling, including fire control measures;
    - c. Grandstand;
    - d. Detention barn;
    - e. Paddock;
    - f. Jockeys', drivers' and backstretch employees' quarters;
    - g. Pari-mutuel totalizator;
    - h. Parking;
    - i. Access by road and public transportation;
    - j. Perimeter fence;
    - k. Other security improvements and equipment;
    - l. Starting, timing, photo finish and photo-patrol or video equipment;
    - m. Commission work areas; and
    - n. Any other factors related to quality which the commission deems crucial to its decision making, as long as the same factors are considered with regard to all applicants;
  4. Imminence of completion of facility and commencement of pari-mutuel horse racing;
  5. Financial ability to develop, own and operate a pari-mutuel horse racing facility successfully, including:
    - a. Ownership and control structure;
    - b. Amounts and reliability of development costs;
    - c. Certainty of site acquisition or lease;
    - d. Current financial condition;
    - e. Sources of equity and debt funds, amounts, terms and conditions and certainty of commitment;
    - f. Provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other financial adversity;
    - g. Feasibility of financial plan; and
    - h. Any other factors related to financial ability which the commission deems crucial to its decision making as long as the same factors are considered with regard to all applicants.
  6. Status of governmental actions required for the applicant's facility, including:
    - a. Necessary road improvements;
    - b. Necessary public utility improvements;
    - c. Required governmental approvals for development, ownership and operation of the facility;
    - d. Acceptance of any required environmental assessment and preparation of any required environmental impact statement; and
    - e. Any other factors related to status of governmental actions which the commission deems crucial to its decision making as long as the same factors are considered with regard to all applicants.
  7. Management ability of the applicant, including:
    - a. Qualifications of managers, consultants and other contractors to develop, own and operate a pari-mutuel horse racing facility;
    - b. Security plan;
    - c. Plans for human and animal health and safety;

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- d. Marketing, promotion and advertising plans;
  - e. Concessions plan;
  - f. Plan for training personnel;
  - g. Equal employment and affirmative action plans; and
  - h. Any other factors related to management ability which the commission deems crucial to its decision making as long as the same factors are considered with regard to all applicants.
8. Compliance with applicable statutes, charters, ordinances or regulations;
9. Efforts to promote orderly growth of horse racing in Virginia and educate public with respect to horse racing and pari-mutuel wagering;
10. Impact of facility, including:
- a. Economic impact, including employment created, purchases of goods and services, public and private investment and taxes generated;
  - b. Environmental impact;
  - c. Impact on energy conservation and development of alternative energy sources;
  - d. Social impact;
  - e. Costs of public improvements;
  - f. Impact on the highway network; and
  - g. Any other factors related to impact which the commission deems crucial to its decision making as long as the same factors are considered with regard to all applicants.
11. Extent of public support and opposition;
12. Effects on competition, including:
- a. Number, nature and relative location of other licenses;
  - b. Minimum and optimum number of racing days sought by the applicant; and
  - c. Any other factors of the impact of competition which the commission deems crucial to decision making as long as the same factors are considered with regard to all applicants.
13. The commission shall also consider any other information which the applicant discloses and is relevant and helpful to a proper determination by the

commission.

## § 2.18. Criteria for unlimited horse racing facilities.

### A. Generally.

Every license to conduct a horse race meeting with pari-mutuel wagering privileges, of 15 days or more in any calendar year is granted by the commission upon the condition that the licensee will conduct horse racing at its facility or meeting for the promotion, sustenance, and growth of a native industry in a manner consistent with the health, safety, and welfare of the people. The adequacy and sufficiency with which the licensee meets the criteria for the procedures, facilities, and equipment for conducting a horse race meeting of such duration shall rest with the commission.

1. Each licensee shall accept, observe, and enforce all federal and state laws, regulations of the commission, and local ordinances.
2. Each licensee shall at all time maintain its grounds and facilities so as to be neat and clean, painted and in good repair, with special consideration for the comfort and safety of the public, employees, other persons whose business requires their attendance, and for the health and safety of the horses there stabled.
3. Each licensee shall honor commission exclusions from the enclosure and eject immediately any person found within the enclosure who has been excluded by the commission and report the ejection to the commission. Whenever any licensee ejects a person from the enclosure, it shall furnish a written notice to the person ejected and shall report the ejection to the commission.
4. No later than 30 days before the first day of any race meeting, each licensee shall submit to the commission the most recent inspection reports issued by governmental authorities regarding the condition of facilities, sanitation, and fire prevention, detection, and suppression.
5. Each licensee shall provide the commission daily attendance reports showing a turnstile count of all persons admitted to the enclosure and the reports shall indicate the daily number of paid admissions, taxed complimentary admissions, and tax exempt admissions.
6. Each licensee shall furnish to the commission within three months of the closing of its fiscal year, three copies of its balance sheet and of its operating statement for the previous fiscal year with comparison to the prior fiscal year, the same duly sworn to by the treasurer of the association, and certified by an independent certified public accountant. The financial report shall be in the form as may be prescribed from time to time by the commission.

7. Each licensee shall maintain a separate bank account to be known as the "horsemen's account," with the amount of purse money statutorily mandated to be deposited in the account within 48 hours of the running of the race. Withdrawals from this account shall at all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of the account shall be bonded:

a. All portions of purse money shall be made available when the stewards have authorized payment to the earners; and

b. No portion of purse money other than jockey fees shall be deducted by the licensee for itself or for another, unless so requested in writing by the person to whom such purse moneys are payable, or his duly authorized representative. Irrespective of whether requested, the horsemen's bookkeeper shall mail to each owner a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting such owner's racing at the close of each race meeting.

8. Each licensee shall remit to the commission within five days of the day on which the revenue for pari-mutuel taxes, admission taxes, and breeders' funds were collected. The remittance shall be accomplished by a direct deposit in a financial institution designated by the commission. On those days when the fifth day is a holiday or a weekend day, the payment must be made by the succeeding business day. At the close of each month in which racing is conducted, the licensee must report to the commission all deposits of taxes and breeders' funds for that month.

9. On each day that deposits are made by the licensee, a report must be filed with the commission containing the following recapitulation: total retainage, pari-mutuel tax; state and local admissions taxes; purse moneys; total breakage; and breeders' fund taxes.

10. Each licensee shall provide areas within the enclosure where publications, other informational materials, and tip sheets, may be sold to the public. All persons holding a tip sheet concession at the facility must be licensed by the commission as vendors.

a. Each handicapper shall post in a conspicuous place the previous day's tip sheet and the outcome of the races. Each handicapper shall deliver one copy of the tip sheet to a commission representative at least one hour before post time.

11. Each licensee shall supervise the practice and procedures of all vendors of food, horse feed, medication, and tack, who are licensed and have access to the stabling area. No licensee by virtue of this regulation shall attempt to control or monopolize proper selling to owners, trainers, or stable employees;

nor shall a licensee grant a sole concession to any vendor of feed, racing supplies, or racing services.

12. Each licensee shall provide to the commission copies of all subordinate contracts, in the amount of \$15,000 annual gross and above, entered into by the owner, owner-operator, or operator, and such contracts shall be subject to approval of the commission.

## B. Facilities for conducting horse racing.

Each licensee shall provide all of the facilities for the conduct of horse racing so as to maintain horse racing of the highest quality and free of any corrupt, incompetent, or dishonest practices and to maintain in horse racing complete honesty and integrity.

1. Each licensee shall provide for flat racing a main racing surface of at least one mile in circumference; for flat or jump racing on the turf a racing surface of at least seven-eighths of a mile in circumference; for harness racing a main racing surface of at least five-eighths of a mile in circumference; and for other types of racing a racing surface of generally accepted standards.

2. Each licensee shall provide a safety rail on the inside of each racing surface and such other fencing that is appropriate to safely enclose the racing surface for horses and riders.

3. Each licensee shall provide distance poles marking off the racing surface and the poles shall be painted in the following colors: quarter poles, red and white; eighth poles, green and white; and sixteenth poles, black and white.

4. Each licensee shall provide racing surfaces whose construction, elevation, and surfaces have received scientific approval as safe and humane, adequate and proper equipment to maintain the racing surface, and sufficient trained personnel to properly operate the equipment. Daily records of maintenance shall be open for inspection.

5. Each licensee shall provide stabling in a sufficient amount to conduct a successful horse race meeting. The horses shall be quartered in individual stalls with separate feeding and watering facilities.

6. Each licensee shall provide a stabling area that is maintained in approved sanitary condition with satisfactory drainage, manure, and other refuse kept in separate boxes or containers distant from living quarters, and the boxes or containers promptly and properly removed.

7. Each licensee shall provide a systematic and effective insect control program and programs to eliminate hazards to public health and comfort in the stabling area and throughout the enclosure.

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8. Each licensee shall provide satisfactory living quarters for persons employed in the stabling area as well as satisfactory commissary, recreation, and lavatory facilities, and maintain the facilities in a clean and sanitary manner. No employee shall be permitted to sleep in any stall or barn loft.

9. Each licensee shall provide on every racing day satisfactory sanitary toilets and wash rooms, and furnish free drinking water for patrons and persons having business within the enclosure.

10. Each licensee shall provide satisfactory first aid facilities with not less than two beds and attendance of a competent physician and registered nurse during racing hours who will be available to treat both patrons and permittees.

11. Each licensee shall provide a paddock where the horses are assembled prior to the post parade. Each licensee shall provide a public viewing area where patrons may watch the activities in the paddock. Each licensee shall also provide a sufficient number of roofed stalls so that horses may be housed during inclement weather.

12. Each licensee shall provide satisfactory facilities for jockeys or drivers who are participating in the day's program. The facilities shall include accommodations for rest and recreation, showers, toilets, wash basins, arrangements for safe keeping of apparel and personal effects and snack bar during horse race meetings.

13. Each licensee shall maintain an information desk where the public may make complaints regarding the facilities, operations of the licensee, or rulings of the commission. The licensee shall respond promptly to complaints, and inform the commission regarding any alleged violation of its regulations.

14. Each licensee shall maintain a detention barn for use by commission employees in securing from horses which have run a race, samples of urine, saliva, blood, or other bodily substances for chemical analysis. The detention barn shall include a wash rack, commission veterinarian office, a walking ring, and a sufficient number of stalls each equipped with a window sufficiently large to allow the taking of samples to be witnessed from outside the stall. The detention barn shall be located convenient to the racing surface and shall be enclosed by a fence so that unauthorized persons shall be excluded. Space shall be provided for signing in and signing out of permittees whose attendance is required in the detention barn.

15. Each licensee shall maintain a receiving barn conveniently located for use by horses arriving for races that are not quartered in the stabling area. The licensee shall have a sufficient number of stalls to

accommodate the anticipated number of horses, hot and cold running water, and stall bedding. The licensee shall maintain the receiving barn in a clean and sanitary manner.

16. Each licensee shall provide and maintain lights so as to ensure adequate illumination in the stabling area and parking area. Adequacy of track lighting for night racing shall be determined by the commission.

17. Each licensee shall provide and maintain stands commanding an uninterrupted view of the entire racing surface for the stewards with the location to be approved by the commission. The licensee shall provide patrol judge stands so that the floor shall be at least six feet higher than the track rail. For harness racing, each licensee shall provide space in the mobile starting gate which will accompany the horses during the race.

18. Each licensee shall furnish office space, approved by the commission, for the commission's use within the enclosure and an appropriate number of parking spaces so that its members and staff may carry out their duties.

19. Each licensee shall submit to the commission, at least 30 days prior to the opening day of a meeting, a complete list of its racing officials, as set forth elsewhere in these regulations, and department heads. No person shall hold any appointment for a horse race meeting unless approved by the commission after determination that the appointee is qualified for his duties, not prohibited by any law of the Commonwealth of Virginia or regulation of the commission, and eligible to be licensed by the commission.

20. Each licensee shall provide a condition book, or for harness racing, a condition sheet, listing the proposed races for the upcoming racing days and prepared by the racing secretary, to the commission at least one week prior to opening day. Additional condition books or condition sheets shall be provided to the commission as soon as published.

21. No licensee shall allow any person to exercise any horse within the enclosure unless that person is wearing a protective helmet of a type approved by the stewards and the chin strap is buckled. For flat racing, the term "exercising" is defined to include breezing, galloping, or ponying horses.

22. Each licensee shall employ at least two outriders for flat racing, at least four outriders for jump races, and at least one outrider for harness racing, to escort starters to the post and to assist in the returning of all horses to the unsaddling area for flat races. No outrider shall lead any horse that has not demonstrated unruliness, but shall assist in the control of any horse which might cause injury to a jockey or

driver or others. During racing hours, outriders will wear traditional attire. For flat race meetings, outriders shall be required to be present on the racing strip, mounted, and ready to assist in the control of any unruly horse or to recapture any loose horse, at all times when the track is open for exercising.

23. Each licensee shall employ for flat meets a sufficient number of valets to attend each jockey on a day's program. Valets will be under the immediate supervision and control of the clerk of scales. No valet shall be assigned to the same jockey for more than two consecutive racing days. Valets shall be responsible for the care and cleaning up of his assigned rider's apparel and equipment; shall ensure his rider has the proper equipment and attend the saddling of his rider's mount; and shall attend the weighing out of his rider. No valet or other jockey room attendant may place a wager for himself or another, directly or indirectly, on races run while he is serving as a valet. Each licensee shall provide uniform attire for valets who shall wear the uniform attire at all times while performing their duties within public view.

### C. Equipment for conducting horse racing.

Each licensee shall provide all of the equipment for the conduct of horse racing so as to maintain horse racing of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled practices, and to maintain in horse racing complete honesty and integrity.

1. Each licensee shall maintain at least two operable starting gates for flat meetings and two operable mobile starting gates for harness racing. The licensee shall have in attendance one or more persons qualified to keep the starting gates in good working order and provide for periodic inspection. For flat meetings, the licensee shall also make at least one starting gate along with adequate personnel available for schooling for two hours each day during training hours, exclusive of nonrace days. For harness racing meetings, a mobile starting gate shall be made available for qualifying races and schooling.

2. Each licensee shall maintain photo-finish equipment to assist the stewards and placing judges, where employed for flat race meetings, in determining the order of finish of each race. The licensee shall provide at the finish line two photo-finish cameras for photographing the finish of races; one camera to be held in reserve. The standards and operations of the photo-finish camera as well as the methodology of the personnel shall be subject to the approval of the stewards:

a. The photo-finish photographer shall promptly furnish the stewards and placing judges prints as they are requested, and the photographer will promptly inform the stewards and placing judges of

any malfunction of his equipment;

b. A print of a photo finish where the placing of horse is a half of length or less shall be displayed either by posting copies of the print or video means to the public promptly after the race has been declared "official"; and

c. Each licensee shall be responsible for maintaining a file of photo finishes of all races for one year after the closing of the horse race meeting.

3. Each licensee shall provide color video tape recordings of the running of each race clearly showing the position and actions of the horse and jockeys or drivers at close range. Each licensee shall provide at least three cameras to record panoramic and head-on views of the race. One camera shall be located on the finish line:

a. Promptly after a race has been declared "official," video tape recordings shall be replayed for the benefit of the public. In those races where there was a disqualification, video tapes of the head-on views may also be shown with an explanation by the public address announcer; and

b. The licensee shall safeguard the tapes of all videotapes for one year after the close of the horse race meeting and promptly deliver to the commission copies of videotapes of those races where there has been an objection, inquiry, protest, or disqualification.

4. Each licensee shall provide an electronic timing system. Each licensee shall also provide a qualified person to manually time each race, including splits of each quarter of a mile, in the event of a malfunction of the electronic system.

5. Each licensee shall provide an internal communication system which links the stewards' stand, racing secretary's office, pari-mutuel department, jockeys' or drivers' room, paddock, detention barn, commission veterinarian's office, starting gate, film patrol office, ambulances, public address announcer, patrol judges, and any other personnel designated by the commission.

6. Each licensee shall provide a public address system whereby calls of the races and other pertinent information may be communicated to the public. This system shall be utilized by a qualified person, and the system shall have the capability of transmitting throughout the stabling area.

7. Each licensee shall restrict the use of all external communication devices for a period of time beginning 30 minutes before post time of the first race and ending when the last race is declared "official":

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a. The licensee shall render inoperable each telephone or other instrument of communication located in the enclosure, other than those designated for the exclusive use of the commission;

b. The licensee may not permit an individual within the enclosure to receive a telephone call, telegram, or message from outside the enclosure without the approval of the stewards;

c. Each licensee shall confiscate until the end of the restricted time period a portable telephone, transmitter, or other instrument of external communication, including a car phone, located within the enclosure; and

d. The licensee may have telephone or telegraph systems within the enclosure for the benefit of the media, but no information regarding the results shall be transmitted out of the enclosure until the results are official except for races that are broadcast or televised live.

8. Each licensee shall provide a totalizator and employ qualified personnel to operate the system, provide maintenance of the hardware, software, and ancillary wagering devices, and be able to perform emergency repairs in case of emergencies. The licensee shall also provide a mutuel board in the infield where approximate odds, amounts wagered in the win, place, and show pools on each betting interest, and other pertinent information may be prominently displayed to the public:

a. The totalizator shall maintain at least two independent sets of pool totals and compare them at least once every 60 seconds. The totalizator shall record in a system log file any difference in the final pool totals;

b. The totalizator shall have the capability of calculating the mutuel pools, approximate odds, probable payoffs and display them to the public at intervals of not more than 60 seconds;

c. The totalizator shall have the capability of being locked and wagering terminated automatically at the command of a steward. Any failure of the system to lock at the start of the race shall be reported immediately by the mutuel manager to the stewards;

d. The totalizator shall have the capability of displaying the probable payoffs on various combinations in the daily double, perfecta, and quinella wagering, and displaying the payoffs to the public;

e. The totalizator shall have the capability of recording the wagering by individual wagers, including the amount wagered, the betting interest, and the mutuel window where the wager was

placed. The records of the wagering shall be promptly made available to the commission upon request. The licensee shall preserve the records of the wagering for 30 days after closing of the horse race meeting. The records shall not be destroyed without permission of the commission;

f. The personnel operating the totalizator shall report immediately to the stewards any malfunction in the system, or what they perceive to be any unusual patterns in the wagering;

g. The totalizator personnel shall make available to the commission any special reports or requests that may assist the commission in carrying out its statutory duties and responsibilities for the conduct of horse racing; and

h. The commission may require an independent certified audit of the totalizator's software attesting to the accuracy of its calculations and the integrity of its accounting processes.

9. Each licensee shall provide at least one human ambulance and at least one horse ambulance within the enclosure at all times during those hours when the racing and training surface is open for racing and training. The ambulances shall be manned and equipped to render immediate assistance, and shall be stationed at a location approved by the stewards.

## D. Provisions for safety, security and fire prevention.

Each licensee shall employ sufficient trained personnel to provide for the safety and security of the public and others who have business within the enclosure. Each licensee shall also take all measures to prevent the outbreak of fires within the enclosure and develop plans for the quick extinguishing of any fires that should occur.

1. Each licensee shall provide sufficient trained security personnel under the supervision of a qualified director of security. If the licensee contracts with a private security service, the security service must be bonded and meet all applicable licensing requirements. If the licensee establishes its own security force, then director of security shall forward to the commission detailed plans for the screening, hiring, and training of its own personnel.

2. The director of security of each licensee shall cooperate fully with the commission and its staff, federal and state law enforcement agencies, local police and fire departments, and industry security services to enforce all laws and regulations to ensure that horse racing in the Commonwealth of Virginia is of the highest integrity.

3. Each licensee shall develop a detailed security plan describing the equipment, i.e., fences, locks, alarms, and monitoring devices; the procedures to admit

persons to restricted areas, i.e., stabling area, paddock, jockeys' or drivers' room, vault, mutuel lines, totalizator room, and post-race detention barn; and the trained personnel in sufficient numbers to provide for the safety and security of all persons during racing and nonracing hours.

4. Each licensee may provide a perimeter fence around the entire enclosure, but shall fence off the stabling area. The entrance to the stabling area shall be guarded on a 24-hour basis by uniformed security personnel so that unauthorized persons shall be denied access to the restricted stabling area. The licensee shall also provide for routine patrolling by uniformed security personnel on a 24-hour basis within the stabling area.

5. During racing hours, the licensee shall provide uniformed security personnel to guard the entrances to the paddock, jockeys' or drivers' room, stewards' stand, and other restricted areas as may be deemed appropriate by the commission so that unauthorized persons shall be denied access to them.

6. The licensee's director of security shall submit to the commission and Virginia State Police a written report describing every arrest or completed incident of security investigation or rule violation including the person charged, the charges against the person, the present whereabouts of the person, and disposition of the charges, if any.

7. The licensee's director of security shall submit to the commission a detailed plan describing the procedures to be followed in case of fire or any other emergency within the enclosure. The plan shall contain the resources immediately available within the surrounding communities to cope with fire or other emergencies, route of evacuation for the public, controlling traffic, and those resources available from the surrounding communities for police, fire, ambulance, and rescue services.

8. Each licensee shall observe and enforce all state and local building codes and regulations pertaining to fire prevention, and shall prohibit the following:

- a. Smoking in horse stalls, feed rooms, or under the shedrow;
- b. Open fires and oil or gasoline burning lanterns or lamps in the stable area;
- c. The unsafe use of electrical appliances or other devices which would pose a hazard to structures, horses, permittees, or the public; and
- d. Keeping flammable materials including cleaning fluids or solvents in the stabling area.

## § 2.19. Request for racing days.

### A. Generally.

A holder of an owner-operator's or operator's license has the privilege of conducting horse [ racing ] meetings at facilities, licensed by the commission, with pari-mutuel wagering for a period of 20 years, subject to annual review by the commission. A holder of an owner-operator's or operator's license shall submit an annual request to the commission for racing days.

### B. Where to file request.

The licensee shall submit the request in writing to the main office of the commission no later than September 1, excluding Saturdays, Sundays, or holidays, for the following calendar year. The commission may, in its discretion, extend the deadline as new horse racing facilities are licensed and completed.

1. A request to be sent by certified mail shall be addressed to:

Executive Secretary  
Virginia Racing Commission  
Post Office Box 1123  
Richmond, VA 23208

2. A request to be hand-delivered shall be delivered to:

Executive Secretary  
Virginia Racing Commission  
700 East Franklin Street  
11th Floor  
Richmond, VA 23219

3. A request delivered by hand or by certified mail will be timely only if received at the main office of the commission by 5 p.m. on or before the date prescribed.

4. Delivery to other than the commission's main office or to commission personnel by hand or by mail is not acceptable.

5. The licensee assumes full responsibility for the method chosen to deliver the request.

### C. Content of request.

The licensee's request in writing shall include a statement of how the request will provide for the promotion, sustenance, and growth of a native industry, in a manner consistent with the health, safety and welfare of the people, except that the commission, in its discretion, may waive the foregoing. The request shall include the following:

1. A request, signed by an officer of the licensee, for assignment of racing days;

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2. A statement of the precise nature and extent of the assignment requested including the total number of racing days requested, the dates within which the racing days are to be conducted and the dark days, the breed or breeds to be utilized, the type or types of racing to be offered, the horse racing facility where the racing days are to be conducted, the hours of racing, and the projected purse structure.

3. A detailed statement of how the request meets the criteria established in § 2.21 C; and

4. Any other documentation the licensee deems material to ensure a complete understanding of the request.

## D. Revision of request.

A licensee may at anytime request a revision of a properly submitted request for racing days for commission approval.

## E. [ ~~Reeission~~ Rescission ] of racing days.

The commission may in its discretion rescind one or more racing days assigned to a licensee, if the commission finds that the licensee has not or will not meet the terms of its license. Any days rescinded may be reassigned to another licensee.

## § 2.20. Owner, owner-operator, or operator unlimited license application fee.

An applicant for an owner's, owner-operator's, or operator's license under § 59.1-375 of the Act must submit a nonrefundable application fee to the commission's designee at the time of application by a certified check or bank draft to the order of the Commonwealth of Virginia in the amount of \$10,000 to cover the cost of the background investigations mandated by § 59.1-371 of the Code of Virginia. In the event the cost of the investigation exceeds the \$10,000 application fee, the applicant must remit the amount of the difference by certified check or bank draft within 10 days after receipt of a bill from the commission.

## § 2.21. Assignment of racing days.

### A. Generally.

The commission shall promptly consider a request for racing days and assign racing days to a licensee.

### B. Consideration of requests.

Upon receipt of a request for assignment or revision of racing days, the commission shall consider the request at its next regular meeting, which is scheduled 15 days after receipt of a request, and may, in its discretion, assign the racing days as requested, modify the request, deny the request, or hold a public hearing pursuant to the following

procedures.

1. If the commission deems a hearing is appropriate, the commission shall send written notice to the licensee and give due notice of the public hearing. The notice must include a brief description of the request, a statement that persons wishing to participate may do so in writing, the time and place of any public hearing on the request, and the earliest and latest date which the commission may act.

2. The licensee will be afforded the opportunity to make an oral presentation, and the licensee or its representative shall be available to answer inquiries by the commissioners.

3. Any affected parties, including horsemen, breeders, employees of the licensee, representatives of other state and local agencies will be afforded the opportunity to make oral presentations. The public may be afforded the opportunity to make oral presentations and shall be given the opportunity to submit written comments.

4. If, after a request is received, the commission determines that additional information from the licensee is necessary to fully understand the request, the commission shall direct the licensee to submit additional information.

5. If the commission further determines it is necessary for a full understanding of a request, the commission shall request the licensee or a person submitting comments to appear before the commission. The commission shall request the appearance in writing at least five days in advance.

6. If a licensee fails to comply with the foregoing, the commission may deny the request for racing days.

7. A record of the proceedings shall be kept, either by electronic means or by court reporter, and the record shall be maintained until any time limits for any subsequent court appeals have expired.

8. Three or more members of the commission are sufficient to hear the presentations. If the chairman of the commission is not present, the commissioners shall choose one from among them to preside over the hearing.

## C. Criteria for assignment of racing days.

The commission, in making its determination, must consider the success and integrity of horse racing; the public health and safety, and welfare; public interest, necessity and convenience; as well as the following factors:

1. The integrity of the licensee;
2. The financial resources of the licensee;

3. The ability of the licensee to conduct horse racing, including the licensee's facilities, systems, managers, and personnel;

4. Past compliance of the licensee with statutes, regulations, and orders regarding horse racing with pari-mutuel wagering privileges;

5. The licensee's market, including area, population, and demographics;

6. The performance of the horse race meeting with previously assigned dates;

7. The impact of the assignment of racing days on the economic viability of the horse racing facility including attendance and pari-mutuel handle;

8. The quantity and quality of economic development and employment generated;

9. Commonwealth tax revenues from racing and related economic activity;

10. The entertainment and recreation opportunities for residents of the Commonwealth;

11. The breeds of horse racing;

12. The quality of racing;

13. The availability and quality of horses;

14. The development of horse racing;

15. The quality of the horse racing facility;

16. Security;

17. Purses;

18. Benefits to Virginia breeders and horse owners;

19. Stability in racing dates;

20. Competition among horse racing facilities, other racing days and with other providers of entertainment and recreation as well as its effects;

21. The social effects;

22. The environmental effects;

23. Community and government support;

24. Sentiment of horsemen; and

25. Any other factors related to the assignment of racing days which the commission deems crucial to its decision-making as long as the same factors are considered with regard to all requests.

## D. Assigning racing days.

In assigning racing days to a licensee, the commission shall designate in writing the total number of racing days assigned, the dates within which the racing days are to be conducted and dark days, the breed or breeds to be utilized, the type or types of racing to be offered, the horse racing facility where the racing days will be conducted, and the hours of racing.

1. The commission shall approve, deny or give its qualified approval to a request for racing days within 45 days after a public hearing, if a public hearing was held on the request.

2. The commission may, in its discretion, change at the beginning of any calendar year the assignment of racing days previously made.

3. The commission shall require a bond with surety or within the amount of \$1 million or a higher amount as the commission may require to cover any indebtedness, including but not limited to purses, awards to horsemen and moneys due the Commonwealth of Virginia, incurred by the licensee.

## E. Denial of request final.

The denial of a request by the commission shall be final unless appealed by the licensee under the provisions of these regulations.

## § 2.22. Payment of owner and operator license fee.

An owner's or operator's license becomes effective upon the receipt by the commission of a certified check or bank draft to the order of the Commonwealth of Virginia in the amount of license fees and is suspended if the license fee is not received on or before the specified dates:

1. Owner's license: A nonrefundable fee of \$5,000 per year due and payable within 10 days of the original license being issued and on or before January 1 of each succeeding year.

2. Operator's license: A nonrefundable fee of \$100 times the number of racing days awarded in the annual application for racing days due and payable on or before January 1 of each year.

## § 2.23. Transfer or acquisition of interest in owner's, owner-operator's or operator's license.

### A. Generally.

A licensee already holding a limited or unlimited owner's, owner-operator's or operator's license may apply to the commission to transfer its race meet or meetings to that of another horse racing facility already licensed by the commission.

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## B. Requirements for transfer of racing days.

The licensee shall apply to the commission in writing requesting the transfer of its racing days to that of another licensee stating:

1. The reason for the transfer;
2. Why the transfer will provide for the promotion, sustenance, and growth of horse racing and breeding, in a manner consistent with the health, safety, and welfare of the Commonwealth of Virginia;
3. Why the transfer will maintain horse racing in the Commonwealth of the highest quality, and free of any corrupt, incompetent, dishonest, or unprincipled practices and maintain complete honesty and integrity;
4. Why the transfer will not adversely affect the operation of any other horse racing facility licensed by the commission;
5. That the transfer has been expressly consented to by the licensee to which the transfer is to be made;
6. That all licensees agree to be bound by the regulations and requirements placed upon it by the commission before the application for the transfer was submitted; and
7. That all licensees to whom racing days are to be transferred, have paid all and any applicable license fees for the conduct of horse racing, with pari-mutuel wagering privileges, at the particular facility or place for holding races on which the racing is to be conducted.

## C. Consideration by commission.

The commission will take into account the statement submitted by the licensee and any other testimony or documentation that it deems material before approving or denying the request for transfer of a license. The commission shall act on the application within 60 days of receipt.

## D. Acquiring an interest.

Any person desiring to become a partner, member or principal stockholder of any licensee shall apply to the commission for approval of acquiring an interest in the license.

1. The applicant shall meet all of the requirements imposed by the commission for licensure as owners or operators, as specified in §§ 2.1 through 2.17 of these regulations.
2. The commission shall consider the application and if the commission finds that acquisition would be detrimental to the public interest, to the honesty and

integrity or racing, of its reputation, the application shall be denied.

3. The commission shall act on the application within 60 days of receipt.

## § 2.24. Appeals of denial, fine, suspension or revocation of license.

### A. Generally.

An applicant who is denied a license may appeal the commission's decision by requesting a hearing on the licensing action. A licensee whose license is revoked, whose license is denied for renewal, whose request is denied for transfer, or who is fined or suspended, may appeal the commission's decision by requesting a hearing on the licensing action.

### B. Hearings to conform to Administrative Process Act.

The conduct of license appeal hearings will conform to the provisions of Article 3 (9-6.14:11 et seq.) of Chapter 1.1:1 of Title 9 relating to Case Decisions.

1. An initial hearing consisting of an informal fact finding process will be conducted by the executive secretary in private to attempt to resolve the issue to the satisfaction of the parties involved.

2. If an appeal is not resolved through the informal fact finding process, a formal hearing will be conducted by the commission in public. The commission will then issue its decision on the case.

3. Upon receipt of the commission's decision on the case, the appellant may elect to pursue court action in accordance with the provisions of the Administrative Process Act (APA) relating to court review.

### C. Form of appeal.

Upon receiving a notice that (i) an application for or the renewal of a license has been denied by the commission, or (ii) the commission intends to or has already taken action to fine, suspend, or revoke a current license, the applicant or licensee may appeal in writing for a hearing on the licensing action. The appeal shall be submitted within 30 days of receipt of the notice of the licensing action.

1. Receipt of said notice is presumed to have taken place not later than the third day following mailing of the notice to the last known address of the applicant or licensee. If the third day falls upon a day on which mail is not delivered by the United States Postal Service, the notice is presumed to have been received on the next business day. The "last known address" means the address shown on the application of an applicant or licensee.

## D. Where to file appeal.

1. An appeal to be sent by certified mail shall be addressed to:

Executive Secretary  
Virginia Racing Commission  
Post Office Box 1123  
Richmond, Virginia 23208

2. An appeal to be hand-delivered shall be delivered to:

Executive Secretary  
Virginia Racing Commission  
700 East Franklin Street  
11th Floor  
Richmond, Virginia 23219

3. An appeal delivered by hand or by certified mail will be timely only if received at the main office of the commission by 5 p.m. on or before the date prescribed.

4. Delivery to other Virginia Racing Commission offices or other commission [ personnel ] or officials by hand or by mail is not effective.

5. The appellant assumes full responsibility for the method chosen to file the notice of appeal.

## E. Content of appeal.

The appeal shall state:

1. The decision of the commission which is being appealed;
2. The basis for the appeal; and
3. Any additional information the appellant may wish to include concerning the appeal.

## F. Procedures for conducting informal fact finding hearings.

The executive secretary will conduct an informal fact finding hearing with the appellant for the purpose of resolving the licensing action at issue.

1. The executive secretary will hold the hearing as soon as possible but not later than 30 days after the appeal is filed. A notice setting out the hearing date, time and location will be sent to the appellant at least 10 days before the day set for the hearing.
2. All informal hearings shall be held at the main office of the Virginia Racing Commission.
3. The hearings shall be informal. They shall not be open to the public.

a. The hearings may be electronically recorded. The recordings will be kept until any time limits for any subsequent appeals have expired.

b. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the commission. The transcript shall become part of the commission's records.

c. The appellant may appear in person or may be represented by counsel to present his facts, argument or proof in the matter to be heard and may request other parties to appear to present testimony.

d. The commission will present its facts in the case and may request other parties to appear to present testimony.

e. Questions may be asked by any of the parties at any time during the presentation of information subject to the executive secretary's prerogative to regulate the order of presentation in a manner which serves the interest of fairly developing the factual background of the appeal.

f. The executive secretary may exclude information at any time which he believes is not germane or which repeats information received.

g. The executive secretary shall declare the hearing completed when both parties have finished presenting their information.

h. Normally, the executive secretary shall issue his decision within 15 days after the conclusion of an informal hearing. However, for a hearing with a court reporter, the executive secretary shall issue his decision within 15 days after receipt of the transcript of the hearing. The decision will be in the form of a letter to the appellant summarizing the case and setting out his decision on the matter. The decision will be sent to the appellant by certified mail, return receipt requested.

## G. Appeal to commission for hearing.

After receiving the executive secretary's decision on the informal hearing, the appellant may elect to appeal to the commission for a formal hearing on the licensing action. The appeal shall be:

1. Submitted in writing within 15 days of receipt of the executive secretary's decision on the informal hearing;

a. An appeal sent by certified mail shall be addressed to:

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Executive Secretary  
Virginia Racing Commission  
Post Office Box 1123  
Richmond, VA 23208

b. An appeal to be hand-delivered shall be delivered to:

Executive Secretary  
Virginia Racing Commission  
700 East Franklin Street  
11th Floor  
Richmond, VA 23219

2. The same procedures in § 2.24 D, for filing the original notice appeal govern the filing of the notice of appeal of the executive secretary's decision to the commission.

3. The appeal shall state:

- a. The decision of the [ ~~director~~ executive secretary ] which is being appealed;
- b. The basis for the appeal; and
- c. Any additional information the appellant may wish to include concerning the appeal.

#### H. Procedures for conducting formal licensing hearings.

The commission shall conduct a formal hearing within 45 days of receipt of an appeal on a licensing action.

1. Three or more members of the commission are sufficient to hear an appeal. If the chairman of the commission is not present, the members present shall choose one from among them to preside over the hearing.
2. The chairman of the commission, at his discretion, may designate an ad hoc committee of the commission to hear licensing appeals and act on its behalf. Such committee shall have at least three members who will hear the appeal on behalf of the commission. If the chairman of the commission is not present, the members of the ad hoc committee shall choose one from among them to preside over the hearing.
3. If any commissioner determines that he has a conflict of interest or potential conflict, that commission member shall not take part in the hearing. In the event of such a disqualification on a subcommittee, the commission chairman shall appoint an ad hoc substitute for the hearing.
4. A notice setting the hearing date, time, and location shall be sent to the appellant at least 10 days before the day set for the hearing. All hearings will be held at the main office of the Virginia Racing Commission,

unless the commission decides otherwise.

5. The hearings shall be conducted in accordance with provisions of the Virginia Administrative Process Act (APA). The hearings shall be open to the public.

a. The hearings shall be electronically recorded and the recordings will be kept until any time limits for any subsequent court appeals have expired.

b. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the commission. The transcript shall become part of the commission's records.

c. The provisions of §§ 9-6.14:12 through 9-6.14:14 of the Administrative Process Act [ (APA) ] shall apply with respect to the rights and responsibilities of the appellant and of the commission.

#### I. Decision by commission.

Normally, the commission will issue its written decision within 21 days of the conclusion of the hearing. However, for a hearing with a court reporter, the commission will issue its written decision within 21 days of receipt of the transcript of the hearing.

1. A copy of the commission's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained by the commission and become a part of the case file.

2. The written decision will contain:

- a. A statement of the facts to be called, "Finding of Facts";
- b. A statement of conclusions to be called "conclusions" and to include as much detail as the [ ~~board~~ commission ] feels is necessary to set out the reasons and basis for its decisions; and
- c. A statement, to be called "Decision and Order," which sets out the commission's decision and order in the case.

#### PART III. PARI-MUTUEL WAGERING.

##### § 3.1. Generally.

All permitted wagering shall be under a pari-mutuel wagering system whereby the holders of winning tickets divide the total amount wagered, less retainage, in proportion to the sums they have wagered individually. All other systems of wagering other than pari-mutuel, e.g., bookmaking and auction-pool selling, are prohibited and

any person participating or attempting to participate in prohibited wagering shall be excluded from the enclosure.

A. Persons under the age of 18 are prohibited from wagering.

No person under the age of 18 shall be permitted by any licensee to purchase or cash a pari-mutuel ticket. No employee of the licensee shall knowingly sell or cash any pari-mutuel ticket for a person under the age of 18.

B. Posted order of finish.

Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as posted on the infield results board and declared "official" by the stewards. Any subsequent change in the order of finish or award of purse money as may result from a ruling by the stewards or commission shall in no way affect the pari-mutuel [ payoff ] .

Payments will be made only on the first three horses passing the finish line according to the official order of finish, except in the case of a dead heat for show, in which case payments will be made on the horses involved in the dead heat.

C. Errors in payment.

The licensee shall be responsible for the correctness of all payouts posted as "official" on the infield results board. If an error is made in posting the payout figures on the infield results board, and discovered before any tickets are cashed, the error may be corrected accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error on the infield results board.

1. The licensee shall compare the two independent final pool totals and payouts calculated by the totalizator prior to posting them on the infield results board. In the event of a discrepancy between the two sets of pool totals and payouts and the inability of the totalizator to determine which of the sets is correct, the highest pool total and payouts shall be used.

2. If an error is made in posting the payout figures on the infield results board and discovered after tickets have been cashed, where the public is underpaid, the amount of the underpayment shall be added to the same pool immediately following. Where the public is overpaid, the amount of the overpayment shall be absorbed by the licensee.

3. If any underpayment is discovered after the close of the horse race meeting or an opportunity does not exist to add the amount of the underpayment to the same pool, the total underpayment shall be paid to the Commonwealth of Virginia in a manner prescribed by the commission.

D. Minimum wagers.

The minimum wager for straight wagering shall be \$2.00. The minimum wager for multiple wagering shall be \$1.00.

E. Minimum payouts.

The licensee shall pay to the holder of any ticket entitling the holder to participate in the distribution of a pari-mutuel pool the amount wagered by the holder plus a minimum profit of 5.0%. If such a payout creates a deficiency in the pari-mutuel pool, the licensee shall make up the deficiency from its share of the pari-mutuel wagering.

The licensee, with the approval of the stewards, may bar [ wagering on ] a horse or entry [ from wagering ] in any or all pari-mutuel pools in a stakes race, handicap, futurity or other special event where the licensee has good and sufficient reason to believe that accepting wagers on the horse or entry may result in a deficiency or minus pool. The decision to bar wagering on a horse or entry shall be announced publicly before wagers are accepted on that race.

F. Posting of regulations.

Part III of these regulations shall be posted for the benefit of the public in not less than two places in the wagering areas of the enclosure and a general explanation shall be printed in the daily program.

The pari-mutuel regulations posted in the wagering areas or a general explanation printed in the daily program shall be preceded by the following statement:

"All payouts by the pari-mutuel departments of horse race meetings licensed by the Virginia Racing Commission are subject to the regulations of the United States Government, the Internal Revenue Service, and applicable statutes of the Commonwealth of Virginia."

G. Identification of holder.

The licensee shall require positive identification of a holder of a valid winning pari-mutuel ticket before the payment when, in the stewards' discretion, circumstances warrant this action.

§ 3.2. Request for types of pari-mutuel pools.

A. Generally.

Each licensee shall submit a request in writing to the commission for approval of the types of pari-mutuel wagering pools that are to be offered to the public during the horse race meeting. The request for approval of types of pari-mutuel wagering pools shall be submitted to the commission in writing no less than 90 days before the

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scheduled opening day of the horse race meeting.

## B. Where to file request.

The licensee shall submit the request in writing to the main office of the commission.

1. A request to be sent by certified mail shall be addressed to:

Executive Secretary  
Virginia Racing Commission  
Post Office Box 1123  
Richmond, VA 23208

2. A request to be hand-delivered shall be delivered to:

Executive Secretary  
Virginia Racing Commission  
700 East Franklin Street  
11th Floor  
Richmond, VA 23219

3. A request delivered by hand or by certified mail will be timely only if received at the main office of the commission by 5 p.m. on or before the date prescribed.

4. Delivery to other than the commission's main office or to commission personnel by hand or by mail is not acceptable.

5. The licensee assumes full responsibility for the method chosen to deliver the request.

## C. Content of request.

The licensee's request in writing shall include a statement of how the request will provide for the promotion, sustenance and growth of a native industry, in a manner consistent with the health, safety and welfare of the people, except that the commission, in its discretion, may waive the foregoing. The request shall include the following:

1. A signed request for approval of pari-mutuel pools;
2. A statement of the precise nature and extent of pools requested, specifying the type of pari-mutuel wagering pools and their placement in the program;
3. A detailed statement of how the request meets each of the criteria in subsection C of § 3.3; and
4. Any other documentation the licensee deems necessary to ensure a complete understanding of the request.

## D. Revision of request.

A licensee may make a revision of a properly submitted request for types of pari-mutuel wagering pools.

## § 3.3. Approval of types of pari-mutuel wagering pools.

### A. Generally.

The commission shall promptly consider a request for types of pari-mutuel wagering pools.

### B. Consideration of requests.

Upon receipt of a request for approval or modification of types of pari-mutuel wagering pools, the commission shall consider the request at its next regularly scheduled meeting, and may, in its discretion [ ~~by a majority vote of the quorum present~~ ], approve the types of pari-mutuel wagering pools as requested, modify the request, deny the request, or hold a public hearing pursuant to the following procedures:

1. If the commission deems a public hearing is appropriate, the commission shall send written notice of the request to all persons interested in participating in the public hearing. The notice must include a brief description of the request, a statement that persons wishing to comment may do so in writing, the time, and place of any public hearing on the request, and the earliest and latest date which the commission may act.

2. The licensee will be afforded the opportunity to make an oral presentation, and the licensee or its representative shall be available to answer inquiries by the commissioners.

3. Any affected parties, including horsemen, breeders, employees of the licensee, representatives of other state and local agencies, and the public will be afforded the opportunity to make oral presentations.

4. If, after a request is received, the commission determines that additional information from the licensee is necessary to fully understand the request, the commission shall direct the applicant to submit the additional information.

5. If the commission further determines it is necessary for a full understanding of a request, the commission shall request the licensee or a person submitting comments to appear before the commission. The commission shall request the appearance in writing at least five days in advance.

6. If a licensee fails to comply with the foregoing, the commission may deny the request for the types of pari-mutuel wagering pools.

7. A record of the proceedings shall be kept, either by electronic means or by court reporter, and the record shall be maintained until any time limits for any

subsequent court appeals have expired.

8. Three or more members of the commission are sufficient to hear the presentations. If the chairman of the commission is not present, the commissioners shall choose one from among them to preside over the meeting.

### C. Criteria for approval of types of pari-mutuel wagering pools.

The commission, in making its determination, must consider the success and integrity of horse racing; the public health and safety, and welfare; public interest, necessity, and convenience; as well as the following factors:

1. The integrity of the licensee;
2. The financial strength of the licensee;
3. The ability of the licensee to operate a racetrack and conduct horse racing, including the licensee's facilities, systems, policymakers, managers, and personnel;
4. Past compliance of the licensee with statutes, regulations, and orders regarding pari-mutuel horse racing;
5. The licensee's market, including area, population, and demographics;
6. The performance of the horse racing facility with previously approved pari-mutuel pools;
7. The impact approving the pari-mutuel pool will have on the economic viability of the horse race meeting, including attendance and handle;
8. The quantity and quality of economic activity and employment generated;
9. Commonwealth of Virginia tax revenues from racing and related economic activity;
10. The entertainment and recreational opportunities for Virginia citizens;
11. The variety of racing;
12. The quality of racing;
13. The availability and quality of horses;
14. The development of horse racing;
15. The quality of the horse racing facility;
16. Security;

17. Purses;

18. Benefits to Virginia breeders and horse owners;

19. Competition among licensees and with other providers of entertainment and recreation as well as its effects;

20. Social effects;

21. Community and government support;

22. Sentiment of horsemen; and

23. Any factors related to the types of pari-mutuel wagering pools which the commission deems crucial to its decision-making as long as the same factors are considered with regard to all horse race meetings.

### D. Approving types of parti-mutuel pools.

The commission shall approve, deny or give its qualified approval to a request for types of pari-mutuel wagering pools within 45 days after a public hearing, if a public hearing is held.

### E. Denial of request final.

The denial of a request by the commission shall be final unless appealed by the licensee under the provisions of these regulations.

### § 3.4. Pari-mutuel tickets.

#### A. Generally.

A valid pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the licensee and is evidence of the obligation of the licensee to pay to the holder the portion of the distributable amount of the pari-mutuel pool as is represented by the ticket. The licensee shall cash all valid unmutilated winning tickets when they are presented for payment within 60 days of the date of their purchase.

#### B. Valid pari-mutuel tickets.

To be deemed a valid pari-mutuel ticket, the ticket must have been issued by a pari-mutuel ticket machine operated by the licensee and recorded as a ticket entitled to a share of the pari-mutuel pool, and contain imprinted information as to:

1. The name of the horse racing facility;
2. The date of the wagering transaction;
3. A unique identifying number or code;
4. The race number for which the pool is conducted;

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5. The type or types of wager or wagers represented;

6. The number or numbers representing the wagering interests for which the wager is recorded; [ and ]

7. The amount or amounts of the contributions to the pari-mutuel pool or pools for which the ticket is evidence [ ; and . ]

[ 8. The place of issuance. ]

## C. Incorrect ticket issuance.

Any claim by a person that he has been issued a ticket other than that which he requested, must be made before the person leaves the window and before the totalizator is locked.

## E. Invalid claims.

After purchasing a ticket and after leaving a ticket window, a person shall not be entitled to make a claim for an incorrect ticket or claim refund or payment for tickets discarded, lost or destroyed or mutilated beyond identification.

## F. Identification of tickets.

The responsibility for identifying valid pari-mutuel tickets rests with the licensee.

## G. Limits on cashing tickets.

Payment on valid pari-mutuel tickets, including tickets where refunds are ordered, shall be made only upon presentation and surrender of valid pari-mutuel tickets to the licensee [ where the wager was made ] within 60 days after the purchase of the ticket. Failure to present any valid pari-mutuel ticket to the licensee within 60 days after the purchase of the ticket shall constitute a waiver of the right to payment.

## § 3.5. Operations of the mutuel department.

### A. Generally.

Each licensee shall strive to keep the daily program of racing progressing as expeditiously as possible with due regard for the health, safety, and comfort of the public and participants. The licensee shall provide a sufficient number of mutuel windows and clerks so that the public will be conveniently accommodated.

### B. Post time.

Post time for the first race on each racing day shall be approved by the commission upon written request by the licensee. Post time for subsequent races on the same program shall be fixed by the mutuel manager.

1. Where heat racing is utilized in harness racing, the

time between separate heats of a single race shall not be less than 40 minutes.

## C. Termination of wagering.

The pari-mutuel machines shall be locked by a steward immediately upon the start of the race through an electrical control in the stewards' stand or before the start of a race through a method subject to the approval of the commission.

## D. Unwarranted delays.

If the start of the race is delayed two minutes or more beyond the official post time, as shown on the infield results board, for no good reason, the stewards may, in their discretion, lock the ticket-issuing machines.

## E. Commencement of wagering.

Mutuel windows shall open no less than 30 minutes before the first race. Cashing of tickets shall begin, and selling shall resume, as soon as possible after the official results of a race have been posted on the infield results board.

## F. Interruptions of wagering.

If, for any reason, including a malfunction of the totalizator, the ticket-issuing machines are locked during the wagering on a race before the start, they shall remain locked until after the race. Wagering shall cease on that race, and the payout for that race shall be computed on the sums then wagered in each pool. [ However, ] in the event the ticket-issuing machines are inadvertently locked through some human error [ or mechanical problem ] , the ticket-issuing machines shall be [ opened reopened ] only on the approval of the stewards [ , if the system balances when it is again operational ] .

## G. Conclusion of wagering.

No pari-mutuel tickets may be sold after the totalizator has been locked, and the licensee shall not be responsible for pari-mutuel ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.

## H. Designated windows.

No pari-mutuel tickets shall be sold except by the licensee, and pari-mutuel tickets shall only be sold at regular windows properly designated by signs [ and freestanding self-service ticket issuing machines ] .

## I. Compliance with tax regulations.

All payouts on winning tickets shall be subject to withholding of federal and state taxes when the amount of the payout exceeds the dollar threshold set by the U.S. Internal Revenue Service. In those cases where the

payouts require identification and deduction of withholding taxes prior to cashing pari-mutuel tickets to holders, the licensee shall comply with the applicable regulations of the Internal Revenue Service and the statutes of the Commonwealth of Virginia requiring identification and deduction of withholding taxes.

## J. Emergency situations.

If any emergency arises in connection with the operation of the mutuel department and the emergency is not covered by these regulations and an immediate decision is necessary, the mutuel manager shall make the decision, and make a prompt report of the facts to the stewards and the commission.

## § 3.6. Wagering interests.

### A. Generally.

The licensee shall be responsible for the coupling of horses for wagering purposes in accordance with these regulations and shall provide wagering opportunities in accordance with the success and integrity of horse racing as well as the public interest.

### B. Coupled entries.

When two [ or ] more horses run in a race and are coupled for wagering purposes, a wager on one of the horses shall be a wager on all of them. The horses [ so coupled ] are called "an entry."

### C. Mutuel field.

When the individual horses competing in a race exceed the numbering capacity of the infield results board, the highest numbered horses within the capacity of the infield results board and all horses of a higher number shall be grouped together and called the "mutuel field," and a wager on one of them shall be a wager on all of them.

### D. Straight wagering opportunities.

Unless the commission approves a prior written request from a licensee to alter wagering opportunities for a specific race, the licensee shall offer:

1. Win, place, and show wagering on all scheduled races that include six or more wagering interests;
2. If horses representing five or fewer wagering interests are scheduled to start in a race, then the licensee may prohibit show wagering on that race; and
3. If horses representing four or fewer wagering interests are scheduled to start in a race, then the licensee may prohibit place wagering [ ; as well as ] show wagering [ ; or both on that race ] .

### E. Trifecta wagering opportunities.

Trifecta wagering shall not be scheduled on a race unless at least six wagering interests are programmed. In the event of a horse being excused by the stewards, trifecta wagering on a race in which five wagering interests remain is permissible. However, there shall be no trifecta wagering on any race with less than five wagering interests.

### F. Perfecta or quinella wagering opportunities.

Perfecta or quinella wagering shall not be scheduled on a race unless at least five wagering interests are programmed. In the event of a horse being excused by the stewards, perfecta or quinella wagering on a race in which four wagering interests remain is permissible, if perfecta or quinella wagering on the race had begun before the stewards excused the horse. There shall be no perfecta or quinella wagering on any race with less than four wagering interests.

### G. Extraordinary circumstances.

In extraordinary circumstances, discretion is vested in the stewards to cancel any trifecta, perfecta, quinella, or any other multiple wager pool, and assign multiple wagering pools to other races when the stewards believe it would best maintain in horse racing complete honesty and integrity.

### H. Stake races and special events.

In the case of stake races, handicaps, futurities, and other special events, the licensee may offer any straight and multiple wagering pools regardless of the number of wagering interest upon submission of a request in writing to the commission and approval from the commission.

## § 3.7. Straight wagering.

### A. Generally.

Win, place, and show pari-mutuel wagering pools shall be considered "straight wagering." In any race, the win, place, and show pools are treated separately, and the distribution of the profits are calculated independently of each other. The "net pool" to be distributed as profit shall be all sums wagered in the pool, less retainage and breakage, as defined elsewhere in these rules.

### B. Win pools.

The amount wagered to win on the horse or wagering interest which finished first is deducted from the net pool and the balance which remains is profit. The profit is divided by the amount wagered on the horse or wagering interest finishing first, this quotient being the profit per dollar wagered to win. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to win pools:

1. If there is a dead heat for first involving two

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horses of two different wagering interests, the net win pool shall be distributed as if it were a place pool. If the dead heat involves horses of three wagering interests, the net win pool is distributed as if it were a show pool; and

2. If no win ticket is sold on the horse which finishes first, then the net win pool is distributed to the holders of win tickets on the horse or wagering interest finishing second. [ If no such ticket is sold, then the licensee shall make a prompt refund. ]

## C. Place pools.

The amounts wagered to place on the first two horses to finish are deducted from the net place pool and the balance which remains is profit. The profit is divided into two equal amounts; one-half of the profit is divided by the amount wagered to place on the first finisher, this quotient being the profit per dollar wagered to place on the first finisher; and one-half of the profit is divided by the amount wagered to place on the second finisher, this quotient being the profit per dollar wagered to place on the second finisher. The return to the holder includes the amount wagered and the profit.

1. If there is a dead heat for first between horses representing the same wagering interest, the net place pool is distributed as if it were a win pool. If the dead heat is between horses representing two different wagering interests, the place pool is distributed as if one wagering interest finished first and the other finished second. If the dead heat is among horses representing three different wagering interests, the net place pool is distributed as if it were a show pool.

2. If there is a dead heat for second between horses representing the same wagering interest, the net place pool is distributed as if no dead heat occurred. If the dead heat for second is between horses representing two or more wagering interests, the net place pool is divided in half, with one-half allocated to the horse finishing first and the other one-half divided equally so as to allocate one-fourth of the net place pool for wagers to place on each of the two horses finishing in a dead heat for second, or one-sixth of the net place pool for wagers to place on each of three horses finishing in a dead heat for second.

3. If the first and second finishers comprise a single wagering interest, the net place pool is distributed as if it were a win pool.

4. If no place ticket is sold on a horse which finishes first or second, then the horse which finished third shall replace that horse in the distribution of wagers in the net place pool. [ If no such ticket is sold, then the licensee shall make a prompt refund. ]

## D. Show pools.

The amounts wagered to show on the first three horses to finish are deducted from the net pool to determine the profit. The profit is divided into three equal amounts. One-third of the net show pool is divided by the amount wagered to show on the first finisher, the quotient being the profit per dollar wagered to show on the first finisher; one-third of the net show pool is divided by the amount wagered to show on the second finisher, the quotient being the profit per dollar wagered to show on the second finisher; and one-third of the profit is divided by the amount wagered to show on the third finisher, the quotient being the profit per dollar wagered to show on the third finisher. The return to the holder includes the amount wagered and the profit.

1. If there is a dead heat for first between two horses involving different wagering interests, or three horses involving three different wagering interests, the show pool is distributed as if no dead heat occurred. If the dead heat for first is between two horses including the same wagering interest, two-thirds of the profit is allocated to wagers to show on the coupled wagering interest and one-third of the profit is allocated to wagers to show on the other horse among the first three finishers. If the dead heat for first is among three horses including one wagering interest, the show pool is distributed as if it were a win pool.

2. If there is a dead heat for second between two horses including different wagering interests, the show pool is distributed as if no dead heat occurred. If the dead heat for second is between horses including the same wagering interest, two-thirds of the net show pool shall be allocated to wagers to show on the coupled wagering interest and one-third of the profit shall be allocated to wagers to show on the horse finishing first. If the dead heat for second is among three horses involving two or three wagering interests, one-third of the net show pool is allocated to wagers to show on the horse finishing first and the remaining two-thirds of the net show pool is divided equally by the number of wagering interests finishing in a dead heat for second for proportionate distribution on wagers to show for each wagering interest finishing in a dead heat for second.

3. If there is a dead heat for third between horses involving the same wagering interests, the net show pool is distributed as if no dead heat occurred. If the dead heat for third is among horses involving two or more wagering interests, two-thirds of the net show pool shall be allocated to wagers to show on the first two finishers and the remaining one-third of the net show pool is divided equally by the number of wagering interests finishing in a dead heat for third for proportionate distribution on wagers to show for each wagering interest finishing in a dead heat for third.

4. If the first three horses to finish comprise one wagering interest, the net show pool shall be

distributed as if it were a win pool. If two horses coupled as a single wagering interest finish first and second, or first and third, or second and third, two-thirds of the net show pool shall be allocated to wagers to show on the single wagering interest and one-third of the net show pool shall be allocated to wagers on the other horse among the first three finishers.

5. In the event one horse coupled in the wagering by reason of being in the mutuel field or part of a mutuel entry finishes first or second and another horse included in the same wagering interest finishes in a dead heat for third, the allocation of the net show pool shall be:

a. One-half of the net show pool shall be allocated to the wagers on the field or entry, one-third of the net show pool shall be allocated to the horse finishing first or second, and one-sixth of the net show pool allocated for the horse finishing in a dead heat for third. The remaining one-sixth of the net show pool shall be allocated to wagers on the horse, which was not a part of the mutuel field or entry, finishing in a dead heat for third.

6. In the event only two horses finish, the net show pool, if any, shall be distributed as if it were a place pool. If only one horse finishes, the net show and place pools, if any, shall be distributed as if it were a win pool.

7. If, in the event no show ticket is sold on a horse which finishes first, or second, or third, then, the horse which finished fourth shall replace that horse in the distribution of wagers in the show pool. [ If no such ticket is sold, then the licensee shall make a prompt refund. ]

### § 3.8. Multiple wagering.

#### A. Generally.

Daily double, quinella, perfecta, trifecta, pick three, and pick six pari-mutuel wagering pools shall be considered "multiple wagering." In any race or races, the daily double, quinella, perfecta, trifecta, pick three, and pick six pools are treated separately and the distribution of the pools are calculated independently of each other. The "net pool" to be distributed shall be all sums wagered in the pool, less retainage and breakage, as defined elsewhere.

#### B. Daily double pools.

The daily double wager is the purchase of a pari-mutuel ticket to select the two horses that will finish first in the two races specified as the daily double. If either of the selections fails to win, the pari-mutuel ticket is void, except as otherwise provided. The amount wagered on the winning combination, the horse or wagering interest which finishes first in the first race coupled with the horse or

wagering interest finishing first in the second race of the daily double, is deducted from the net pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning daily double. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to daily double pools:

1. If there is a dead heat for first including two different wagering interests in one of the two daily double races, the daily double pool is distributed as if it were a place pool, with one-half of the net pool allocated to wagers combining the single winner of one daily double race and one of the wagering interests involved in the [ head dead ] heat in the other daily double race, and with the other one-half of the net pool allocated to the wagers combining the single winner of one daily double race and the other wagering interest involved in the dead heat in the other daily double race.

2. If there are dead heats for first involving different wagering interests in each of the daily double races which result in winning combinations, the net pool shall be allocated equally to the winning combinations after first deducting from the net pool the amount wagered on all winning combinations for proportionate allocation to the winning daily double combinations.

3. If no daily double ticket is sold combining the horse or wagering interest which finishes first in one of the daily double races, the daily double pool is distributed as if it were a win pool, with the net pool allocated to wagering combinations which include the horse or wagering interest which finished first in one of the daily double races.

4. If no daily double ticket is sold combining the horses or wagering interests which finish first in both the first and second race of the daily double, then the winning combinations for distribution of the daily double profit shall be that combining the horses or wagering interests which finished second in each of the daily double races.

5. If, after daily double wagering has begun, a horse not coupled with another as a wagering interest in the first race of the daily double is excused by the stewards or is prevented from obtaining a fair start, then daily double wagers combining the horse shall be deducted from the daily double pool and shall be promptly refunded.

6. If, after the first race of the daily double has been run, a horse not coupled with another as a wagering interest in the second race of the daily double is excused by the stewards or prevented from obtaining a fair start, then daily double wagers combining the winner of the first daily double race with the horse, which was excused or was prevented from obtaining a

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fair start, shall be allocated a consolation daily double.

7. Consolation daily double payoffs shall be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or wagering interest scheduled to start in the second daily double race, the quotient being the consolation payoff per dollar wagered combining the winner of the first daily double race with the horse prevented from racing in the second daily double race. The return to the holder includes the amount wagered and the profit. The consolation payoff shall be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.

8. If for any reason the first race of the daily double is cancelled and declared "no contest" a full and complete refund shall be promptly made of the daily double pool.

9. If for any reason the second race of the daily double is cancelled and declared "no contest," the net daily double pool shall be paid to the holders of daily double tickets which include the winner of the first race. [ If no such ticket is sold, then the net daily double pool shall be paid to the holders of daily double tickets which include the second place horse. If no daily double tickets were sold on the second place horse, then the licensee shall make a prompt refund. ]

## C. Quinella pools.

The quinella wager is the purchase of a pari-mutuel ticket to select the first two horses to finish in the race. The order in which the horses finish is immaterial. The amount wagered on the winning combination, the first two finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit. The net pool is divided by the amount wagered on the winning combination. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to the quinella pools:

1. If there is a dead heat for first between horses including two different wagering interests, the net quinella pool is distributed as if no dead heat occurred. If there is a dead heat among horses involving three different wagering interests, the net quinella pool is distributed as if it were a show pool and the pool is allocated to wagers combining any of the three horses finishing in the dead heat for first.

2. If there is a dead heat for second between horses including two different wagering interests, the net quinella pool is distributed as if it were a place pool and it is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second. If the dead heat is among horses involving three different wagering interests, the net quinella

pool is distributed as if it were a show pool and it is allocated to wagers combining the first horse with each of the three horses finishing in a dead heat for second.

3. If horses representing a single wagering interest finish first and second, the net quinella pool shall be allocated to wagers combining the single wagering interest with the horse or wagering interest with the horses or wagering interest which finishes third.

4. If no quinella ticket is sold combining the first finisher with one of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second.

5. If no quinella ticket is sold combining the first finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two horses which finished in the dead heat for second.

6. If no quinella ticket is sold combining the first finisher with either of the horses finishing in a dead heat for second, or combining the two horses which finished in a dead heat for second, the net quinella pool is distributed as if it were a show pool and it is allocated to wagers combining any of the first three finishers with any other horses.

7. If no quinella ticket is sold combining the first two finishers, then the net quinella pool shall be distributed as if it were a place pool and it is allocated to wagers combining the first finisher with any other horses and to wagers combining the second finisher with any other horse.

8. If no quinella ticket is sold combining horses or wagering interests as would require distribution, a full and complete refund shall be made of the entire quinella pool.

[ 9. If a horse is excused by the stewards, no further quinella tickets shall be issued designating that horse, and all quinella tickets previously issued designating that horse shall be refunded and deducted from the gross pool. ]

## D. Perfecta pools.

The perfecta wager is the purchase of a pari-mutuel ticket to select the two horses that will finish first and second in a race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted. The amount wagered on the winning combination, the horse finishing first and the horse finishing second, in exact order, is the amount to be deducted from the net perfecta pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per

dollar wagered on the winning perfecta combination. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to the perfecta pool:

1. If no ticket is sold on the winning combination of a perfecta pool, the net perfecta pool shall be distributed equally between holders of tickets selecting the winning horse to finish first and holders of tickets selecting the second place horse to finish second.
2. If there is a dead heat between two horses for first place, the net perfecta pool shall be calculated and distributed as a place pool, one-half of the net perfecta pool being distributed to holders of tickets selecting each of the horses in the dead heat to finish first with the other horse to finish second.

In case of a dead heat between two horses for second place, the net perfecta pool shall be calculated as a place pool, one-half of the net perfecta pool being distributed to holders of tickets selecting the horse to finish first and one horse in the dead heat, and the other one-half being distributed to holders selecting the horse to finish first and the other horse in the dead heat.

3. If there is a dead heat for second place and if no ticket is sold on one of the two winning combinations, the entire net perfecta pool shall be calculated as a win pool and distributed to holders of the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the net perfecta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.
4. If an entry finishes first and second, or mutuel field horses finish first and second, the net pool shall be distributed to holders of tickets selecting the entry to win combined with the horses having finished third.
5. If no ticket is sold that would require distribution of a perfecta pool, the licensee shall make a complete and full refund of the perfecta pool.
6. If a horse is excused by the stewards, no further perfecta tickets shall be issued designating that horse, and all perfecta tickets previously issued designating that horse shall be refunded and deducted from the gross pool.

#### E. Trifecta pools.

The trifecta wager is purchase of a pari-mutuel ticket to select the three horses that will finish first, second, and third in a race. Payment of the ticket shall be made only to the holder who has selected the same order of finish as officially posted. The amount wagered on the winning combination, the horse finishing first, the horse finishing second, and the horse finishing third, in exact order, is

deducted from the pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning combination. The return to the holder includes the amount wagered and the profit.

1. If no ticket is sold on the winning combination, the net trifecta pool shall be distributed equally among holders of tickets designating the first two horses in order.
2. If no ticket is sold designating, in order, the first two horses, the net trifecta pool shall be distributed equally among holders of tickets designating the horse to finish first.

3. If no ticket is sold designating the first horse to win, the net trifecta pool shall be distributed equally among holders of tickets designating the second and third horses in order. [ If no such ticket is sold, then the licensee shall make a prompt refund. ]

4. If less than three horses finish, the payout shall be made on tickets selecting the actual finishing horses, in order, ignoring the balance of the selection.

5. If there is a dead heat, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position involved in the dead heat, shall be winning tickets. The net trifecta pool shall be calculated as a place pool.

6. The uncoupling for betting purposes of horses having common ties is prohibited in races upon which trifecta wagering is conducted.

7. If a horse is excused by the stewards [ or prevented from obtaining a fair start, , no further trifecta tickets shall be issued designating that horse, and ] all trifecta tickets previously issued designating the horse shall be refunded and deducted from the gross pool.

#### F. Pick three pools.

The pick three wager is the purchase of a pari-mutuel ticket to select the winners of three races designated by the licensee for pick three wagering. Payment of the ticket shall be made to holder who has selected the winners of the three different races designated for pick three wagering, unless otherwise provided for in these regulations.

1. Those horses constituting an entry of coupled horses or those coupled to comprise the mutuel field in a race comprising the pick three wager shall race as a single wagering interest for the purpose of pool calculation and payment. However, if any part of a coupled entry or the mutuel field racing as a single wagering interest is a starter in a race, the entry or field selection shall remain as the designated wagering

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interest to win in that race for the pick three calculation, and the selection shall not be deemed a scratch.

2. The entire net pick three pool shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the three races comprising the pick three wager.

3. In the event there is no pari-mutuel ticket which correctly designates the official winner in each of the three races comprising the pick three wager, the major share (75%) shall not be distributed but shall be carried over to the next racing day and shall be added to the pick three pool for distribution among holders of pick three tickets which correctly designate the official winner in each of the three races comprising the pick three wager. The minor share (25%) will be distributed among holders of pick three tickets which correctly designate the most official winners, but fewer than three, of the races comprising the pick three wager.

4. In the event a pick three pari-mutuel ticket designates a selection in any one or more of the races comprising the pick three and that selection is excused by the stewards or is prevented from obtaining a fair start, the actual favorite(s) as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payouts to the holders.

5. In the event of a dead heat for win between two or more horses in any pick three race, all horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

6. No pick three ticket shall be refunded except when all three races are cancelled or declared "no contests." The refund shall apply to the pick three pool established on that racing card. Any "net pool" accrued from a carryover from a previous pick three shall further be carried over to the next pick three pool scheduled by the licensee conducting the race meeting.

7. In the event that any number of races less than three comprising the pick three are completed, 100% of the net pool for the pick three shall be distributed among holders of tickets that designate the most winners in the completed races. No carryover from a previous day shall be added to the pick three pool in which less than three races have been completed. Any net pool carryover from a previous pick three pool shall be further carried over to the next pick three scheduled by the licensee.

8. Should no distribution be made pursuant to these regulations on the last day of the horse race meeting

in which pick three wagering is offered, then that portion of the distributable pool and all moneys accumulated shall be distributed to the holders of tickets correctly designating the most winning selections of the three races comprising the pick three that day.

9. In the event that a licensee is unable to distribute the retained distributable amount carried over from any prior pick three pool established pursuant to this rule by the end of its race meeting due to cancellation of the final program of racing or any other reason, the retained distributable amount shall be invested with interest, in a manner approved by the commission. The principal and interest shall be carried forward to the next race meeting having a pick three at the same location and of the same breed of horses that generated the retained distributable amount.

10. In the event a race meeting is not conducted at that location, with the same breed of horses that generated the net pick three pool with interest, the net pick three pool shall be remitted to the commission. A retained undistributed pick three carryover pool shall not for any purpose be considered as part of the unclaimed tickets pool.

11. No pari-mutuel ticket for pick three wagering shall be sold, exchanged or cancelled after the time of closing of wagering in the first of the three races comprising the pick three, except for refunds on pick three tickets as required by these regulations. No person shall disclose the number of tickets sold in the pick three pool, or the number or amount of tickets selecting winners of the pick three races until the stewards have declared the last pick three race each day to be "official."

## G. Pick six pools.

The pick six wager is the purchase of a pari-mutuel ticket to select the winners of six races designated by the licensee for pick-six wagering. Payment of the ticket shall be made to holder who has selected the winners of the six different races designated for pick six wagering, unless otherwise provided for in these regulations.

1. Those horses constituting an entry of coupled horses or those horses coupled to comprise the mutuel field in a race comprising the pick six wager shall race as a single wagering interest for the purpose of pool calculation and payment. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated to win in that race for the pick six calculation, and the selection shall not be deemed a scratch.

2. The entire net pick six pool shall be distributed among the holders of pari-mutuel tickets which

correctly designate the official winner in each of the six races comprising the pick six wager.

3. In the event there is no pari-mutuel ticket which correctly designates the official winner in each of the six races comprising the pick six, the major share (75%) shall not be distributed but shall be carried over to the next racing day and be added to the pick six pool for distribution among holders of pick six tickets which correctly designate the official winner in each of the six races comprising the pick six wager. The minor share (25%) shall be distributed among holders of pick six tickets which correctly designate the most official winners, but fewer than six, of the races comprising the pick six wager.

4. In the event a pick six pari-mutuel ticket designates a selection in any one or more of the races comprising the pick six and that selection is excused by the stewards or is prevented from obtaining a fair start, the actual favorites(s) as evidenced by the amounts wagered in the "win pool" at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payouts to the holders.

5. In the event of a dead heat for win between two or more horses in any pick six race, all horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

6. No pick six ticket shall be refunded except when all six races are cancelled or declared "no contests." The refund shall apply to the pick six pool established on that racing card. Any "net pool" accrued from a carryover from a previous pick six shall further be carried over to the next pick six pool scheduled by the licensee conducting the race meeting.

7. In the event that any number of races less than six comprising the pick six are completed, 100% of the net pool for the pick six shall be distributed among holders of tickets that designate the most winners in the completed races. No carryover from a previous day shall be added to the pick six pool in which less than six races have been completed. Any net pool carryover from a previous pick six pool shall be further carried over to the next pick six scheduled by the licensee.

8. Should no distribution be made pursuant to these regulations on the last day of the horse race meeting in which pick six wagering is offered, then that portion of the distributable pool and all moneys accumulated shall be distributed to the holders of tickets correctly designating the most winning selections of the six races comprising the pick six that day.

9. In the event that a licensee is unable to distribute

the retained distributable amount carried over from any prior pick six pool established pursuant to this rule by the end of its race meeting due to cancellation of the final program of racing or any other reason, the retained distributable amount shall be invested with interest, in a manner approved by the commission. The principle and interest shall be carried forward to the next race meeting having a pick six at the same location and of the same breed of horses that generated the retained distributable amount.

10. In the event a race meeting is not conducted at that location, with the same breed of horses that generated the net pick six pool with interest, the net pick six pool shall be remitted to the commission. A retained undistributed pick six carryover pool shall not for any purpose be considered as part of the unclaimed tickets pool.

11. No pari-mutuel ticket for pick six wagering shall be sold, exchanged or cancelled after the time of closing of wagering in the first of the six races comprising the pick six, except for refunds on pick six tickets as required by these regulations. No person shall disclose the number of tickets sold in the pick six pool or the number or amount of tickets selecting winners of the pick six races until the stewards have declared the last pick six race each day to be "official."

## § 3.9. Refunds.

### A. Generally.

For all wagers other than the daily double, pick three or pick six, a refund at face value shall be made to all holders of pari-mutuel tickets on horses that have been excused by the stewards, participated in a race where no horse finished, or a race, where in the discretion of the stewards, was declared "no contest" for wagering purposes. Unless otherwise provided for in these regulations, no refund shall be made if the horse excused by the stewards is part of a coupled entry or the field.

### B. Nonstarters in straight wagering.

If any horse is prevented from obtaining a fair start by failure of the starting gate or other untoward events, the entire amount in the win, place and show pools wagered on that horse shall be promptly refunded and the horse declared a nonstarter.

### C. Nonstarters in multiple wagering.

In races on which multiple wagering is permitted, except on the second half of the daily double, pick three or pick six, if a horse is prevented from obtaining a fair start, the entire amount wagered on any combination including that horse shall be promptly refunded and the horse declared a nonstarter.

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## D. Cancelling pools due to nonstarters.

If any horse or horses are prevented from obtaining a fair start so that it would reduce the total number of starters below six, the following shall apply:

1. If horses representing five wagering interests obtain a fair start, the licensee may refund the entire amount wagered in the show pool;
2. If horses representing four or fewer wagering interests obtain a fair start, the licensee may refund the entire amount wagered in the show pool [ ; as well as ] place pool [ ; or both ] ; and
3. If horses representing fewer than two interests obtain a fair start, the race may be declared "no contest" and the entire amount wagered in the win, place and show pools shall be promptly refunded.

## E. Cancelling pools due to late scratches.

After wagering has commenced on a race and prior to the race being run, should a horse or horses be excused by the stewards resulting in a field of less than six different wagering interests, the following apply:

1. If horses representing five wagering interests will start, the licensee may refund the entire amount wagered in the show pool;
2. If horses representing five or fewer wagering interests will start, the licensee may refund the entire amount wagered in the show pool [ ; the as well as ] place pool [ ; or both ] ;
3. If horses representing fewer than two interests will start, the race may be cancelled and the entire amount wagered in the win, place and show pools shall be promptly refunded. However, the horse or horses shall race for the purse as nonwagering event.

## F. No refunds.

If a horse is left at the post at the start, or the rider or driver is unseated, there shall be no refund.

## G. [ ~~Scratches~~ Scratches ] in entries.

If two or more horses in a race are coupled as a wagering interest or the field, there shall be no refund unless all of the horses so coupled are excused by the stewards or all of the horses so coupled are prevented from obtaining a fair start. Discretion, however, is vested in the stewards to order a refund where a part of an entry in a stake, handicap, futurity or other special event is excused by the stewards or prevented from obtaining a fair start, where it is in the public interest to do so. In this instance, the remaining part of the entry shall race for the purse only.

## H. Postponed races.

In the case of a race postponed beyond the day originally scheduled, all money wagered on the race shall be refunded.

## I. Cancelling turf races.

In the event conditions require a race to be moved from the turf to the main racing surface, any advance wager shall be refunded at the request of the holder of the pari-mutuel ticket up until post time of the race immediately preceding the scheduled turf race. This regulation does not apply to pick three or pick six wagering.

## J. Announcement of refunds.

In those cases where a refund is due the public or a pari-mutuel pool is cancelled, the licensee shall promptly inform the public through the public address system and other appropriate means of communication.

## PART IV. DISTRIBUTION OF PURSE MONEY.

### § 4.1. Purse amounts.

Pursuant to § 59.1-392 of the Code of Virginia, 8.0% of the pari-mutuel pools for straight wagering, and 9.0% of the pari-mutuel pools for multiple wagers shall be allocated for purse money to participants by the licensee. In making the distribution of purse money, the licensee shall, to the extent possible, maintain purse amounts in proper relationship to actual pari-mutuel handles.

### § 4.2. Adjustments to purses.

Should levels of pari-mutuel handle create overpayment or underpayment of purses paid during the course of the race meeting, the licensee shall make adjustments in each publication of its condition book to attempt to keep purses consistent with mutuel handles.

### § 4.3. Overpayments carried over.

If, at the end of the horse race meeting, an overpayment of purses has occurred, the overpayment shall be carried over to the next horse race meeting of the same breed and the overpayment may be recovered by the licensee. The licensee shall recover the overpayment on an even basis over the course of the horse race meeting to prevent serious inconsistencies in purse levels during the horse race meeting.

### § 4.4. Underpayments carried over.

If, at the end of a horse race meeting, an underpayment of purses has occurred, the underpayment shall be carried over to the next horse race meeting of the same breed. The underpayment must be paid to the horse owners by

adding the underpayment to the purses. The licensee shall repay the underpayment on an even basis over the course of the horse race meeting to prevent serious inconsistencies in purse levels during the horse race meeting.

§ 4.5. *Willful underpayment.*

Should the commission determine that a licensee willfully failed to adjust purse levels in violation of these regulations for the purposes of retaining purse underpayments from one race meeting to the next, the licensee will be the subject of disciplinary action of the commission.

§ 4.6. *Escrow accounts.*

All money received by a licensee for races that require nominating, sustaining, entry, or starting fees must be placed in interest bearing escrow accounts, and all accrued interest must be added to these races if: (i) the total fees received for the race exceed \$15,000; or (ii) fees are due and payable for the race more than 180 days in advance of the advertised date of the running of the race.

NOTE: Due to its length, the License Application used by the Virginia Racing Commission in administering this regulation is not being published; however, the application is available for public inspection at the Office of the Registrar of Regulations or at the Virginia Racing Commission.

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# EMERGENCY REGULATIONS

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## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

**Title of Regulation:** VR 615-01-28. Aid to Dependent Children (ADC) Program - Entitlement Date.

**Statutory Authority:** § 63.1-25 of the Code of Virginia.

**Effective Dates:** March 8, 1990, through March 7, 1991

### Preamble:

The Aid to Dependent Children (ADC) Program is a federal program, funded from federal and state funds, established under Title IV of the Social Security Act to provide financial assistance and services to needy families with children. This program is administered statewide by the Department of Social Services through 124 local departments of social services.

Federal regulations at 45 CFR 206.10 allow states two options to begin assistance to eligible individuals. One option is that the agency will pay a prorated amount for the month of application regardless of when the case is authorized by being determined eligible. The other option is to pay benefits beginning on the day of authorization or no later than 30 days from the date of the application, whichever is earlier. Further, states which choose the second option may begin entitlement on the first of the month following the month of application when the decision is not made in the month of application. Virginia's ADC date of entitlement policy is reflective of the latter option, as it was determined that the former option is too costly and funding was not available.

Recently, however, the Department of Health and Human Services (HHS) has advised that the policy relative to the option which is operative in Virginia is, in part, not in compliance with said regulations. That part not in compliance relates to decisions of eligibility made in the month of application. Virginia's ADC policy requires that when eligibility is determined in the month of application, entitlement must begin effective the date of application. HHS takes exception and states that in this situation entitlement must begin with the date of authorization rather than date of application. As such, it is recognized that Virginia's policy is based on a misinterpretation of the regulation. This emergency regulation is designed to correct this inconsistency.

Due to the noncompliance with regulations, cases being approved in the month of application are receiving overpayments. As such, the Department finds that this situation necessitates immediate promulgation of an emergency regulation. The emergency precludes the promulgation of said regulation from the public participation requirements of the Administrative Process Act, § 9-6.14:4.1 of the Code of Virginia.

Emergency approval of the Governor is needed to

allow the Department to implement amended regulations immediately. The inability to do so creates the situation whereby erroneous payments will continue to be authorized. Additionally, the Department stands in jeopardy to lose federal financial participation in such situations.

Immediately following approval and publication of the emergency regulation in the Virginia Register of Regulations, the Department of Social Services will initiate action to develop final regulations as required by the Administrative Process Act, § 9-6.14:4.1 of the Code of Virginia.

Due to the nature of this amendment, it is projected that approximately \$150,000 per year will be saved in General Fund dollars.

### Summary:

Pursuant to § 63.1-25 of the Code of Virginia, the State Board of Social Services has been delegated the authority to promulgate rules and regulations necessary for the operation of public assistance programs in Virginia.

The Department of Social Services, in conjunction with the Attorney General's office, is proposing to amend state ADC policy regarding the date of entitlement. The amended policy will require that when an application for ADC is determined eligible in the same month in which the application is received, entitlement will begin with the date of authorization. Such an amendment will bring Virginia's ADC date of entitlement policy into compliance with 45 CFR 206.10.

VR 615-01-28. Aid to Dependent Children (ADC) Program - Entitlement Date.

## PART I. DEFINITIONS.

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

"Date of entitlement" means the date assistance begins.

"Application" means a written request for financial assistance received by the local social services agency.

"Date of Authorization" means the date the application is determined to be eligible by the local eligibility worker.

## PART II. DATE OF ENTITLEMENT.

§ 2.1. When eligibility for financial assistance is determined in the same month in which the application is received, entitlement will begin effective the date of ~~application~~ authorization. If eligibility is not determined in

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the same month in which the application is received, the date of entitlement will begin effective the first of the month following the month of application.

Submitted by:

/s/ Larry D. Jackson, Commissioner  
Date: January 7, 1990

Approved by:

/s/ Lawrence Douglas Wilder, Governor  
Date: March 7, 1990

Filed by:

/s/ Joan W. Smith, Registrar  
Date: March 8, 1990 - 11:52 a.m.

\* \* \* \* \*

Title of Regulation: VR 615-01-30. Aid to Dependent Children (ADC) Program - Disregard of Census Earnings.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Effective Dates: March 12, 1990, through August 31, 1990

Preamble:

The Aid to Dependent Children (ADC) Program is a federal program which provides financial assistance to needy children who are deprived of the support and care of at least one parent. The program, which is authorized under Title IV of the Social Security Act and Title 45 of the Code of Federal Regulations, is funded through a combination of state and federal monies. Currently, both the state and federal governments contribute 50% of the benefit costs of the program. State statutory authority to operate the ADC program can be found at § 63.1-25 of the Code of Virginia (1950), as amended.

Current federal regulations mandate that all income received by the family must be counted to reduce the amount of financial assistance to which the family is entitled unless such income is specifically disregarded by federal statute or regulation. There is currently no basis in either the Social Security Act or the Code of Federal Regulations to disregard earnings received from employment as a census worker.

In January 1989, the U.S. Department of Commerce requested that the U.S. Department of Health and Human Services allow states to exclude from countable income all earnings received by applicants for/recipients of ADC which is derived from employment as a census worker. In their request, the Department of Commerce noted that in 1980 they were understaffed throughout the Census, especially in inner city districts, due to the lack of available

candidates who felt that they could afford to accept census employment.

In response to the request of the Department of Commerce, the Department of Health and Human Services granted states waiver authority on November 17, 1989, to allow participation in an experimental project under the provisions of § 1115(a) of the Social Security Act. The project would allow, at the request of any state and for the limited purpose indicated, the disregard of any income or compensation received from the U.S. Department of Commerce resulting from employment in the 1990 Decennial Census in the determination of eligibility for ADC and the amount of the assistance payment.

In Virginia, the importance of participating in this project is twofold. First, it will expand the pool of potential census workers needed by the Department of Commerce to effectively and accurately collect census data. It is estimated that for each individual captured in the census, Virginia stands to gain approximately \$428 in federal funds. As such, it is extremely beneficial to the entire state to ensure that the necessary individuals are available to engage in Census employment. Additionally, participation in the project will allow the U.S. Department of Health and Human Services to study, with data gathered by each participating state, the effects that short-term employment which does not impact eligibility for assistance has on the future employability of ADC recipients.

Emergency approval of the Governor is needed to allow the Virginia Department of Social Services to participate in this experimental project which is a joint venture between the U.S. Departments of Commerce and Health and Human Services. Due to the fact that employment opportunities for census workers will last approximately four to six weeks during the period March 1, 1990, through August 31, 1990, sufficient time is not available to promulgate this regulation in accordance with the public participation requirements of the Administrative Process Act. If authority to participate in this project is granted pursuant to the provisions of this emergency regulation, the Virginia Department of Social Services will receive, consider, and respond to any comments received regarding this regulation during participation in the project.

If adopted, all 124 local social services agencies will be required to implement this change in the determination of eligibility for assistance in the ADC program. This change will not increase ADC benefit costs over those projected for FY 90 and FY 91. However, the state will also not realize a benefit cost savings which would otherwise be associated with a reduction/termination of ADC benefits due to employment. It should be noted that the potential savings which would be realized is projected to be

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negligible due to the fact that:

1. *Employment opportunities available as census workers generally last between four to six weeks and are not intended to result in permanent employment opportunities. As such, the state could save, at most, two months of assistance for each employed individual.*

2. *The number of ADC recipients which are anticipated to secure employment as census workers is expected to be small. In a letter to the Department of Health and Human Services, the Department of Commerce has indicated that they have had limited success with utilizing public assistance recipients in past census undertakings.*

*The overall benefits to the Commonwealth of participating in this project is to assess the impact that participation in the project has on the long-term employment opportunities of ADC recipients and to ensure the accuracy of census data collected.*

## Summary:

*This regulation will allow the Virginia Department of Social Services to participate in an experimental project which would exclude from the countable income of a family receiving assistance in the Aid to Dependent Children (ADC) Program any earnings received from the U.S. Department of Commerce resulting from employment in the 1990 Decennial Census.*

*Pursuant to § 63.1-25 of the Code of Virginia (1950), as amended, the State Board of Social Services has been delegated authority to promulgate rules and regulations necessary for operation of public assistance programs in Virginia. This regulation was approved by the State Board of Social Services in accordance with waiver authority granted by the U.S. Department of Health and Human Services.*

VR 615-01-30. Aid to Dependent Children (ADC) Program - Disregard of Census Earnings.

## PART I. DEFINITIONS.

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

"Assistance unit" means those persons whose needs and income shall be considered in the determination of eligibility for assistance.

"Determination of eligibility" means the three-step procedure used by local social services agencies to establish whether an assistance unit is in need of assistance and the amount of assistance to which the unit

may be entitled. The steps require screening the family's gross income against 185% of the state's Standard of Need, the determination of need which compares the family's net adjusted income to 90% of the Standard of Need, and the grant calculation.

"Disregarded" means that the income may not be considered by local social services agencies, as specified, in the determination of eligibility.

"Eligible child" means any child who has not attained the age of 18, or if 18 and in high school, is expected to graduate before age 19.

## PART II. DISREGARDED EARNED INCOME.

§ 2.1. As specified below, certain earned income of members of the assistance unit shall be disregarded in the determination of eligibility for assistance in the Aid to Dependent Children (ADC) Program. With the exception of items A, B, and C below, the earned income disregards may not be disregarded when the family's gross income is screened against 185% of the state's Standard of Need:

A. Earnings received by an eligible child from employment under Title II, Parts A and B; and Title IV, Parts A and B; of the Job Training Partnership Act of 1982 shall be disregarded for six months per calendar year;

B. Earnings received by an eligible child from a source other than the Job Training Partnership titles specified above shall be disregarded for six months per calendar year in all three steps of the eligibility determination process. Subsequent to this six-month period, such earnings shall only be disregarded in the grant calculation;

C. Earnings received from the U.S. Department of Commerce during the period March 1, 1990, through August 31, 1990 resulting from employment in the 1990 Decennial Census;

D. Any earnings received by an eligible child who is a part-time student who is not employed full-time;

E. A standard work deduction of the first \$90 of earned income received by each employed member of the assistance unit whose earnings are not otherwise exempt;

F. A disregard of \$30 plus one-third of the balance for the first four months of employment. Subsequent to the first four months of employment, a \$30 disregard shall be applied during the fifth through twelfth month of employment;

G. Actual child care or incapacitated adult care costs up to the appropriate maximums shall be disregarded in the determination of eligibility. With regard to child care expenses, however, the recipient may opt to have this expense paid by the local department of social services

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through a vendor agreement, in which case it shall not be disregarded from the remaining earned income for purposes of the grant calculation.

/s/ Larry D. Jackson, Commissioner  
Date: February 22, 1990

/s/ L. Douglas Wilder, Governor  
Date: March 8, 1990

/s/ Joan W. Smith, Registrar  
Date: March 12, 1990 - 2:39 p.m.

\* \* \* \* \*

**Title of Regulation:** VR 615-01-31. Food Stamp Program - Disregard of Earnings from Short-Term Census Employment.

**Statutory Authority:** § 63.1-124.2 of the Code of Virginia.

**Effective Dates:** March 12, 1990, through August 31, 1990

**Preamble:**

The Food Stamp Program is a federal program which permits low-income households to obtain a more nutritious diet by increasing the food purchasing power of eligible households. The program, which is authorized by the Food Stamp Act of 1977, as amended, and Title 7 of the Code of Federal Regulations, is funded by federal monies. Currently, the federal government contributes 100% of the benefit costs of the program and 50% of the administrative costs. State statutory authority to operate the Food Stamp Program can be found at § 63.1-25.2 of the code of Virginia (1950), as amended.

Current federal regulations mandate that all income received by the family must be counted in determining eligibility for food stamps unless such income is specifically disregarded by federal statute or regulation. There is currently no basis in either the Food Stamp Act or the Code of Federal Regulations to disregard earnings received from employment as a Census worker.

In January, 1990, the U.S. Department of Commerce requested that the U.S. Department of Agriculture allow states to exclude from countable income all earnings received by applicants for or recipients of Food Stamps which is derived from employment as a census worker. In their request, the Department of Commerce noted that in 1980 they were understaffed throughout the Census, especially in inner city districts, due to the lack of available candidates who felt that they could afford to accept Census employment.

In response to the request of the Department of Commerce, USDA granted states waiver authority on

January 23, 1990, to allow participation in an experimental project under the provisions of the Food Stamp Act of 1977, as amended. The project would allow, at the request of any state and for the limited purpose indicated, the disregard of any income or compensation received from the U.S. Department of Commerce resulting from employment in the 1990 Decennial Census in the determination of eligibility for Food Stamps and the amount of the allotment.

In Virginia, the importance of participating in this project is twofold. First, it will expand the pool of potential census workers needed by the Department of Commerce to effectively and accurately collect Census data. It is estimated that for each individual captured in the Census, Virginia stands to gain approximately \$428 in federal funds. As such, it is extremely beneficial to the entire state to ensure that the necessary individuals are available to engage in Census employment. Additionally, participation in the project will allow the U.S. Department of Agriculture to study, with data gathered by each participating state, the effects that short-term employment which does not impact eligibility for assistance has on the future employability of Food Stamp recipients.

Emergency approval of the Governor is needed to allow the Virginia Department of Social Services to participate in this experimental project which is a joint venture between the U.S. Departments of Commerce and Agriculture. Due to the fact that employment opportunities for Census workers will last approximately four to six weeks during the period March 1, 1990, through August 31, 1990, sufficient time is not available to promulgate this regulation in accordance with the public participation requirements of the Administrative Process Act. If authority to participate in this project is granted pursuant to the provisions of this emergency regulation, the Virginia Department of Social Services will receive, consider, and respond to any comments received regarding this regulation during participation in the project.

If adopted, all 124 local social services agencies will be required to implement this change in the determination of eligibility for assistance in the Food Stamp Program.

The overall benefits to the Commonwealth of participating in this project are to assess the impact that participation in the project has on the long-term employment opportunities of Food Stamp recipients and to ensure the accuracy of Census data collected.

**Summary:**

This regulation will allow the Virginia Department of Social Services to participate in an experimental project which would exclude from the countable income of a family receiving assistance in the Food Stamp Program any short-term earnings received from

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the U.S. Department of Commerce resulting from employment in the 1990 Decennial Census.

Pursuant to § 63.1-125 of the Code of Virginia (1950), as amended, the State Board of Social Services has been delegated authority to promulgate rules and regulations necessary for operation of public assistance programs in Virginia. This regulation was approved by the State Board of Social Services in accordance with waiver authority granted by the U.S. Department of Agriculture.

VR 615-01-31. Food Stamp Program - Disregard of Earnings from Short-Term Census Employment.

## PART I. DEFINITIONS.

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

"Benefit levels" means the amount of food stamps to which an eligible household is entitled.

"Determination of eligibility" means the two-step procedure used by local social services agencies to establish whether a household is eligible for assistance and the amount of assistance to which they may be entitled. The steps require screening the household's gross income against 130% of the federal poverty level, and, if the household passes that screening, the calculation of the allotment.

"Disregarded" means that the income may not be considered by local social services agencies, as specified, in the determination of eligibility.

"Household" means those persons whose income and resources shall be considered in the determination of eligibility.

## PART II. DISREGARDED EARNED INCOME.

§ 2.1. Earnings received from the United States Department of Commerce as short-term Census employees are to be disregarded in the determination of eligibility and benefit levels for households applying for or receiving food stamps.

/s/ Larry D. Jackson, Commissioner  
Date: February 22, 1990

/s/ Lawrence Douglas Wilder, Governor  
Date: March 8, 1990

/s/ Joan W. Smith, Registrar  
Date: March 12, 1990 - 2:39 p.m.

\* \* \* \* \*

**Title of Regulation:** VR 615-01-32. Aid to Dependent Children (ADC) Program - Deprivation Due to Continued Absence.

**Statutory Authority:** § 63.1-25 of the Code of Virginia.

**Effective Dates:** March 8, 1990, through March 7, 1991

### Preamble:

In order to receive Aid to Dependent Children (ADC) benefits, a child must be deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of a parent. The Department of Social Services was recently involved in litigation in which it was charged that Virginia's deprivation policy pertaining to the evaluation of the provision of maintenance by a parent whose absence is due to separation is in violation of federal laws and regulations.

Current Virginia ADC policy states that if the continued absence is due to divorce, desertion, incarceration, deportation, unestablished paternity, or a parent serving a court imposed sentence of unpaid public work or community service during working hours, while still living in the home, deprivation is considered to exist. If the continued absence is due to separation, whether the result of the employment away from the home (except for performance of active duty in the uniformed services) or simply living apart, the local social services agency must evaluate whether this absence precludes or interrupts the absent parent's ability to provide maintenance, physical care, and guidance for the child. Virginia's current policy indicates that if the absent parent provides monthly support which equals or exceeds 50% of the child's pro rata share of the standard of need, deprivation does not exist. The Department has been enjoined by the Western district of Virginia, United States District Court, from using a monetary percentage of need standard to determine eligibility.

The Attorney General's Office has requested that the Department take immediate action to make the necessary revisions to assure that Virginia's ADC policy clearly reflects the language in 45 Code of Federal Regulations 233.90(c)(1)(iii).

Due to the absence of current policy to reflect the requirements of federal regulations and the order of the court regarding deprivation due to the continued absence of a parent, the Department finds that this situation necessitates immediate promulgation of an emergency regulation. The emergency precludes the promulgation of said regulation from the public participation requirements of the Administrative Process Act, § 9-6.14:4.1 of the Code of Virginia.

The emergency approval of the Governor is needed to allow the Department to implement this revision

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effective upon filing it with the Registrar of Regulations. The inability of the Department to promulgate such regulation will result in a delay in the implementation of federal regulations and the order of the court resulting in legal action against the Commonwealth.

The Department of Social Services will receive, consider, and respond to any petitions to reconsider or revise the emergency regulation contained herein which may be filed by interested persons or groups prior to the regulation's expiration.

## Summary:

Pursuant to § 63.1-25 of the Code of Virginia, the State Board of Social Services has been delegated the authority to promulgate rules and regulations for operation of public assistance programs in Virginia.

The Department of Social Services, in conjunction with the Attorney General's Office, is proposing to revise the current definition of deprivation due to the continued absence of a parent to indicate that, in cases of separation, the physical absence of the parent from the home is to be considered sufficient to constitute deprivation if the absence interrupts or precludes parental functioning. This revision reflects the language in federal regulations at 45 CFR 233.90(c)(1)(iii). This revision is necessary to assure that Virginia's ADC program is in compliance with federal regulations and the order of the court.

VR 615-01-32. Aid to Dependent Children (ADC) Program - Deprivation Due to Continued Absence.

## PART I. DEFINITIONS.

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

"Continued absence" means the absence of a parent from the home when (i) the parent is out of the home, (ii) the nature of the absence is such as either to interrupt or terminate his ability to function as a parent, and (iii) the known or indefinite duration of the absence precludes counting on the parent's performance of his function in planning for the support or care of the child.

"Parent" means a mother or father, married or unmarried, natural or adoptive, following entry of an interlocutory order.

"Separation" means living apart for reasons other than uniformed services. Separation includes simply living apart or employment away from home.

## PART II. DEPRIVATION.

§ 2.1. In order to be found eligible to receive ADC, a child must meet certain financial and categorical eligibility requirements. One such categorical requirement is that the child must be deprived of parental care and support by reason of death, continued absence from the home, or physical or mental incapacity of a parent. Deprivation of parental care or support exists under the following conditions, regardless of whether the parent was chief breadwinner or devoted himself primarily to care of the child and whether or not the parents are married to each other.

### A. Death of a parent.

If either of the child's parents is deceased, the child will be considered to be deprived. Evidence of the death must be verified and recorded. Deprivation on the basis of death of the father cannot exist if paternity has not been established.

### B. Continued absence.

The following conditions will meet the definition of continued absence and will render the child deprived:

1. Court decreed divorce when one parent is actually out of the home;
2. Deportation of a parent by the U.S. Immigration and Naturalization Service;
3. Unestablished paternity;
4. Incarceration of a parent;
5. Conviction of a parent who is serving a court imposed sentence of unpaid public work or community service during working hours while still living in the home. Deprivation based on this provision is only applicable when both parents are in the home;
6. Desertion by a parent who is out of the home and has made no provision for support;
7. Separation of the parents when at least one of the following conditions is not met by the absent parent:
  - a. Maintenance. Monthly support from the absent parent which equals or exceeds 50% of the child's pro rata share of the standards of need;
  - b. Care. The demonstration of interest or concern for the child on an ongoing basis;
  - c. Guidance. Direct or indirect influence on the child's behavior or development on an ongoing basis.

When the absence is due to separation, once physical absence is established, even though the parent may be in contact with the child due to court order visitation,

# Emergency Regulations

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*situations of joint custody, employment away from home, or an informal agreement by the parents, a determination of whether there has been an interruption of parental functioning must be made. In such situations, if the absent parent has contact with the child more than 120 hours per month on a regular and ongoing basis, deprivation does not exist and maintenance, care, and guidance are considered met. The hours of contact with the child will be determined by signed statements of the custodial and absent parents. If the absent parent will not cooperate, the custodial parent's statement will be accepted. If the absent parent's statement is in excess of 120 hours per month and the custodial parent's is not, the absent parent must provide documentation to substantiate the number of hours of contact with the children that was claimed.*

Submitted by:

/s/ Larry D. Jackson, Commissioner  
Department of Social Services  
Date: March 1, 1990

Approved by:

/s/ Lawrence Douglas Wilder, Governor  
Commonwealth of Virginia  
Date: March 7, 1990

Filed by:

/s/ Joan W. Smith  
Registrar of Regulations  
Date: March 8, 1990 - 11:52 a.m.

# STATE CORPORATION COMMISSION

## STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 23, 1990

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS890325

Ex Parte: In the matter of adopting Rules Governing Underwriting Practices and Coverage Limitations and Exclusions for Acquired Immunodeficiency Syndrome (AIDS)

### AMENDATORY ORDER

WHEREAS, on February 16, 1990, First Colony Life Insurance company filed a Petition for Reconsideration in the above captioned proceeding; and

THE COMMISSION, having considered the Petition for Reconsideration and the recommendation of its Staff, is of the opinion that Section 6.A.2 and Section 7.A.3.b of the regulation should be amended,

THEREFORE, IT IS ORDERED:

(1) That Section 6.A.2 of the regulation be, and it is hereby, amended to read "An adverse underwriting decision is permissible if, during the underwriting process, it is revealed that the applicant has had positive HIV-related test results following the testing protocol as provided in Section 6.C, or has been diagnosed as having AIDS or HIV infection."

(2) That Section 7.A.3.b be, and it is hereby, amended to read "based on the sole existence of a positive HIV-related test result, following the protocol as described in Section 6.C, without the manifestation of symptoms or actual diagnosis of AIDS. Claims may not be denied as a pre-existing condition solely on the existence of a positive HIV-related test result without the manifestation of symptoms or actual diagnosis of AIDS. Nothing in Section 7.A.3.b of this regulation shall be considered as prohibiting an insurance company from contesting a policy on the basis of material misrepresentation during the contestable period of the policy."

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Roberta B. Meyer, Esquire, American Council of Life Insurance, 1001 Pennsylvania Avenue, N.W., Washington, D.C. 20004-2599; Regina Grayson Jamerson, Esquire, Health Insurance Association of America, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036-3998; William E. McRorie, Esquire, First Colony Life Insurance, P.O. Box 1280, 700 Main Street, Lynchburg, Virginia 24505; Joan M. Gardner, Esquire, Government Affairs Counsel, Blue Cross & Blue Shield of Virginia, 2015 Staples Mill Road, P.O. Box 27401, Richmond, Virginia 23279; L. Benjamin Young, Jr., CARE Virginia, P.O. Box

4080, Charlottesville, Virginia 22900; Diana M. Marchesi, Esquire, Transamerica Life, Box 2101, Terminal Annex, Los Angeles, California 90051-0101; Michelle Redden, Esquire, State Farm, One State Farm Plaza, Bloomington, Illinois 61710; Adele M. Conway, Phoenix Mutual Life, 100 Bright Meadow Boulevard, Enfield, Connecticut 06082-1989; Sandra Kramer, Esquire, 700 East Main Street, Suite 1612, Richmond, Virginia 23219; C.M.G. Buttery, M.D., Virginia Department of Health, 109 Governor Street, Richmond, Virginia 23219; Carolyn White Hodgins, Department for Rights of the Disabled, James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia 23219; John S. Boritas, Metropolitan Life Insurance Company, One Madison Avenue, New York, New York 10010-3690; Dorothy M. Moga, INOVA Health Systems, 8001 Braddock Road, Springfield, Virginia 22151; Margaret Parker, 6610 West Broad Street, Richmond, Virginia 23230; Anda Olsen, 7440 Woodland Drive, Indianapolis, Indiana 46278; Joseph Califf, Box 324, Arlington, Virginia 22210; Paul Wirhan, 3426 Washington Boulevard, No. 102, Arlington, Virginia 22201; and the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky who shall forthwith mail a copy of this order to every insurance company licensed to sell life and accident and sickness insurance policies in the Commonwealth of Virginia and every health services plan and health maintenance organization licensed to do business in the Commonwealth of Virginia.

\* \* \* \* \*

AT RICHMOND, FEBRUARY 26, 1990

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Case No. PUC890042

Ex Parte: In the matter of Abolishing the Rules Governing the Certification of Radio Common Carriers Adopted Pursuant to Virginia Code § 56-508.6 and the Rules Governing Establishment of Competitive Rates, Charges, and Regulations Pursuant to Virginia Code § 56-508.5B, and Adopting new Rules Governing Radio Common Carrier Services

### ORDER ADOPTING RULES

By order of November 6, 1989, the Commission invited comments upon a new set of Rules Governing Radio Common Carrier Services which, if adopted, would replace the Rules Governing the Certification of Radio Common Carriers adopted by the Commission September 27, 1984, in Case No. PUC840029, and the Rules Governing Establishment of Competitive Rates, Charges, and Regulations Pursuant to Virginia Code § 56-508.5B, adopted August 25, 1986, in Case No. PUC860003. Comments have been received from CFW Telephone Company; Executive Services Paging Company; Metro-Tones, Inc., of Virginia;

# State Corporation Commission

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Denton Enterprises, Inc. (Denton); Centel Cellular Company; Radio Phone Communications, Inc.; PacTel Paging, Inc. (PacTel); Hello Pager Company, Inc.; Metro Call Delaware, Inc. (Metro Call); and Rule Communications.

Based upon the responses to our invitation for comments, the Commission is of the opinion that the proposed Rules, as initially published, should be modified in certain respects. Rules 1 through 3 and Rule 10 were not opposed and are adopted as written. We will now discuss the remaining Rules and the comments received relative thereto.

Proposed Rule 4 is essentially the same as existing Rule 4 which was adopted in Case No. PUC840029. Nonetheless, PacTel Paging and Rule Communications suggested modifications that would make it more consistent with current Federal Communications Commission (FCC) practices. Based upon those comments, the Staff suggested that the requirement for the filing of maps be revised to require United States Geological Survey (USGS) maps showing reliable service contours that are based on the charts of miles filed with the FCC. The Staff also recommended that applicants be permitted to submit the contour maps for sites either already approved by the FCC or for which an application is pending, and that applicants be entitled to supplement their applications to add or delete sites. The Commission agrees and has revised Rule 4, contained in APPENDIX I hereto.

PacTel, Denton, and Rule Communications also suggested changes for Rule 5 to track current FCC practice. In addition, PacTel suggested that Rule 5 be amended to clarify that, while new companies will be granted statewide certification, their authority to provide service will only be permitted in the territory indicated by their reliable service area contour maps. The Staff recommended that the Commission adopt these revisions, along with the requirement that any provider expanding its service territory file a revised contour map with the Division of Communications. Those revisions are adopted and reflected by the attached APPENDIX.

Rule Communications recommended that Rule 6 specify the USGS maps that are to be filed: either those with a scale of 1 to 250,000 or those of the entire Commonwealth. PacTel Paging recommended a revision requiring that a radio common carrier (RCC) expanding or altering its coverage areas to file revised contour maps. The Staff recommended adopting the filing of USGS maps with a scale of 1 to 250,000, and that providers expanding their service territories be required to file revised contour maps with the Division of Communications. The Staff's recommendations are adopted as reflected in the APPENDIX.

Proposed Rule 7 requires that any provider wishing to abandon or discontinue any part of its service obtain prior approval from the Commission. PacTel opposed this, urging that discontinuance of service be governed solely by

market forces and the business decisions of the companies. It argues that since expansion is permitted in the Rules without additional certification, retraction of service should be allowed to occur in like manner, without Commission approval. PacTel would only require Commission notification of any discontinuance of service. Because some customers find their paging service essential, the Commission is not prepared to allow providers absolute freedom to exit a market at will. Accordingly, we retain Rule 7 as drafted in order to assure that customer needs can be addressed before any paging service is discontinued.

Rule 8 prevents the geographic deaveraging of rates. Several of the responding companies remarked that it is only natural for paging rates to vary in different locations because of cost differences, competitive differences, and other factors that vary from one region to another. The Commission appreciates that these differences do occur, but Rule 8 is designed to place the same restriction on the RCCs that is imposed upon the paging services of Virginia's local exchange carriers operating under the Experimental Plan for Alternative Regulation of Virginia Telephone Companies. Accordingly, the attached version of Rule 8 has not been altered.

Denton and Metro Call said that Rule 9's requirement of an annual price list should be deleted. Denton suggested that companies only be required to make rate information available to the Commission upon reasonable demand. Denton poses that an annual price list will be of little value to the Commission if vigorous competition in the RCC industry were to cause prices to change monthly. Metro Call urges that it should be permitted total detariffing to allow maximum flexibility. Rule Communications was not opposed to the price list, but was opposed to affording those lists proprietary treatment. Rule Communications contends that it would be easier to assure the uniform charging of subscribers if the public and competitors were to have access to those price lists. The Commission will not alter this part of Rule 9 because the filing of annual price lists is required of local exchange carriers that provide paging service under the Experimental Plan mentioned above.

Metro Call recommended that Rule 9's requirement for the annual filing of current financial reports be deleted. The Staff agreed with this, but felt that carriers should be required to maintain Virginia books in accordance with Generally Accepted Accounting Principles. Accordingly, the attached Rule 9 has been altered to delete the requirement for the annual filing of current financial reports.

Proposed Rule 11 is essentially a restatement of Rule 10 from Case No. PUC840029. Metro Call recommended that the Rule be modified to eliminate the requirement of surety bonds from existing certificated RCCs, but to require a surety bond or other guarantee from any new RCC unless it demonstrates that it has sufficient financial resources to protect customer deposits. Both the existing

and the proposed rules merely permit the Commission to require a surety bond or other guarantee. The Commission has not exercised that option, but sees no reason not to retain it in case it is needed. Accordingly, the proposed Rule is adopted.

Proposed Rule 12 is essentially the same as existing Rule 11 from Case No. PUC840029. PacTel urged a revision of the Rule to prevent its being used by existing paging companies to impede new providers that are seeking to enter the market. This danger has existed since old Rule 11 was adopted in 1984, but no carrier has ever attempted to use it to thwart a new entrant. If anyone should attempt to use the Rule in such a manner, the Commission will forestall it. Rule 12 is adopted as initially proposed.

Rule 13 is essentially a rewriting of existing Rule 12 in order to remove any reference to tariffs. PacTel recommended that it be modified to afford the same proprietary protection to price lists of new entrants as is afforded by Rule 9 to annual filings of price lists. The Commission concurs in this recommendation. Accordingly, Proposed Rule 13 has been modified to allow price lists to be filed under propriety protection.

The Commission is of the opinion that the Rules Governing the Certification of Radio Common Carrier Services as herein modified and as set forth in APPENDIX I hereto should be adopted.

Accordingly,

IT IS, THEREFORE, ORDERED:

(1) That the Rules Governing the Certification of Radio Common Carrier Services attached hereto as APPENDIX I are hereby adopted, effective on the date of this order;

(2) That there being nothing further to come before the Commission, this case shall be removed from the docket and the record developed herein placed in the file for ended causes.

ATTESTED COPIES hereof shall be sent by the Clerk of the Commission to the radio common carriers of the State of Virginia as shown on the service list attached hereto as Attachment A; to the local exchange companies operating in Virginia as shown on Attachment B; to the Division of Consumer Counsel, Office of the Attorney General, 101 North 8th Street, 6th Floor, Richmond, Virginia 21219; and the Commission's Divisions of Communications, Accounting and Financing and Economic Research and Development.

## APPENDIX I

### RULES GOVERNING RADIO COMMON CARRIER SERVICES

Rule 1 - All public service corporations, other than telephone companies, and others proposing to provide

radio common carrier services in Virginia pursuant to Virginia Code § 56-508.6 shall file an original and fifteen (15) copies of an Application for Certificate with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216, which shall contain all of the information and exhibits required herein by these rules.

Rule 2 - Notice of the application shall be given to each existing provider of radio common carrier services and shall be provided to governmental officials if required by the Commission in its initial order establishing the procedural schedule for the case. Applicants shall submit information which identifies the applicant including (a) its name, address, and telephone number, (b) its corporate ownership, (c) the name, address, and telephone number of its corporate parent or parents, if any, (d) a list of its officers and directors or, if the applicant is not a corporation, a list of its principals and their directors if said principals are corporations, and (e) the names, addresses, and telephone numbers of its legal counsel.

Rule 3 - Each incorporated applicant for a certificate shall demonstrate that it is authorized to do business in the Commonwealth as a public service company.

Rule 4 - Applicants shall be required to show their financial, managerial, and technical ability to render radio common carrier service to any person within any of the service areas requested. (a) As a minimum requirement, a showing of financial ability shall be made by attaching the applicant's most recent stockholder's annual report and its most recent SEC Form 10-K or, if the company is not publicly traded its most recent financial statements. (b) To demonstrate managerial experience, each applicant shall attach a brief description of its history of providing radio common carrier service and shall list the geographic areas in which it has been and is currently providing radio common carrier service. Each applicant shall list the experience of each principal officer in order to show its ability to provide service. (c) Technical abilities shall be indicated by a description of proposed and existing facilities within the Commonwealth. Applicants shall file with the Commission construction permits and reliable service area maps as required by the Federal Communications Commission and United States Geological Survey (USGS) maps showing reliable service contours based on the charts of miles filed with the Federal Communications Commission (FCC). An applicant may submit only the contour maps for all sites on which it either already has obtained FCC approval or has a FCC application pending, and the applicant may supplement its application during the certificate process to add and/or delete sites. Applications shall explain each of the services proposed to be offered by the applicant in Virginia and shall explain the marketing the applicant plans to use to make these

# State Corporation Commission

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services known to the public.

Rule 5 - No specific service area shall be granted with the certificate. Instead, providers will be *granted statewide certification, but are authorized to provide service ; only as indicated on their reliable service area contour maps as filed with the Federal Communications Commission (FCC) under Rule 4 above. If a provider desires to expand its service territory, it need only file its FCC authorization and a revised contour map with the Commission's Division of Communications .*

Companies must inform customers that reliable service can only be anticipated within the area defined by the signal contour. The reliable service area of a base station is that portion of the field strength contour within which the reliability of communication service is 90%, i.e. within the area circumscribed by such contour, 9 out of every 10 calls initiated by the base station can be satisfactorily received by the mobile unit, as taken from Part 22 of the Rules and Regulations of the Federal Communications Commission. Providers are permitted to inform customers that adequate service may be had beyond the signal contour line depending upon atmospheric and other conditions.

Rule 6 - Radio common carriers holding certificates on the date these rules are adopted will be granted statewide certification upon filing with the Commission's Division of Communications a ~~United States Geological Survey (USGS) map of Virginia showing all reliable service area contours~~ *USGS maps with a scale of 1:250,000 showing all reliable service area contours. If a provider expands its service territory, it shall file its FCC authorization and a revised contour map with the Commission's Division of Communications .*

Rule 7 - No provider of radio common carrier services shall abandon or discontinue service, or any part thereof, established under provisions of § 56-508.6 of the Code of Virginia except with the approval of the Commission, and upon such terms and conditions as the Commission may prescribe.

Rule 8 - Prior Commission approval will be required to introduce any rates, charges, and conditions that vary according to customers' geographic locations.

Rule 9 - Each provider of radio common carrier services ~~annually shall file a current financial report with the Commission,~~ shall maintain Virginia books, and shall maintain such books in accordance with generally accepted accounting principles. In lieu of a tariff-filing requirement, price lists are required to be filed under proprietary protection with the Commission Staff on an annual basis by all companies providing radio common carrier services in Virginia.

Rule 10 - No provider of radio common carrier services

shall unreasonably discriminate among subscribers requesting service. Any finding of such discrimination shall be grounds for suspension or revocation of the certificate granted by the Commission. Excessive subscriber complaints against any provider, which the Commission ~~has found~~ *finds* to be meritorious, may also be grounds for suspension or revocation of the provider's certificate. In all proceedings pursuant to Rule 10, the Commission shall give notice to the provider of the allegations against it and offer the provider an opportunity to be heard concerning those allegations prior to the suspension or revocation of the provider's certificate of public convenience and necessity.

Rule 11 - Any provider of radio common carrier services requiring customer deposits for service may be required to file with the Commission a surety bond or other guarantee of responsibility in an amount sufficient to assure refunds of all outstanding customer deposits. Those providers requiring customer deposits shall also pay interest on those deposits as required by the Commission's order in Case No. PUE820073 *or subsequent modifications* and shall also adhere to late payment and returned check charges addressed in Case No. 19589 or in subsequent modifications ~~thereof~~.

Rule 12 - Any certificated provider of radio common carrier services or applicant opposed to the certification of a competing provider shall present evidence of any adverse effect on service within the Commonwealth upon the competing or other certificated service providers and shall also present evidence that the proposed service will result in unnecessary duplication of facilities and services.

Rule 13 - Each application for a certificate to provide radio common carrier service shall include the provider's proposed price lists (*filed under proprietary protection*) , rules, regulations, terms, and conditions.

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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 CRIMINAL JUSTICE SERVICES (BOARD OF)

Title of Regulation: **VR 240-01-4. Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courtroom Security Officers and Process Service Officers.**

#### Governor's Comment:

I concur with the content of this proposal. My final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: March 7, 1990

\* \* \* \* \*

Title of Regulation: **VR 240-01-12. Rules Relating to Certification of Criminal Justice Instructors.**

#### Governor's Comment:

I concur with the content of this proposal. My final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: March 5, 1990

\* \* \* \* \*

Title of Regulation: **VR 240-04-1. McGruff House Program Regulations.**

#### Governor's Comment:

I concur with the content of this proposal. My final approval will be contingent on the review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: March 10, 1990

### DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: **VR 615-01-2. Lump Sum Ineligibility Period in the Aid to Dependent Children (ADC) Program.**

#### Governor's Comment:

I concur with this proposal. My final approval will be contingent upon the Department of Social Services' consideration of the Department of Planning and Budget's suggestions for clarifying the language of the proposal and the proper review and consideration of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: March 8, 1990

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

Title of Regulation: **VR 625-03-00. Flood Prevention and Protection Assistance Fund.**

#### Governor's Comment:

This proposal is intended to protect the public's safety and welfare through the proper administration and management of the Flood Prevention and Protection Assistance Fund. Pending public comment, I recommend approval of the proposal.

/s/ Lawrence Douglas Wilder  
Governor  
Date: March 7, 1990

### STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-16-16. Richmond-Crater Interim Water Quality Management Plan.**

#### Governor's Comment:

This proposal is intended to protect the water quality of the Richmond-Crater area while ensuring that the city complies with state and federal water control laws and the Environmental Protection Agency's National Combined Sewer Overflow Strategy, I recommend approval of the proposal, pending public comment.

/s/ Lawrence Douglas Wilder  
Governor  
Date: March 8, 1990

\* \* \* \* \*

Title of Regulation: **VR 680-21-01.15. Surface Water Standards for the Protection of Human Health.**

#### Governor's Comment:

This proposal is intended to protect the public from the adverse effects of dioxin in state waters and ensure the state's compliance with the federal water quality standards for toxic substances. I give my approval of the proposal, pending public comment.

/s/ Lawrence Douglas Wilder

# Governor

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Governor  
Date: March 7, 1990

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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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## STATE AIR POLLUTION CONTROL BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed action is to provide the latest edition of referenced technical and scientific documents and to incorporate newly promulgated federal New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.

A public meeting will be held on April 12, 1990, at 10 a.m. in the State Capitol, Captiol Square, House Room 1, Richmond, Virginia, to receive input on the development of the proposed regulation.

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

Written comments may be submitted until April 12, 1990.

**Contact:** Nancy S. Saylor, Program and Policy Analyst, Division of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution, specifically the General Provisions (Part II).** The purpose of the proposed action is to provide administrative and enforcement provisions to support the emission standards and other provisions which limit air pollution.

A public meeting will be held on May 2, 1990, at 10 a.m. in the State Capitol, Captiol Square, House Room 1, Richmond, Virginia, to receive input on the development of the proposed regulation.

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

Written comments may be submitted until May 2, 1990.

**Contact:** Robert Mann, Director, Division of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240, telephone (804) 786-5789

## DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Alcoholic Beverage Control Board intends to consider amending regulations entitled: **VR 125-01-1 through VR 125-01-7. Regulations of the Virginia Alcoholic Beverage Control Board.** The purpose of the proposed action is to receive information from industry, the general public and licensees of the board concerning adopting, amending or repealing the board's regulations.

### NOTICE TO THE PUBLIC

A. Pursuant to the Virginia Alcoholic Beverage Control Board's "Public Participation Guidelines for Adoption or Amendment of Regulations" (VR 125-01-1, Part V of the Regulations of the Virginia Alcoholic Beverage Control Board), the board will conduct a public meeting on June 21, 1990, at 10 a.m. in its Hearing Room, First Floor, A.B.C. Board, Main Offices, 2901 Hermitage Road, Richmond, Virginia, to receive comments and suggestions concerning the adoption, amendment or repeal of board regulations. Any group or individual may file with the board a written petition for the adoption, amendment or repeal of any regulation. Any such petition shall contain the following information, if available.

1. Name of petitioner.
2. Petitioner's mailing address and telephone number.
3. Recommended adoption, amendment or repeal of specific regulation(s).
4. Why is changed needed? What problem is it meant to address?
5. What is the anticipated effect of not making the change?
6. Estimated costs and/or savings to regulate entities, the public, or others incurred by this change as compared to current regulations.
7. Who is affected by recommended changes? How affected?
8. Supporting documents.

# General Notices/Errata

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The board may also consider any other request for regulatory changes at its discretion. All petitions or requests for regulatory change should be submitted to the board no later than April 12, 1990.

B. The board will also be appointing an Ad Hoc Advisory Panel consisting of persons on its general mailing list who will be affected by or interested in the adoption, amendment or repeal of board regulations. This panel will study requests for regulatory changes, make recommendations, and suggest actual draft language for a regulation, if it concludes a regulation is necessary. Anyone interested in serving on such panel should notify the undersigned by April 12, 1990, requesting that their name be placed on the general mailing list.

C. Petitions for regulatory change and requests to be appointed to the Ad Hoc Advisory Panel should be sent to Robert N. Swinson, Secretary to the Board, 2901 Hermitage Road, Richmond, Virginia 23220 or may be faxed (804) 367-8249 if the original paperwork is also mailed.

D. Entities affected: (1) all licensees (manufacturers, wholesalers, importers, retailers) and (2) the general public.

Statutory Authority: §§ 4-7(1), 4-11, 4-36, 4-69, 4-69.2, 4-72.1, 4-98.14, 4-103(b) and 9-6.14:1 et seq. of the Code of Virginia.

Written comments may be submitted until 10 a.m., June 21, 1990.

Contact: Robert N. Swinson, Secretary to the Board, P. O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616

## BOARD FOR BARBERS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Barbers intends to consider amending regulations entitled: **Virginia Board of Barbers Examiners Regulations**. The purpose of the proposed action is to solicit public comment on all existing regulations as to the effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with the Public Participation Guidelines.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until April 16, 1990.

Contact: Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

## DEPARTMENT OF COMMERCE

### Notice of Intended Regulatory Action

NOTE: EXTENSION OF WRITTEN COMMENT PERIOD

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Commerce intends to consider amending regulations entitled: **VR 190-04-1. Regulations Relating to Private Security Services**. The purpose of the proposed action is to solicit public comment on all existing regulations as to the effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with the Public Participation Guidelines.

Statutory Authority: §§ 54.1-1902 and 54.1-1903 of the Code of Virginia.

Written comments may be submitted until April 26, 1990.

Contact: Gerald W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534 or toll-free 1-800-552-3016

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

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-2. Virginia Tradesmen Certification Standards, 1987 Edition**. The purpose of the proposed action is to amend current standards for local certification of plumbers, building-related mechanical workers, electricians and divisions within those trade areas.

The purpose of the intended regulatory action is to develop a 1990 edition of the existing regulation.

Statutory Authority: § 15.1-11.4 of the Code of Virginia.

Written comments may be submitted until April 15, 1990.

Contact: Robert Gregory, Administrator, Department of Housing and Community Development, 205 N. 4th St., Richmond, VA 23219, telephone (804) 786-4857

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **394-01-4. Virginia Uniform Statewide Building Code, Amusement Device Regulations**. The purpose of the proposed action is to protect the health, safety and welfare of amusement device users.

The purpose of the intended regulatory action is to develop a 1990 edition of the existing regulation.

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

Written comments may be submitted until April 15, 1990.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-6. Virginia Statewide Fire Prevention Code.** The purpose of the proposed action is to provide mandatory statewide regulation for protection of life and property from the hazards of fire or explosion.

The purpose of the intended regulatory action is to develop a 1990 edition of the existing regulation.

Statutory Authority: §§ 27-95 and 27-97 of the Code of Virginia.

Written comments may be submitted until April 15, 1990.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-8. Virginia Liquefied Petroleum Gas Regulations.** The purpose of the proposed action is to require safe use and storage of L-P gases in order to protect individuals and property from fire and explosion hazards.

The purpose of the intended regulatory action is to develop a 1990 edition of the existing regulation.

Statutory Authority: § 27-87 of the Code of Virginia.

Written comments may be submitted until April 15, 1990.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending

regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code Volume I, New Construction Code.** The purpose of the proposed action is to provide mandatory, statewide uniform regulation for construction of new buildings.

The purpose of the intended regulatory action is to develop a 1990 edition of the existing regulation.

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

Written comments may be submitted until April 15, 1990.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-22. Virginia Uniform Statewide Building Code Volume II, Building Maintenance Code.** The purpose of the proposed action is to provide mandatory, statewide uniform regulation for maintenance and use of buildings.

The purpose of the intended regulatory action is to develop a 1990 edition of the existing regulation.

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

Written comments may be submitted until April 15, 1990.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider promulgating regulations entitled: **VR 394-01-23. Standards Governing Operation of Individual and Regional Code Academies.** The purpose of the proposed action is to promulgate current standards for governing operation of individual and regional code academies.

Statutory Authority: § 36-137 of the Code of Virginia.

Written comments may be submitted until April 15, 1990.

**Contact:** Robert Gregory, Administrator, Department of Housing and Community Development, 205 N. 4th St., Richmond, VA 23219, telephone (804) 786-4857

# General Notices/Errata

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## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-31. Virginia Uniform Statewide Building Code, Industrialized Building and Manufactured Home Safety Regulations.** The purpose of the proposed action is to provide uniform statewide safety standards for industrialized buildings and manufactured homes.

The purpose of the intended regulatory action is to develop a 1990 edition of the existing regulation.

Statutory Authority: § 36-80 of the Code of Virginia.

Written comments may be submitted until April 15, 1990.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772

## DEPARTMENT OF LABOR AND INDUSTRY

### Safety and Health Codes Board

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Safety and Health Codes Board intends to consider amending regulations entitled: **Virginia Occupational Safety and Health Standards for General Industry, Control of Hazardous Energy Sources (Lockout/Tagout).** The purpose of the proposed action is to remove requirements from the present regulation which permit the use of a "tagout" system in lieu of a "lockout" system on most hazardous energy sources covered by the regulation. The proposed amendment would only permit the use of a "tagout" system when the hazardous energy source was not capable of being locked out.

Statutory Authority: § 40.1-22 of the Code of Virginia.

Written comments may be submitted until March 31, 1990, to Commissioner, Department of Labor and Industry, P. O. Box 12064, 205 North Fourth Street, Richmond, Virginia 23241.

**Contact:** Regina Cobb, Agency Management Analyst, Department of Labor and Industry, P. O. Box 12064, 205 N. 4th St., Richmond, VA 23241, telephone (804) 786-9873

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Safety and Health Codes Board intends to consider amending regulations entitled: **Virginia Occupational Safety and Health Standards for Construction Industry, Sanitation.** The

purpose of the proposed action is to revise requirements from the present regulation in the areas of drinking water, toilets and washing facilities.

Statutory Authority: § 40.1-22 of the Code of Virginia.

Written comments may be submitted until March 31, 1990, to Commissioner, Department of Labor and Industry, P. O. Box 12064, 205 North Fourth Street, Richmond, Virginia 23241.

**Contact:** Regina Cobb, Agency Management Analyst, Department of Labor and Industry, P. O. Box 12064, 205 N. 4th St., Richmond, VA 23241, telephone (804) 786-9873

## LOTTERY BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Lottery Board intends to consider amending regulations entitled: **VR 447-02-1. Instant Game Regulations.** The purpose of the proposed action is to allow lottery retailers to return instant lottery tickets for credit prior to the announced end of the games, and clarify when a claim form is required to redeem prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until May 21, 1990.

**Contact:** Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2021 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider promulgating regulations entitled: **Virginia Indigent Health Care Trust Fund.** The purpose of the proposed action is to promulgate regulations to administer the Virginia Indigent Health Care Trust Fund.

Statutory Authority: § 32.1-333 of the Code of Virginia.

Written comments may be submitted until April 13, 1990.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

## † 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: **Inpatient Hospital Utilization Review**. The purpose of this action is to modify current State Plan language consistent with federal law and regulations pertaining to inpatient hospital services utilization review.

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

Written comments may be submitted until April 13, 1990, to Stephen B. Riggs, D.D.S., Dental Support Director, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider promulgating regulations entitled: **Mental Health, Mental Retardation and Substance Abuse Services**. The purpose of the proposed action is to include coverage for the following services: targeted case management, rehabilitation, EPSDT, and substance abuse services.

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

Written comments may be submitted until 4:30 p.m., April 16, 1990, to Ann E. Cook, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

## † 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 460-03-4.1940. Nursing Home Payment System: Patient Intensity Related System**. The purpose of the proposed action is to supersede the current nursing home reimbursement system with one based on the intensity of services received by Medicaid patients.

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

Written comments may be submitted until 4:30 p.m., April 26, 1990, to James Byrd, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance

Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

## 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 465-03-01. Physical Therapy**. The purpose of the proposed action is to amend Part II, § 2.4 to establish licensure requirements for graduates of foreign institutions to practice as physical therapist assistants.

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

Written comments may be submitted until March 28, 1990.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925

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

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider amending regulations entitled: **VR 470-02-02. Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children**. The purpose of the proposed action is to regulate the use of strip searches and body cavity searches in residential facilities for children licensed by the department.

The prohibition of strip searches and body cavity searches is being proposed for Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children, unless permitted by other state regulations.

Statutory Authority: §§ 37.1-10 and 37.1-179 of the Code of Virginia.

Written comments may be submitted until March 27, 1990.

**Contact:** Barry P. Craig, Director of Licensure, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3472 or (804) 371-8977/TDD ☎

# General Notices/Errata

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## BOARD OF PSYCHOLOGY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Psychology intends to consider amending regulations entitled: **VR 565-01-2. Regulations Governing the Practice of Psychology.** The purpose of the proposed action is to be consistent with the board's Public Participation Guidelines inviting comment on all existing regulations as part of the board's biennial review of rules. The board is considering modifications to its existing regulations dealing with supervision of technical assistants, filing dates to commence residency on prerequisite to licensing, definitions, classifications, fees, general requirements, previous experience, internship and course requirements, out-of-state applicants, examination scheduling, reexaminations, reapplying, deferrals by candidate, technical assistant requirements and duties, standards of practice, and grounds for revocation, suspension or denial of renewal of license.

This Notice of Intended Regulatory Action is an extension of the Notice of Intent first published on February 12, 1990.

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

Written comments may be submitted until May 10, 1990.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, 1601 Rolling Hills Dr., Suite 200, Richmond, VA 23229-5005, telephone (804) 662-9913

## VIRGINIA RACING COMMISSION

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **Racing Officials: Duties, Qualifications and Responsibilities. Permit Holders: Duties, Qualifications and Responsibilities.** The purpose of the proposed action is to set forth duties, qualifications and responsibilities of racing officials and permit holders for pari-mutuel horse racing in Virginia.

Statutory Authority: § 59.1-364 of the Code of Virginia.

Written comments may be submitted until May 12, 1990.

**Contact:** William H. Anderson, Regulatory Coordinator, Virginia Racing Commission, P. O. Box 1123, Richmond, VA 23209, telephone (804) 371-7363

## BOARD OF SOCIAL WORK

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Work intends to consider amending regulations entitled: **VR 620-01-2. Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to (i) allow nonregistered supervised experience for clinical social workers received prior to July 6, 1989 (effective date of current regulations), to be considered for licensure; (ii) adjust fees for examinations and biennial renewals; (iii) clarify part-time equivalency requirements; and (iv) incorporate additional proposals necessary to accomplish these objectives.

Regulations are currently in the form of Emergency Regulations effective November 2, 1989.

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

Written comments may be submitted until April 26, 1990.

**Contact:** Evelyn B. Brown, Executive Director, Board of Social Work, 1601 Rolling Hills Dr., Suite 200, Richmond, VA 23229, telephone (804) 662-9914

## DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Commonwealth Transportation Board intends to consider promulgating regulations entitled: **Vegetation Control Policy.** The purpose of the proposed action is to establish policy and provisions concerning vegetation cutting and control around outdoor advertising.

Statutory Authority: §§ 33.1-12(3), (7) and 33.1-351(a) of the Code of Virginia.

Written comments may be submitted until April 13, 1990.

**Contact:** J. R. Barrett, Environmental Program, Department of Transportation, Environmental Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 371-6826

## STATE WATER CONTROL BOARD

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-14-01. Permit Regulation.** The purpose of the

proposed action is to consider necessary amendments to the Permit Regulation. These amendments are for the purpose of making VR 680-14-01 conform more closely with federal regulations effective May 26, 1989; to provide for reporting of discharges by unpermitted owners; and to make minor revisions for clarification of the regulation. Further, the intent and purpose of the Toxics Management Regulation (VR 680-14-03) will be incorporated into the Permit Regulation by these amendments. As a result, it is the intent of the board to revoke VR 680-14-03 concurrent with these amendments to VR 680-14-01.

These amendments could potentially impact all of the approximately 2,800 Virginia Pollutant Discharge Elimination System permittees in that more permits could contain water quality-based permit limitations versus the approximately 400 permittees estimated to be impacted by the Toxics Management Regulation. In addition, the proposed amendments will affect persons who currently do not have VPDES or VPA permits and discharge to state waters in that failure to report such discharges will be a violation of state regulations. Applicable laws and regulations include the State Water Control Law, Permit Regulation (VR 680-14-01), Toxics Management Regulation (VR 680-14-03), Water Quality Standards (VR 680-21-00), and the Clean Water Act. For review or copies of applicable laws and regulations, contact Mr. Richard Ayers at the address below.

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

Written comments may be submitted until 4 p.m., April 9, 1990.

**Contact:** Richard W. Ayers, Office of Water Resources Management, State Water Control Board, P. O. Box 11143, Richmond, VA 23230, telephone (804) 367-6302

## GENERAL NOTICES

### DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

#### † Notice of Grant Programs

The Department of Housing and Community Development was designated the administering agency for distribution of state funds appropriated by the General Assembly under the Virginia Housing Partnership Fund for the 1989-90 biennium and for the 1991-92 biennium. Under the Partnership Fund, funds are made available for several state housing grant programs, including the State Homeless Housing Assistance Resources (SHARE) Programs.

Notice is hereby given of the availability of grants to eligible project sponsors under the following programs: Seed-Money Program (application deadline - May 1, 1990 - amount available statewide - \$356,250); Emergency Home Repair Grants (application deadline - April 13, 1990 - amount available statewide - \$237,500); SHARE-Shelter Support Grants (application deadline - April 2, 1990 - amount available statewide - \$556,695); SHARE-Expansion Grant/Loan (application deadline - May 1, 1990 - amount available statewide - \$3,200,000).

For information or application manuals contact: Virginia Department of Housing and Community Development, Division of Housing, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 786-7891.

### DEPARTMENT OF MINES, MINERALS AND ENERGY

#### Division of Gas and Oil

#### † Emergency Order for Coalbed Methane

This order is adopted by the Virginia Oil and Gas Inspector pursuant to § 45.1-293 of the Code of Virginia.

/s/ Byron T. Fulmer, Virginia Oil and Gas Inspector  
Date: March 7, 1990

Coalbed Methane Emergency Order CBM-1-30790

#### § 1. Definitions.

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

“Cased completion” means a coalbed methane gas well in which production casing is set through the productive coalbed or coalbeds.

“Cased/open hole completion” means a coalbed methane gas well in which at least one coalbed is completed through casing and at least one coalbed is completed open hole.

“Gob Well” means a coalbed methane gas well which produces gas that is captured from the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

“Horizontal ventilation holes” means an underground system by which methane gas is collected from the working face of a mine's operations and is vented to the atmosphere.

“Open hole completion” means a coalbed methane gas well in which no production casing is set through the productive coalbed or coalbeds.

“Produced waters” means water or fluids produced from

# General Notices/Errata

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a coalbed methane gas well or gob well as a by-product of drilling, completing and producing methane gas from a coalbed, coalbeds or gob.

“Vertical ventilation hole” means a hole, permitted by the DMME, Division of Mines pursuant to the Rules and Regulations Governing Vertical Mine Ventilation Holes, VR 480-05-96, drilled from the surface to a coal seam, used only for safety purposes by removing gas from the coal seam and the adjacent strata, thus venting the gas that would normally be in the mine ventilation system.

## § 2. Applicability.

This order addresses development and production of coalbed methane gas. These requirements are in addition to the requirements of the Rules and Regulations for Conservation of Oil and Gas Resources and Well Spacing (VR 480-05-22), orders, policies and procedures issued by the Virginia Oil and Gas Conservation Board, Virginia Well Review Board or Department of Mines, Minerals and Energy. Where there is a conflict or inconsistency between the provisions of this order and the requirements of §§ 45.1-334, 45.1-335, 45.1-336, 45.1-341, 45.1-343, 45.1-344, 45.1-354, or 45.1-355 of the Code of Virginia, or of any other regulation, order, policy or procedure, the provisions of this order shall prevail.

## § 3. Spacing.

For the purposes of spacing of coalbed methane gas wells within the counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, or Wise or the City of Norton, well spacing shall be pursuant to § 45.1-357.2 of the Code of Virginia.

## § 4. Allowable production rate.

Unless otherwise provided for by the Virginia Oil and Gas Conservation Board, the allowable production for a coalbed methane gas well shall be 100% of absolute open flow.

## § 5. Testing of flow potential: multiple completions.

Testing of flow potential, in the case of multiple zone completions, shall be by each zone completed by the operator. The test results shall be promptly submitted and become part of the permanent record of the well.

## § 6. Pooling and unitization.

A. Requirements of § 45.1-357.4 of the Code of Virginia and § 2.03 of the Rules and Regulations for Conservation of Oil and Gas Resources and Well Spacing shall apply to any unit or pooling application submitted to the board.

B. This section shall apply to any application submitted for conversion of a vertical ventilation hole to a coalbed methane gas well.

## § 7. Permit applications.

A. Permits required: A permit shall be required to drill any coalbed methane gas well, to convert a vertical ventilation hole to a coalbed methane gas well, or to convert a conventional well to or from a coalbed methane gas well.

1. Any operator who intends to (i) convert an existing vertical ventilation hole permitted by the Division of Mines to a coalbed methane gas well, or (ii) convert a permitted conventional gas well to a coalbed methane gas well or coalbed methane well to a conventional well, shall first obtain a permit from the Division of Gas and Oil.

2. To convert a permitted coalbed methane gas well or a permitted gob well to a vertical ventilation hole, the applicant must secure a permit for a vertical ventilation hole from the Division of Mines and a coal surface mining and reclamation permit from the Division of Mined Land Reclamation. Obtaining these permits shall be a condition to the cancellation of the coalbed methane gas well operator's permit from the Division of Gas and Oil.

3. To convert a conventional well to a coalbed methane gas well, an operator shall be required to submit a new permit application. The new permit application shall identify how the operator proposes to convert the conventional well to a coalbed methane well.

B. Permit application requirements: In addition to the requirements set forth in §§ 45.1-311 and 45.1-357.5 of the Code of Virginia, the applicant shall be required to:

1. Submit an explanation of the basis for notification of the entities within the application.

2. Notify coal owners and operators within 753 feet of the location of the coalbed methane gas well, and submit proof of notification by such means as certified return receipt or a signed “Statement of No Objection.”

3. Identify all coal owners and/or coal operators within 753 feet of the location of the coalbed methane gas well on the plat. For the purposes of plat identification the following symbol, denoting a coalbed methane gas well, shall be used. All other symbols shall remain in effect.

Coalbed methane gas well  CBM

4. Submit a signed consent as required in § 45.1-357.5 A 3 of the Code of Virginia.

5. Submit proof of conformance with any mine development plan within the vicinity of the proposed

coalbed methane gas well.

6. Submit proof from the Division of Mined Land Reclamation that the proposed wells, pipelines, or associated facilities located on areas included in a DMLR permit are approved as post-mining land uses.

7. Submit a water quality analysis for water to be used in drilling the coalbed methane gas well showing that the water complies with the State Water Control Board's Anti-degradation Policy and the DMME April 7, 1987, Quality of Water Used in Drilling Policy. Compliance with the departmental policy can be achieved by three methods:

- a. Using water from a source approved by the Department of Health;
- b. Using water from a water well at the site; or
- c. Documenting ground water quality at the site and using water that equals or exceeds that quality.

If treatment is required, the applicant must submit a plan of treatment to be used to bring the water quality within the standards specified by the State Water Control Board and DMME policies.

C. Operation plan requirements: In addition to the requirements of § 45.1-311 E of the Code of Virginia, the applicant must submit the following information with the operations plan:

1. A description of the drilling media to be used and the chemical analysis of the media to be used.
2. A description of the method of handling and disposing of waste fluids and produced waters. Should the applicant hold a VPDES from the State Water Control Board, or a UIC permit from the U.S. Environmental Protection Agency and waste disposal well permit from the Division, he shall file a copy of the permit or permits with the application.
3. A description of the method and procedure for the handling and removal of solid waste during all phases of the operations.
4. A statement of the effect of operations on the ground or surface water supplies. The plan shall include estimates of the amount and source of water withdrawals to be used in the drilling and completion phases of the operations.
5. A "Request for Variance" from §§ 45.1-354 and 45.1-355 of the Code of Virginia and § 6.06 of the Rules and Regulations for Conservation of Oil and Gas Resources and Well Spacing, if the applicant intends to test the coalbed methane gas well beyond the open flow potential test. If a variance has been requested, a plan of testing must be submitted with the Operations

Plan.

6. An explanation of all safety and environmental procedures for all surface equipment, including tank batteries, to be utilized on site during and after completion of the well. A schematic shall illustrate the proposed equipment and facilities. For the purposes of wellhead installation on a gob well or any coalbed methane well to be mined through, the well head assembly shall include proper installation of safety equipment, including, but not limited to:

- a. Placement of the flame arrestors;
- b. Placement of the back pressure system;
- c. Placement of the pressure relief system; and
- d. Placement of the vent system a minimum of 20 feet above ground level.

The Inspector may require additional safety equipment to be installed on a case by case basis.

7. An explanation of procedures to be followed to protect the safety of persons working in an underground coal mine for any coalbed methane gas well to be drilled into active or inactive areas of the mine.

## § 8. Casing requirements.

A. For the purposes of this section, the following minimum casing requirements shall be met for casing coalbed methane gas wells.

1. Surface casing: Unless otherwise granted in a variance from the inspector, all wells drilled in search of coalbed methane gas shall have surface casing set at least 300 feet below the surface or 50 feet below the lowest groundwater supply source, whichever is deeper. The surface casing and cement shall be designed to withstand 300 psi and allowed to stand for 12 hours before drilling out from under the casing.
2. Production casing: Unless otherwise granted in a variance from the inspector the following casing and cementing procedures shall be required:
  - a. For cased hole completions, casing shall be set and cemented in place with a calculated cement volume to fill the annular space to a point not less than 200 feet above the top of the uppermost coalbed which is to be completed.
  - b. For open hole completions, casing shall be set at least 100 feet above the uppermost coalbed which is to be completed. The casing shall be cemented to fill the calculated annular volume to a point at least 200 feet above the bottom of the casing.

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3. Before drilling out the production casing, the casing shall be tested to 600 psi. If after 30 minutes, the pressure has dropped to 10% or more of the test pressure, corrective action is to be taken to ensure that the casing is so set and cemented that it will hold the test pressure for 30 minutes or more. All test results shall be posted at the rig and shall be reported in the Completion Report pursuant to § 4.06 of the Rules and Regulations for Conservation of Oil and Gas Resources and Well Spacing.

## § 9. Request for variance for casing.

A. Each application for a coalbed methane gas well may contain a "Request for Variance" from §§ 45.1-334, 45.1-335 and 45.1-336 of the Code of Virginia. The request shall address the following subjects:

1. The method of wellbore completion, whether cased, open or cased/open hole;
2. Coal seams to be left uncased;
3. Mining activity currently being conducted in the area of the proposed location;
4. Proposed setting depth of the water protection string; and
5. In the case of a coalbed methane gas well drilled through a coal seam from which the coal has been removed, the protection that will be provided to prevent the escape of any gases into the mined out coal seam.

## § 10. Completion report requirements.

A. In addition to the requirements set by the board for the filing of completion reports on a well, the following information is required to be submitted with the report:

1. The total amount of water consumed in the drilling and completion operations of the coalbed methane gas well.
2. The final water quality of the pit fluids. This information must be submitted before disposal of the fluids.
3. Copies of all electric logs ran on the well.

## § 11. Operation requirements.

A. Unless otherwise approved by the inspector, all coalbed methane gas wells shall be cleaned to a properly constructed, line pit. The pit shall be constructed of sufficient size and shape to contain all produced fluids from the well.

B. No produced fluids or pit fluids shall be discharged into surface waters without first obtaining a VPDES

permit. For land application, the final water quality of the pit fluid must be in compliance with the following parameters:

1. Oil and Grease - less than 15 mg/l
2. Total Suspended Solids - less than 30 mg/l
3. Ph - 6.0 to 9.0
4. Manganese - less than 4.0 mg/l
5. Iron - less than 7.0 mg/l
6. Chlorides - less than 25 mg/l
7. Free of all toxic compounds.

C. If the standards in subsection B cannot be met and a disposal system has not been approved, the operator shall contact the division immediately.

D. All coalbed methane gas well operators are required to submit monthly reports of total produced water withdrawn from coalbed methane gas wells on a well by well basis. The report shall be submitted with the monthly production report submitted under § 6.05 of the Rules and Regulations for Conservation of Oil and Gas Resources and Well Spacing. The report shall contain data showing monthly produced water withdrawal and cumulative produced water withdrawal.

## § 12. Testing of coalbed methane wells.

For the purposes of testing the potential flow rate of a coalbed methane gas well, if the operator cannot determine the capability of production from the well within 30 days after the completion of the well, he may request approval from the inspector to run a Coalbed Methane Gas Production Test. Such test shall be performed only when the water production and the gas flow rate is stabilized for a period of not less than 10 days prior to the test. The test shall be run for a minimum of 24 hours in a manner approved by the inspector. Results of the test shall be submitted to the inspector with the completion report.

## § 13. Venting or flaring of coalbed methane wells.

A. Venting or flaring of wells is prohibited, except under the following conditions:

1. For the safety of mining operations or for the safe and efficient testing or operation of coalbed methane gas wells; or
2. For the purposes of conducting a Coalbed Methane Production Test approved by the inspector.

## § 14. Metering of coalbed methane production.

Production from coalbed methane gas wells, gob wells, or horizontal ventilation holes shall be metered separately prior to introduction into the gathering pipeline system or a point of sale.

## § 15. Plugging requirements.

A. In addition to the provisions of §§ 45.1-341, 45.1-343 and 45.1-344 of the Code of Virginia, the following procedures for the plugging of coalbed methane gas wells are allowed.

1. For the purposes of mining through a well, cement plugs shall be placed across each productive interval or intervals. The plugs shall extend a minimum of 25 feet above and below each interval.

2. For cased hole or cased hole/open hole completions, a 100-foot cement plug shall be set immediately above the top of the most shallow productive coalbed interval.

3. For open hole completions, a 100-foot cement plug shall be placed 50 feet above and 50 feet below the base of the production casing.

4. For wells which have not been completed, a 100-foot cement plug shall be placed 50 feet above and 50 feet below the base of surface casing.

B. In addition to the above requirement, a 25-foot plug is to be set at the top of the well.

C. An operator may request a variance from § 45.1-347 of the Code of Virginia, if it can be shown that the marker would interfere with future cultivation at the site.

D. These provisions shall not be construed to impair or abridge the requirements of the Federal Mine Safety and Health Administration or the Department of Mines, Minerals and Energy's Division of Mines on coal operators requirements for mining near or through a coalbed methane gas well.

## NOTICES TO STATE AGENCIES

RE: Forms for filing material on dates for publication in the Virginia Register of Regulations.

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

## FORMS:

NOTICE OF INTENDED REGULATORY ACTION -

RR01

NOTICE OF COMMENT PERIOD - RR02

PROPOSED (Transmittal Sheet) - RR03

FINAL (Transmittal Sheet) - RR04

EMERGENCY (Transmittal Sheet) - RR05

NOTICE OF MEETING - RR06

AGENCY RESPONSE TO LEGISLATIVE

OR GUBERNATORIAL OBJECTIONS - RR08

DEPARTMENT OF PLANNING AND BUDGET

(Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

## ERRATA

### DEPARTMENT OF MOTOR VEHICLES

Title of Regulation: VR 485-60-8901. Motor Vehicle Dealer Advertising Practices and Enforcement Regulations.

Publication: 6:11 VA.R. 1629 February 26, 1990

#### Correction to the Final Regulation:

Page 1629, Summary, Part II, line five should read: "...has a strict determination of the vehicle's..."

Page 1629, General Provisions, § 1.1. Intent, line eight should read: "...Article 9 (§ 46.2-1580 et seq.)..."

Page 1629, § 1.2. Definitions, "Civil penalty," line two should read: "...not to exceed \$1,000 for any single violation..."

Page 1630, § 1.2. Definitions, "License," line two should read: "...permits such dealer to..."

Page 1631, D. Terms, conditions, and disclaimers, Item 4, line 3 and 4 should read: "...conspicuously displayed or announced, or both, during the ad. They must be at an understandable speed or understandable volume level, or both."

Page 1632, Part III, Enforcement, line five should read: "...§ 46.2-1581) and also those regulated advertising practices described in Part II."

# CALENDAR OF EVENTS

## Symbols Key

- † Indicates entries since last publication of the Virginia Register
- e Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

## NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

## VIRGINIA CODE COMMISSION

### EXECUTIVE

#### BOARD FOR ACCOUNTANCY

† April 5, 1990 - 2 p.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. e

A meeting to conduct a formal hearing: File Number 86-01329, Board for Accountancy v. Graham C. Larmer.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524

\* \* \* \* \*

May 7, 1990 - 10 a.m. - Public Hearing  
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. e

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Accountancy intends to repeal existing regulations and adopt new regulations entitled: **VR 115-01-2. Board for Accountancy Regulations.** The board is repealing its current regulations and proposing new regulations to establish the requirements for certification and licensure as a certified public accountant and establish the standards of practice for the professions.

Statutory Authority: § 54.1-201(5) of the Code of Virginia.

Written comments may be submitted until April 30, 1990.

Contact: Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

## DEPARTMENT FOR THE AGING

### Long-Term Care Ombudsman Program Advisory Council

March 29, 1990 - 9:30 a.m. - Open Meeting  
Department for the Aging, 700 East Franklin Street, 10th Floor, Conference Room, Richmond, Virginia. e

Business will include review of revised Advisory Council Guidelines and a report of recent program activities.

Contact: Virginia Dize, State Ombudsman, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 225-2271/TDD ☎ or toll-free 1-800-552-3402

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

May 16, 1990 - 10 a.m. - Public Hearing  
Washington Building, 1100 Bank Street, Room 204, Richmond, Virginia. e

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: **VR 115-04-04. Rules and Regulations for the Enforcement of the Virginia Weights and Measures Law.** The purpose of the proposed action is to adopt a method of sale and standards of fill, as determined by weight, for clams, mussels, oysters, and other mollusks.

Statutory Authority: § 3.1-926 of the Code of Virginia.

Written comments may be submitted until April 2, 1990.

Contact: J. Alan Rodgers, Bureau Chief, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 402, P. O. Box 1163, Richmond, VA 23209, telephone (804) 786-2476

Pesticide Control Board

May 2, 1990 - 9:30 a.m. - Public Hearing  
Virginia Tech, Donaldson-Brown Continuing Education Center, Room G, Blacksburg, Virginia

May 7, 1990 - 10:30 a.m. - Public Hearing  
Washington Building, 1100 Bank Street, Board Room, Room 204, 2nd Floor, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Pesticide Control Board intends to amend regulations entitled: **VR 115-04-03. Rules and Regulations for the Enforcement of the Virginia Pesticide Law.** The purpose of the proposed amendments is to repeal § 23, "Records" and § 26, "Evidence of Financial Responsibility" of the aforementioned regulation as a part of the development of VR 115-04-22, Regulations Governing Licensing of Pesticide Businesses Under Authority of Virginia Pesticide Control Act. The Pesticide Control Act provides that current regulations, with provisions related to but different than those proposed, will remain in effect "until repealed by the Pesticide Control Board."

Statutory Authority: §§ 3.1-249.28 and 3.1-249.30 of the Code of Virginia.

Written comments may be submitted until April 30, 1990.

Contact: C. Kermit Spruill, Jr., Director, Division of Product and Industry Regulation, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 403, P. O. Box 1163, Richmond, VA 23209, telephone (804) 786-3523

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May 2, 1990 - 9 a.m. - Public Hearing  
Virginia Tech, Donaldson-Brown Continuing Education Center, Room G, Blacksburg, Virginia

May 7, 1990 - 10 a.m. - Public Hearing  
Washington Building, 1100 Bank Street, Board Room, Room 204, 2nd Floor, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Pesticide Control Board intends to adopt regulations entitled: **VR 115-04-20. Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services under the Virginia Pesticide Control Act.** The purpose of the proposed regulation is to establish fees to be collected by the Virginia Department of Agriculture and Consumer Services for Pesticide Product Registration, Certified Commercial Applicator Certificates, and Registered Technician Certificates as well as for licensing pesticide businesses. This regulation will establish user fees to fund the management of

pesticide programs fully in Virginia as recommended by the Council on the Environment in a report entitled Special Report: Pesticide Management in Virginia (January, 1989), which gave impetus to legislation that became the 1989 Pesticide Control Act.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Written comments may be submitted until April 30, 1990.

Contact: C. Kermit Spruill, Jr., Director, Division of Product and Industry Regulation, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 403, P. O. Box 1163, Richmond, VA 23209, telephone (804) 786-3523

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May 2, 1990 - 10 a.m. - Public Hearing  
Virginia Tech, Donaldson-Brown Continuing Education Center, Room G, Blacksburg, Virginia

May 7, 1990 - 11 a.m. - Public Hearing  
Washington Building, 1100 Bank Street, Board Room, Room 204, 2nd Floor, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Pesticide Control Board intends to adopt regulations entitled: **VR 115-04-21. Public Participation Guidelines of the Pesticide Control Board.** The purpose of the proposed regulation is to establish public participation guidelines, pursuant to § 9-6.14:7.1 of the Code of Virginia, for use by the Pesticide Control Board. This regulation will assure that the public is fully involved in the board's development of regulations.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Written comments may be submitted until April 30, 1990.

Contact: C. Kermit Spruill, Jr., Director, Division of Product and Industry Regulation, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 403, P. O. Box 1163, Richmond, VA 23209, telephone (804) 786-3523

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May 2, 1990 - 9:30 a.m. - Public Hearing  
Virginia Tech, Donaldson-Brown Continuing Education Center, Room G, Blacksburg, Virginia

May 7, 1990 - 10:30 a.m. - Public Hearing  
Washington Building, 1100 Bank Street, Board Room, Room 204, 2nd Floor, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Pesticide Control Board intends to adopt regulations entitled: **VR 115-04-22. Regulations Governing Licensing of**

# Calendar of Events

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**Pesticide Businesses Operating Under Authority of Virginia Pesticide Control Act.** The purpose of the proposed regulation is to require an annual business license for persons who sell, recommend for use, store, or apply pesticides in Virginia. (Businesses that sell pesticides in limited quantities primarily for limited household use are exempt from the provisions of this regulation.) This regulation will provide a means of identifying those firms that sell, recommend for use, store, or apply pesticides for hire. It will also provide a system for tracking certified commercial applicators and registered technicians. In addition, the regulation will require that records be kept on storage, sale, recommendation for use, and use of pesticides. The regulation also requires evidence of financial responsibility for all licensed entities, which under current regulations is required only of the certified commercial pesticide applicator.

In part, this regulation will supersede two portions of VR 115-04-03, Rules and Regulations for Enforcement of the Virginia Pesticide Law—specifically § 23, "Records," and § 26, "Evidence of financial responsibility." The adoption, therefore, of this new regulation will require the repeal of these two provisions of the present regulation, a step authorized by the Virginia Pesticide Control Act.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Written comments may be submitted until April 30, 1990.

**Contact:** C. Kermit Spruill, Jr., Director, Division of Product and Industry Regulation, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 403, P. O. Box 1163, Richmond, VA 23209, telephone (804) 786-3523

## STATE AIR POLLUTION CONTROL BOARD

**April 12, 1990 - 10 a.m. – Open Meeting**  
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. e

A meeting to receive input on the development of the proposed Regulations for the Control and Abatement of Air Pollution.

**Contact:** Nancy S. Saylor, Program and Policy Analyst, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249

\* \* \* \* \*

**April 25, 1990 - 10 a.m. – Public Hearing**  
Department of Air Pollution Control, Southwestern Virginia Regional Office, 121 Russell Road, Abingdon, Virginia

**April 25, 1990 - 10 a.m. – Public Hearing**  
Department of Air Pollution Control, Valley of Virginia

Regional Office, Executive Office Park - Suite D, 5338 Peters Creek Road, Roanoke, Virginia

**April 25, 1990 - 10 a.m. – Public Hearing**  
Auditorium of the Recreation Center, 301 Grove Street, Lynchburg, Virginia

**April 25, 1990 - 10 a.m. – Public Hearing**  
Department of Air Pollution Control, Northeastern Virginia Regional Office, 300 Central Road - Suite B, Fredericksburg, Virginia

**April 25, 1990 - 10 a.m. – Public Hearing**  
Auditorium of the Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia

**April 25, 1990 - 10 a.m. – Public Hearing**  
Department of Air Pollution Control, Hampton Roads Regional Office, Old Greenbrier Village - Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia

**April 25, 1990 - 1 p.m. – Public Hearing**  
Richard Byrd Public Library, 7250 Commerce Street, Springfield, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia and the requirements of § 110(a) (1) of the Federal Clean Air Act that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The regulation amendments cover emission standards for volatile organic compounds (VOC) and associated administrative and enforcement regulations.

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

Written Comments may be submitted until May 11, 1990, to Director of Program Development, Department of Air Pollution Control, P. O. Box 10089, Richmond, Virginia 23240.

**Contact:** Ellen P. Snyder, Policy/Program Analyst, Department of Air Pollution Control, P. O. Box 10089, Richmond, VA 23240, telephone (804) 786-0177

## ALCOHOLIC BEVERAGE CONTROL BOARD

**March 26, 1990 - 9:30 a.m. – Open Meeting**

**April 9, 1990 - 9:30 a.m. – Open Meeting**

**April 23, 1990 - 9:30 a.m. – Open Meeting**

**May 14, 1990 - 9:30 a.m. – Open Meeting**

**May 31, 1990 - 9:30 a.m. – Open Meeting**

2901 Hermitage Road, Richmond, Virginia. e

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

**Contact:** Robert N. Swinson, Secretary, Alcoholic Beverage

Control Board, 2901 Hermitage Rd., P. O. Box 27491,  
Richmond, VA 23261, telephone (804) 367-0616

## ALEXANDRIA LOCAL EMERGENCY PLANNING COMMITTEE

† **May 9, 1990 - 6 p.m.** – Open Meeting  
Alexandria Police Department, Roll Call Room, 2003 Mill  
Road, Alexandria, Virginia

A regular meeting.

**Contact:** Chap Coleman or Janette Jacobs, Alexandria  
Local Emergency Planning Committee, Alexandria, VA,  
telephone (703) 838-3825 or 838-4600

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

**March 29, 1990 - 10 a.m.** – Open Meeting  
**March 30, 1990 - 10 a.m.** – Open Meeting  
Council Chambers, Rouss City Hall, North Cameron Street,  
Winchester, Virginia

The board will meet to conduct a formal hearing:  
APELSCLA Board v. Keith Williams, File Number  
89-00264

**Contact:** Gayle Eubank, Hearings Coordinator, Department  
of Commerce, 3600 W. Broad St., Richmond, VA 23230,  
telephone (804) 367-8524

\* \* \* \* \*

**April 12, 1990 - 10 a.m.** – Public Hearing  
Department of Commerce, 3600 West Broad Street, 5th  
Floor, Richmond, Virginia. e

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Board for Architects,  
Professional Engineers, Land Surveyors and Landscape  
Architects intends to repeal existing regulations and  
adopt new 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 regulate the  
practice of architecture, professional engineering, land  
surveying and landscape architecture, as well as the  
professional corporations and business entities offering  
those professional services.

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

Written comments may be submitted until March 31, 1990.

**Contact:** Bonnie S. Salzman, Assistant Director, Department  
of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA  
23230, telephone (804) 367-8514 or toll-free 1-800-552-3016

## COMMISSION FOR THE ARTS

† **April 23, 1990 - 10 a.m.** – Open Meeting  
James Monroe Building, 101 North 14th Street, 15th Floor  
Conference Room, Richmond, Virginia. e

Choreographer's prize panel meeting.

**Contact:** Commission for the Arts, James Monroe Bldg.,  
101 N. 14th St., 17th Floor, Richmond, VA 23219-3683,  
telephone (804) 225-3132

## BOARD FOR AUCTIONEERS

**April 19, 1990 - 9 a.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street,  
Richmond, Virginia. e

An open meeting to (i) review complaints; (ii) discuss  
revenue and expenditures; (iii) discuss regulatory  
review; and (iv) consider other matters which require  
board action.

**Contact:** Geralde W. Morgan, Administrator, Department of  
Commerce, 3600 W. Broad St., Richmond, VA 23230-4917,  
telephone (804) 367-8534 or toll-free 1-800-552-3016

## BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

**April 4, 1990 - 8:30 a.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,  
Richmond, Virginia. e

A board meeting to conduct regulatory review.

**Contact:** Meredyth P. Partridge, Executive Director, 1601  
Rolling Hills Dr., Richmond, VA 23229-5005, telephone  
(804) 662-9111

## BOARD FOR BARBERS

**March 26, 1990 - 9 a.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street, 5th  
Floor, Richmond, Virginia. e

An open meeting to (i) review correspondence; (ii)  
review applications; (iii) review enforcement cases;  
(iv) discuss regulatory review; and (v) conduct routine  
board business.

**Contact:** Roberta L. Banning, Assistant Director,  
Department of Commerce, 3600 W. Broad St., Richmond,  
VA 23230-4917, telephone (804) 367-8590 or toll-free  
1-800-552-3016 (VA only)

# Calendar of Events

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## VIRGINIA COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

† **April 2, 1990 - 10 a.m.** – Open Meeting  
Virginia House, Richmond, Virginia

The meeting will include a resume of past activities and a discussion of future activities commemorating the birth of the Bill of Rights.

**Contact:** Tracy K. Warren, Associate Director, Virginia Commission on the Bicentennial of the United States Constitution, Center for Public Service, University of Virginia, 2015 Ivy Road, Charlottesville, VA 22903-1795, telephone (804) 924-0948

## VIRGINIA CATTLE INDUSTRY BOARD

† **April 30, 1990 - 1 p.m.** – Open Meeting  
† **May 1, 1990 - 8:15 a.m.** – Open Meeting  
Lynchburg Hilton, 2900 Candler's Mountain Road, Randolph Macon Conference Room, Lynchburg, Virginia. e

A meeting to determine the budget for 1990-91 and which projects in the areas of research, consumer education, and industry information will be funded.

**Contact:** Reggie Reynolds, Executive Director, P. O. Box 176, Daleville, VA 24083, telephone (703) 992-1992

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **March 28, 1990 - 10 a.m.** – Open Meeting  
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia. e (Interpreter for deaf provided if requested)

A regular quarterly meeting. The agenda will be mailed to persons on the board mailing list on or about March 19, 1990, and may be obtained by calling (804) 225-3440.

**Contact:** Tina Halsted, Staff Specialist, Chesapeake Bay Local Assistance Department, Suite 701, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

## LOCAL EMERGENCY PLANNING COMMITTEE OF CHESTERFIELD COUNTY

**April 5, 1990 - 5:30 p.m.** – Open Meeting  
**May 3, 1990 - 5:30 p.m.** – Open Meeting  
Chesterfield County Administration Building, 10001 Ironbridge Road, Chesterfield, Virginia. e

The committee will meet to discuss the requirements of Superfund Amendment and Reauthorization Act of 1986.

**Contact:** Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Dept., P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236

## DEPARTMENT FOR CHILDREN

### Consortium on Child Mental Health

**April 4, 1990 - 9 a.m.** – Open Meeting  
**May 2, 1990 - 9 a.m.** – Open Meeting  
Eighth Street Office Building, 805 East Broad Street, 11th Floor Conference Room, Richmond, Virginia. e

A regular meeting.

**Contact:** Wenda Singer, Chair, Department for Children, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-2208

### State-Level Runaway Youth Services Network

**April 26, 1990 - 9 a.m.** – Open Meeting  
Department of Corrections, 6900 Atmore Drive, Room 3056, Richmond, Virginia. e

A regular meeting.

**Contact:** Martha Frickert, Human Resources Developer, Department for Children, 805 E. Broad St., 11th Floor, Richmond, VA 23219, telephone (804) 786-5994

## BOARD OF COMMERCE

**May 24, 1990 - 11 a.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. e

A regular quarterly meeting to discuss the impact of legislation passed by the 1990 General Assembly and review progress on departmental studies mandated by the General Assembly.

**Contact:** Alvin D. Whitley, Policy Analyst, Director's Office, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8564 or toll-free 1-800-552-3016 (ext. 8564)

## DEPARTMENT OF CONSERVATION AND RECREATION

**April 9, 1990 - 9 a.m.** – Public Hearing  
County Administration Center, Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia

**April 10, 1990 - 9 a.m.** – Public Hearing  
James City County Government Complex, Board Room, 101 C Mounts Bay Road, Williamsburg, Virginia

**April 11, 1990 - 8 a.m.** – Public Hearing

McCourt Building, Prince William Board of Supervisors Room, 4850 Davis Ford Road, Prince William, Virginia

**April 12, 1990 - 8 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, Senate Room B, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Conservation and Recreation intends to adopt regulations entitled: **VR 215-02-00. Stormwater Management Regulations.** The purpose of the proposed regulation is to implement the Stormwater Management Act, Chapters 467 and 499 of the 1989 Acts of Assembly. The proposed regulations specify minimum technical criteria and administrative procedures for stormwater management programs which local governments are authorized to adopt. State agencies with land development projects are also governed by the proposed regulations.

Statutory Authority: §§ 10.1-104 and 10.1-603.4 of the Code of Virginia.

Written comments may be submitted until May 14, 1990, to Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219.

**Contact:** Donald R. Vaughan, Supervisor, Urban Programs Section, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 371-7483

## BOARD FOR CONTRACTORS

† **April 18, 1990 - 9 a.m. - Open Meeting**  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. e

A quarterly meeting to (i) address policy and procedural issues; (ii) review and render decisions on applications for contractors' licenses; and (iii) review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be discussed in executive session.

### Applications Review Committee

† **March 28, 1990 - 10 a.m. - Open Meeting**  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. e

A regular meeting to review applications with convictions and/or complaints for Class A Contractors Licenses and Class B Contractor Registrations.

**Contact:** Kelly G. Ragsdale, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230,

telephone (804) 367-8557 or toll-free 1-800-552-3016

## BOARD OF CORRECTIONS

**April 11, 1990 - 10 a.m. - Open Meeting**  
Board of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia

A regular monthly meeting.

**Contact:** Vivian Toler, Secretary of the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235

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

† **May 25, 1990 -** 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 Departments of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services intends to amend regulations entitled: **VR 230-40-001, VR 270-01-003, VR 470-02-01, VR 615-29-02. Core Standards for Interdepartmental Licensure and Certification of Residential Facilities for Children.** This regulation is designed to assure adequate care, treatment, and education are provided by residential facilities for children. The proposed revisions amend and clarify requirements governing staff supervision of children.

## STATEMENT

**Basis:** Sections 16.1-311, 22.1-321, 37.1-10, 37.1-182, 53.1-249, 63.1-25, 63.1-196.4 and 63.1-217 of the Code of Virginia provide the statutory basis for promulgation of standards for regulation of residential facilities for children. The State Boards of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and Youth Services have approved the proposed revisions for a 60-day period of public comment.

**Purpose:** The regulation is designed to assure that adequate care, treatment, and education are provided by residential facilities for children. The proposed revisions amend and clarify requirements governing staff supervision of children.

**Substance:** The Departments of Corrections; Education; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services are responsible for the regulation of public and private residential facilities providing care, treatment, or education to children.

The regulation is designed to assure that adequate care, treatment, and education are provided by residential

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facilities for children.

**Issues:** The revisions are designed to allow residential facility administrators increased flexibility in deploying staff supervising children, to reduce the level of supervision required for adolescents in independent living programs, to increase the level of supervision required for infants and during hours children are normally sleeping, and to protect children from unwarranted and intrusive body searches.

**Impact:** Approximately 150 residential facilities for children are subject to the regulation; all are currently regulated under substantially similar requirements. All will experience programmatic changes which have no financial impact, a maximum of eight facilities may need to add personnel, and eight may experience cost savings.

**Statutory Authority:** §§ 16.1-311, 22.1-321, 37.1-10, 37.1-182, 53.1-249, 63.1-25, 63.1-196.4, and 63.1-217 of the Code of Virginia.

Written comments may be submitted until May 25, 1990, to Rhonda G. Merhout-Harrell, Office of Interdepartmental Licensure and Certification, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

**Contact:** John J. Allen, Jr., Coordinator, Office of the Coordinator, Interdepartmental Licensure and Certification, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-7124

## COMMUNITY CORRECTIONS RESOURCES BOARD

† **March 27, 1990 - 2 p.m.** – Open Meeting  
Board of Supervisors' Meeting Room, 9 Court Square,  
Winchester, Virginia. e

A meeting to review evaluations and referrals.

**Contact:** Scott Anderson, Coordinator, 112 S. Cameron St,  
Winchester, VA 22601, telephone (703) 665-5633

## CRIMINAL JUSTICE SERVICES BOARD

**April 4, 1990 - 9:30 a.m.** – Public Hearing  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. e

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 amend regulations entitled: **VR 240-01-4. Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courtroom Security Officers and Process Service Officers.** The proposed rules set forth optimum tasks and the minimum acceptable level of proficiency for entry level jailors, custodial officers, courtroom security officers and process service officers.

**Statutory Authority:** § 9-170 of the Code of Virginia.

Written comments may be submitted until March 5, 1990, to L. T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

**Contact:** Paula Scott, Executive Assistant, Criminal Justice Services Board, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000

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**April 4, 1990 - 9:30 a.m.** – Public Hearing  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. e

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 amend regulations entitled: **VR 240-01-12. Rules Relating to Certification of Criminal Justice Instructors.** The proposed amendments revise qualifications, requirements and minimum standards for the certification and recertification of criminal justice instructors.

**Statutory Authority:** § 9-170 of the Code of Virginia.

Written comments may be submitted until March 5, 1990, to L. T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

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

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**April 4, 1990 - 10:30 a.m.** – Public Hearing  
State Capitol, Capitol Square, House Room 2, Richmond,  
Virginia. e

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Criminal Justice Services intends to adopt regulations entitled: **VR 240-04-1. McGruff House Program Regulations.** These proposed regulations outline procedures for the designation and operation of McGruff House Programs and McGruff Houses.

**Statutory Authority:** §§ 9-170 and 9-173.4 of the Code of Virginia.

Written comments may be submitted until March 16, 1990.

**Contact:** Paula Scott, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8730

† **April 4, 1990 - 1 p.m.** – Open Meeting  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. e

A meeting to consider matters related to the board's responsibilities for criminal justice training and improvement of the criminal justice system.

**Contact:** Paula Scott, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8730

## Committee on Training

† **April 4, 1990 - 9:30 a.m.** – Open Meeting  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. e

A meeting to discuss matters related to training for criminal justice personnel. A public hearing is scheduled to receive comments on proposed regulatory changes.

**Contact:** Paula Scott, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000

## BOARD OF DENTISTRY

**April 5, 1990 - 1:30 p.m.** – Open Meeting  
**April 6, 1990 - 8:30 a.m.** – Open Meeting  
**April 7, 1990 - 9 a.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. e

A meeting to conduct (i) regular board business; (ii) committee meetings; (iii) a formal hearing; and (iv) regulatory review.

**Contact:** N. Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9906

## BOARD OF EDUCATION

**March 29, 1990 - 9 a.m.** – Open Meeting  
**March 30, 1990 - 9 a.m.** – Open Meeting  
General Assembly Building, Capitol Square, Richmond, Virginia. e (Interpreter for deaf provided if requested)

**April 25, 1990 - 1 p.m.** – Open Meeting  
**April 26, 1990 - 9 a.m.** – Open Meeting  
**April 27, 1990 - 9 a.m.** – Open Meeting  
Boar's Head Inn, Charlottesville, Virginia. e (Interpreter for deaf provided if requested)

The Board of Education and the Board of Vocational Education will hold its regularly scheduled meeting. The agenda is available upon request.

**Contact:** Margaret Roberts, Director, Community Relations Office, Department of Education, P.O. Box 6Q, Richmond, VA 23216, telephone (804) 225-2540

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

† **May 24, 1990 - 10 a.m.** – Public Hearing  
General Assembly Building, Capitol Square, Richmond, Virginia. e

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **VR 270-01-0034. Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits.** These regulations provide a basis for the oversight of certain privately owned occupational training schools and academic programs for handicapped children.

## STATEMENT

**Purpose:** The purpose of these amendments are to bring the regulations into line with amendments to Title 22.1, Chapter 16, §§ 22.1-319 through 22.1-335 of the Virginia Code adopted by the 1988 General Assembly; to make specific provisions for a Student Tuition Guaranty Fund to protect the contractual rights of students; to provide for upgrading the quality of programs and student services offered at the schools; and to bring these regulations into conformity with changes in statutes and regulations governing education of the handicapped.

**Substance:** These amendments include provisions for schools to operate branch campuses anywhere in the Commonwealth under the certificate issued to the main campus, requires schools to submit more detailed and extensive financial reports, upgrades the requirements for administrators and instructional staff, defines what records schools must keep and expands into writing current practices which schools use or the department monitors on an ongoing basis, brings the regulations for schools for the handicapped more in line with requirements for public school special education programs and clarifies vaguely or poorly written existing regulations, details the operating structure for the Student Tuition Guaranty Fund, sets forth fees to be charged schools for operating to offset the cost of administering the program to the department, includes new provisions included in § 22.1-329 of the Virginia Code which allows the board to deny a certificate under certain circumstances, and provides the staff additional remedies in resolving complaints.

**Issues:** These regulations were initially adopted in 1970. Regulations for schools for the handicapped were added in 1973. No substantial revision has taken place over the years despite changes in the manner in which schools operate. The changes were developed by a task force of school owners and directors, members of the general public, public school personnel, and personnel from other state agencies.

**Impact:** These regulations affect approximately 180 proprietary schools currently certified to operate in the Commonwealth. The cost of operating a school under these regulations will vary somewhat from current costs due to

# Calendar of Events

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increased fees payable to the department and the school's participation in the new Student Tuition Guaranty Fund. However, school owners and directors participating in the Task Force deliberations did not feel that the cost would increase significantly. There is no additional cost to the department to implement and enforce these regulations.

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

Written comments may be submitted until April 28, 1990.

**Contact:** Charles W. Finley, Associate Director, Department of Education, P. O. Box 6-Q, Richmond, VA 23216-2060, telephone (804) 225-2081

## COUNCIL ON THE ENVIRONMENT

† **April 4, 1990 - 7 p.m.** – Public Hearing  
Virginia Living Museum, Newport News, Virginia

† **April 5, 1990 - 7 p.m.** – Public Hearing  
Taylor Jr. High School, Warrenton, Virginia

† **April 10, 1990 - 7 p.m.** – Public Hearing  
Best Western Red Lion, Blacksburg, Virginia

† **April 18, 1990 - 7 p.m.** – Public Hearing  
Science Museum of Virginia, Richmond, Virginia

Public hearings to obtain input from Virginia's citizens on the state of the environment, its future, and its management. Public comment on environmental issues is used in writing the agency's report, Virginia's Environment.

**Contact:** David J. Kinsey, Environmental Programs Analyst, 202 N. 9th St., Suite 900, Richmond, VA 23219, telephone (804) 786-4500, toll-free 1-800-435-7229 or (804) 786-6152/TDD ☎

## GLOUCESTER LOCAL EMERGENCY PLANNING COMMITTEE

**April 25, 1990 - 6:30 p.m.** – Open Meeting  
Gloucester Administration Building, Gloucester, Virginia

Spring quarterly meeting to receive reports from Training and Exercise, Plans and Public Information Committees.

**Contact:** Georgette N. Hurley, Assistant County Administrator, P. O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042

## GOOCHLAND COUNTY LOCAL EMERGENCY PLANNING COMMISSION

**March 27, 1990 - 8 p.m.** – Open Meeting  
Goochland County General District Court, Goochland, Virginia

A meeting to review changes in the Emergency Operations Plan.

**Contact:** Gregory K. Wolfrey, County of Goochland, Board of Supervisors, P. O. Box 10, Goochland, VA 23063, telephone (804) 556-5300

## HAZARDOUS MATERIALS TRAINING COMMITTEE

**March 27, 1990 - 10 a.m.** – Open Meeting  
Holiday Inn Conference Center, Koger Center South, 1021 Koger Center Boulevard, Richmond, Virginia

A meeting to discuss curriculum, course development, and review existing hazardous materials courses.

**Contact:** Larry L. Logan, Fire and Emergency Services, 3568 Peters Creek Rd., NW, Roanoke, VA 24019, telephone (703) 561-8070

## STATE BOARD OF HEALTH

† **April 20, 1990 - 10 a.m.** – Open Meeting  
Goodwin House, Inc., 4800 Fillmore Avenue, Alexandria, Virginia

A regular meeting.

**Contact:** Susan R. Rowland, M.P.A., Acting Legislative Analyst, Department of Health, 109 Governor St., Suite 400, Richmond, VA 23219, telephone (804) 786-3561

## DEPARTMENT OF HEALTH (STATE BOARD OF)

NOTE: EXTENSION OF WRITTEN COMMENT PERIOD  
**March 31, 1990** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to amend regulations entitled: **VR 355-11-02.02. Regulations Governing the Newborn Screening and Treatment Program**. The rules and regulations governing the newborn screening and treatment program have been revised and amended to include genetic, metabolic, and other diseases of the newborn as specified in §§ 33.1-12 and 33.2-65 et seq. of the Code of Virginia. They specifically clarify the critical time periods for submitting newborn screening tests in an effort to more accurately screen and diagnose newborn diseases.

Statutory Authority: § 32.1-12 and Article 7 (§ 32.1-65 et seq.) of Chapter 2 of the Code of Virginia.

Written comments may be submitted until March 31, 1990.

**Contact:** J. Henry Hershey, M.D., M.P.H., Genetics Director, Maternal and Child Health, 109 Governor St., 6th Floor, Richmond, VA 23219, telephone (804) 786-7367

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**April 17, 1990 - 10 a.m. – Public Hearing**  
Roanoke County Board of Supervisors Meeting Room, 3738 Brambleton Avenue, Roanoke, Virginia

**NOTE: CHANGE OF HEARING DATE, TIME AND LOCATION**

**April 18, 1990 - 10:30 a.m. – Public Hearing**  
Henrico County Board of Supervisors Meeting Room, Administrative Building, 4301 East Parham Road, Richmond, Virginia

**April 19, 1990 - 10 a.m. – Public Hearing**  
Virginia Beach Council Chamber, City Hall, 2nd Floor, Municipal Center, Court House Drive and North Landing Road, Virginia Beach, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health intends to amend regulations entitled: **VR 355-17-01. Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings.** The purpose of the proposed action is to allow the department to grant an exemption to a marina required to have boat sewage pump-out service, if the service is being provided by another nearby marina.

Statutory Authority: § 32.1-246 of the Code of Virginia.

Written comments may be submitted until May 4, 1990.

**Contact:** A. F. Golding, Marina Supervisor, Department of Health, 109 Governor Street, James Madison Bldg., Room 903A, Richmond, VA 23219, telephone (804) 786-1761

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

**March 27, 1990 - 9:30 a.m. – Open Meeting**

† **April 24, 1990 - 9:30 a.m. – Open Meeting**  
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. e

A monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting.

**Contact:** G. Edward Dalton, Acting Director, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6371/TDD ☎

## BOARD FOR HEARING AID SPECIALISTS

**May 7, 1990 - 8:30 a.m. – Open Meeting**  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. e

An open board meeting to (i) administer examinations; (ii) review enforcement cases; (iii) sign certificates; and (iv) consider other matters which require board action.

**Contact:** Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534 or toll-free 1-800-552-3016

## DEPARTMENT OF HISTORIC RESOURCES

† **April 17, 1990 - 2 p.m. – Open Meeting**  
State Capitol, Capitol Square, Senate Room 4, Richmond, Virginia. e

A general business meeting.

### State Review Board

† **April 17, 1990 - 10 a.m. – Open Meeting**  
State Capitol, Capitol Square, Senate Room 4, Richmond, Virginia. e

A meeting to consider the nomination of the following properties to the Virginia Landmarks Register and the National Register of Historic Places:

1. Sentry Box, Fredericksburg
2. Scaleby, Clarke County
3. Roanoke Fire House # 6, Roanoke
4. La Vue, Spotsylvania County
5. William Scott Farmstead, Isle of Wight County
6. White Oak Primitive Baptist Church, Stafford County
7. Louisa County Courthouse, Louisa County
8. Much Haddam, Loudoun County
9. Fairfax House, Alexandria
10. St. John's Historic District, (boundary adjustment) Richmond
11. Miller House, Rappahannock County
12. Casa Maria, Albemarle County

**Contact:** Margaret T. Peters, Information Director, 221 Governor Street, Richmond, VA 23219, telephone (804)

# Calendar of Events

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786-3143 or (804) 786-1934/TDD ☎

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**April 3, 1990 - 9 a.m. – Open Meeting**

**May 1, 1990 - 9 a.m. – Open Meeting**

Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for deaf provided if requested)

Local emergency preparedness committee meeting as required by SARA Title III.

**Contact:** Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298

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

**April 26, 1990 - 10 a.m. – Public Hearing**

General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☎

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-06. Virginia Statewide Fire Prevention Code/1987 Edition.** The Board of Housing and Community Development proposes to amend those portions of the Virginia Statewide Fire Prevention Code regulations pertaining to: Applications to Pre-USBC and Post-USBC buildings necessary to permit the amendments to Volume II requiring all existing hospitals, nursing homes and homes for adults to be retrofitted with automatic sprinkler systems and fire detection systems to be enforced by the local fire official or the State Fire Marshal.

Statutory Authority: §§ 27-95 and 27-97 of the Code of Virginia.

Written comments may be submitted until May 4, 1990.

**Contact:** Gregory H. Revels, Program Manager, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772

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**April 26, 1990 - 10 a.m. – Public Hearing**

General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☎

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code Volume I - New Construction Code,**

**1987 Edition.** The proposed amendments eliminate the option of constructing institutional facilities, other than certain child care facilities, without an automatic fire suppression system. Historical fire experience had indicated that an automatic sprinkler system is the more reliable approach to providing early detection, fire containment and fire suppression to protect patients and residents occupying institutional buildings.

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

Written comments may be submitted until May 4, 1990.

**Contact:** Gregory H. Revels, Program Manager, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772

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**April 26, 1990 - 10 a.m. – Public Hearing**

General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☎

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-22. Virginia Uniform Statewide Building Code Volume II - Building Maintenance Code, 1987 Edition.** The proposed amendments by the Board of Housing and Community Development to the 1987 edition of the Virginia Uniform Statewide Building Code - Volume II - Building Maintenance Code will require all existing nursing homes, homes for adults, hospitals and mental health care facilities to have sprinkler and fire alarm systems installed by August 1, 1994.

Statutory Authority: §§ 36-98 and 36-103 of the Code of Virginia.

Written comments may be submitted until May 4, 1990.

**Contact:** Gregory H. Revels, Program Manager, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772

## COUNCIL ON HUMAN RIGHTS

**March 28, 1990 - 10 a.m. – Public Hearing**

James Monroe Building, 101 North 14th Street, 1st Floor, Richmond, Virginia. ☎

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Council on Human Rights intends to adopt regulations entitled: **VR 402-01-02. Regulations to Safeguard Virginia's Human Rights From Unlawful Discrimination.** The purpose of these regulations is to supplement the Virginia Human Rights Act (§ 2.1-714 et seq.) which safeguards

all individuals within the Commonwealth from unlawful discrimination.

Statutory Authority: § 2.1-720.6 of the Code of Virginia.

Written comments may be submitted until February 18, 1990, to Sandra D. Norman, P.O. Box 717, Richmond, Virginia 23206.

**Contact:** Lawrence J. Dark, Director, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2292 or toll-free 1-800-633-5510

## COUNCIL ON INDIANS

† **March 28, 1990 - 1 p.m.** — Open Meeting  
Jamestown Settlement, Williamsburg, Virginia

A regular meeting to conduct general business and receive reports from the Council's standing committees.

**Contact:** Mary Zoller, Information Director, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9285

## DEPARTMENT OF LABOR AND INDUSTRY

### Virginia Apprenticeship Council

† **April 19, 1990 - 10 a.m.** — Open Meeting  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. e

A regular quarterly meeting. The public session begins at 10 a.m. The council meeting will begin immediately after conclusion of the public session.

**Contact:** Robert S. Baumgardner, Director of Apprenticeship, Department of Labor and Industry, P. O. Box 12064, Richmond, VA 23241, telephone (804) 786-2381

### Safety and Health Codes Board

**April 3, 1990 - 10 a.m.** — Open Meeting  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. e

A meeting to consider:

Request for Variance From the Boiler and Pressure Vessel Safety Act - University of Virginia, Charlottesville, VA

Request for Variance From the Boiler and Pressure Vessel Safety Act - Firestone Tire and Rubber Co., Inc., Hopewell, VA

Request for Variance From the Boiler and Pressure Vessel Safety Act - Allied Signal Corp., Hopewell, VA

Amendment to the Asbestos Standard for General Industry and the Construction Industry, Partial Response to Court Remand

Amendment to the Air Contaminants Standard, Permissible Exposure Limits (PEL), Partial Stay

Standard Concerning Occupational Exposure to Hazardous Chemicals in Laboratories, Final Rule

Amendment to the Lead Standard, Statement of Reasons

Amendment to Concrete and Masonry Construction Safety Standard, Technical Corrections

Amendment to the Air Contaminants Standard, Permissible Exposure Limits (PEL), Technical Corrections

Proposed Regulation Concerning Sanitation in the Construction Industry

Proposed Regulation Concerning Control of Hazardous Energy Sources (Lockout/Tagout), Revision to Tagging Requirements

Amendment Concerning Revision of Construction Industry Tests and Inspection Records

**Contact:** Jay W. Withrow, Director, Office of Federal Liaison and Technical Support, Department of Labor and Industry, P. O. Box 12064, Richmond, VA 23241, telephone (804) 786-9873

## LOCAL GOVERNMENT ADVISORY COUNCIL

† **April 9, 1990 - 1 p.m.** — Open Meeting  
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. e

Initial and organizational meeting of the council under the amended provisions of § 2.1-335.1 of the Code of Virginia.

**Contact:** Robert H. Kirby, Secretary, Local Government Advisory Council, 702 Eighth Street Office Bldg., Richmond, VA 23219, telephone (804) 786-6508

## LONGWOOD COLLEGE

### Board of Visitors

† **April 20, 1990 - 9 a.m.** — Open Meeting  
Ruffner Building, Longwood College, Farmville, Virginia. e

A meeting to conduct business pertaining to the governance of the institution.

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**Contact:** William F. Dorrill, President, Longwood College, Farmville, VA 23901, telephone (804) 395-2001

## STATE LOTTERY BOARD

**March 28, 1990 - 10 a.m. - Open Meeting**  
State Lottery Department, 2201 West Broad Street,  
Conference Room, Richmond, Virginia. e

A regular monthly meeting. Business will be conducted according to items listed on the agenda which has 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) 367-9433

## MARINE RESOURCES COMMISSION

**March 27, 1990 - 9:30 a.m. - Open Meeting**  
Marine Resources Commission, 2600 Washington Avenue,  
4th Floor, Room 403, Newport News, Virginia. e

The commission will meet to hear and decide cases on fishing licensing, oyster ground leasing, environmental permits in wetlands bottomlands, coastal sand dunes and beaches. The commission hears and decides appeals made on local wetlands board decisions.

Fishery management and conservation measures are discussed by the commission. The commission is empowered to exercise general regulatory power within 15 days and is empowered to take specialized marine life harvesting and conservation measures within five days.

**Contact:** Cathy W. Everett, Secretary to the Commission, 2600 Washington Ave., Room 303, Newport News, VA 23607-0756, telephone (804) 247-8088

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† **May 25, 1990 -** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care (Inpatient Outlier Adjustments)**. This proposed regulation will conform the Plan to federal requirements contained in the Medicare Catastrophic Coverage Act of 1988 concerning additional payments for hospitals which have extraordinary costs.

## STATEMENT

Basis and authority: Section 32.1-324(C) of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance (State Plan), pursuant to the board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's promulgating of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the Code requires this agency to initiate the public notice and comment process as contained in Article 2 of the APA.

The Medicare Catastrophic Coverage Act (MCCA) of 1988 (§ 302(b)(2), P.L. 100-360) requires that State plans which reimburse inpatient hospital services on a prospective basis be amended to permit an outlier adjustment in payment amounts to disproportionate share hospitals. An emergency regulation was filed with the Registrar of Regulations on September 29, 1989, and its substance was forwarded to the Health Care Financing Administration on the same date for federal financial participation approval.

Purpose: The purpose of this proposal is to conform the State Plan to the new federal requirements of § 302(b)(2) of the MCCA.

Summary and analysis: The MCCA (§ 302(b)(2)) requires that State plans which reimburse inpatient hospital services on a prospective basis be amended to permit an outlier adjustment in payment amounts to disproportionate share hospitals. To qualify for this additional payment, these hospitals must be providing to infants under age one, on or after July 1, 1989, medically necessary inpatient services which involve exceptionally high costs or exceptionally long lengths of stay.

DMAS currently provides, in section 1.F of Supplement 1 to Attachment 3.1 A & B of the State Plan, for unlimited medically necessary days for children under age 21. Therefore, no amendment is needed for services involving exceptionally long lengths of stay.

This regulation amends Attachment 4.19 A of the State Plan to authorize payments of outlier adjustments for exceptionally high costs such as additional payments to compensate for extraordinary costs which exceed a certain threshold. The threshold for each hospital will be set at two and one-half standard deviations above the mean operating cost per day in that hospital for patients under one year old. A separate mean will be calculated for those hospitals which qualify for the extensive neonatal care provision of Attachment 4.19A V.(6). In addition to its prospective rate, a hospital will then be paid, as an outlier adjustment, all of its per diem operating costs which exceeded its threshold(s).

Each eligible hospital will be responsible for providing to

DMAS information from which its mean Medicaid operating cost per day could be computed.

**Impact:** The costs associated with this regulation are identical with those discussed in the September 15, 1989, emergency regulation. In FY 89, 42 hospitals qualified for and received disproportionate share adjustments. That year, 32 of those hospitals submitted claims for children under age one, and received actual payments of \$30.2 million.

To arrive at the FY 91 estimate, DMAS increased this amount by a factor to account for allowable costs in excess of the ceiling and inflated it by the DRI Virginia-specific inflation factor. Based on the statistical properties of the outlier rule, DMAS estimated that 0.714% of inpatient hospital expenditures (or \$251,000) would be expended per year. The excess of ceiling factor is 1.11 and the 1990 DRI equals 1.05. The applicable formula is:

$$\text{Actual Payments} \times \text{Excess of Ceiling Factor} \times \text{DRI 90} \times 0.714\%$$

$$\text{As applied: } \$30,174,648 \times 1.11 \times 1.05 \times .00714 = \$251,103.$$

Because of the nature of the reimbursement system, the majority of the \$251,000 cost which will be incurred in FY 90 will be paid in FY 91. Likewise, the majority of the \$264,000 cost, which was determined by inflating the \$251,000 cost by the inflation factor, will be incurred in FY 91 and will be paid in FY 92. In the first year (FY 90) the department estimates that the adjustment is unlikely to exceed \$50,000. The funds appropriated to the department are adequate to provide for this adjustment. The estimated impact, expressed in thousands, follows:

<u>FY</u>	<u>GF</u>	<u>NGF</u>	<u>Total</u>
90	\$ 25	\$ 25	\$ 50
91	\$125.5	\$125.5	\$251
92	\$132	\$132	\$264

**Forms:** DMAS will develop a format which eligible hospitals can follow in furnishing information from which their mean Medicaid operating cost per day can be computed.

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

Written comments may be submitted until 4:30 p.m., May 25, 1990, to William R. Blakely, Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

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**April 13, 1990** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1100, State Plan for Medical Assistance Relating to Coverage of Prosthetics Services and Expansion of Dental Services under EPSDT - Amount, Duration, and Scope of Services.** The purpose of the proposed action is to promulgate permanent rules to conform the State Plan for Medical Assistance to the General Assembly's mandate through the 1989 Appropriations Act.

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

Written comments may be submitted until April 13, 1990, to Malcolm O. Perkins, Manager, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

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**May 11, 1990** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1940, Nursing Home Payment System (New Construction Cost Limits).** This proposed regulation proposes to replace the old no-longer-published Dodge Construction Index, with a new standard, the R.S. Means index, for allowable construction costs.

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

Written comments may be submitted until 4:30 p.m., May 11, 1990, to William R. Blakely, Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

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**April 27, 1990** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1

# Calendar of Events

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of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **VR 460-05-1000.0000. State/Local Hospitalization Program**. The purpose of the proposed action is to regulate the State/Local Hospital program under the administration of the Department of Medical Assistance Services. These rules provide for client eligibility, covered services and provider reimbursement.

Statutory Authority: §§ 32.1-344 and 32.1-346 of the Code of Virginia.

Written comments may be submitted until April 27, 1990, to David Coronado, Director, Division of Indigent Health Care, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

## GOVERNOR'S ADVISORY BOARD ON MEDICARE AND MEDICAID

**March 27, 1990 - 2 p.m. – Open Meeting**  
Hyatt Hotel, Madison Room, I-64 and West Broad Street, Richmond, Virginia. e

A meeting to (i) receive presentation from Dr. C.M.G. Buttery, Commissioner, Department of Health: "Five Point Plan for Primary Health Care"; and (ii) discuss the mission and future direction of the board.

**Contact:** Marsha Linkous, Administrative Staff Specialist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8999

## BOARD OF MEDICINE

### Chiropractic Examination Committee

† **April 5, 1990 - 1:30 p.m. – Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia. e

The committee will meet in executive session to develop test questions for the June 1990, Chiropractic Examination.

### Executive Committee

† **May 11, 1990 - 9 a.m. – Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive, Board Room 2, Richmond, Virginia. e

The committee will meet to review closed cases,

cases/files requiring administrative actions and consider any other items which may come before the committee.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9925

### Advisory Board on Occupational Therapy

† **May 4, 1990 - 9:30 a.m. – Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive, Board Room 2, Richmond, Virginia. e

The committee will review public comments and prepare responses and recommendations to the full board and any other business that may come before the committee.

### Advisory Board on Physical Therapy

† **May 18, 1990 - 9 a.m. – Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive, Board Room 2, Richmond, Virginia. e

The advisory board will review and discuss regulations, bylaws, procedural manuals, receive reports, and other items which may come before the advisory board.

### Advisory Committee on Respiratory Therapy

**April 17, 1990 - 10 a.m. – Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive, Board Room 3, Richmond, Virginia. e

The committee will (i) elect officers for the fiscal year July 1, 1990, to June 30, 1991; (ii) review the amendments to the Code for certification; (iii) review regulations; and (iv) review such other matters that may come before the committee.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9925

### Informal Conference Committee

**April 4, 1990 - 9:30 a.m. – Open Meeting**  
Radisson Hotel-Lynchburg, 601 East Main Street, Lynchburg, Virginia. e

† **April 20, 1990 – Open Meeting**  
Best Western Inn, York and Page Street, Williamsburg, Virginia

The committee will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to

subsection A.7 and A.15 of § 2.1-344 of the Code of Virginia.

**Contact:** Karen D. Waldron, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9908

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

### State Human Rights Committee's Subcommittee to Review Regulations

**March 29, 1990 - 1 p.m. - Open Meeting**  
James Madison Building, 109 Governor Street, 13th Floor Conference Room, Richmond, Virginia. e

A special subcommittee of the State Human Rights Committee to review and receive comments on the proposed Regulations to Ensure the Rights of Residents of Facilities Operated by Department of Mental Health, Mental Retardation and Substance Abuse Services.

### State Human Rights Committee

**March 30, 1990 - 9 a.m. - Open Meeting**  
James Madison Building, 109 Governor Street, 13th Floor Conference Room, Richmond, Virginia. e

A regular meeting to discuss business relating to human rights.

**Contact:** Elsie D. Little, ACSW, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Office of Human Rights, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988

## MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

### Board of Directors

**April 5, 1990 - 7 p.m. - Open Meeting**  
**May 3, 1990 - 7 p.m. - Open Meeting**  
**June 7, 1990 - 7 p.m. - Open Meeting**  
502 South Main Street #4, Culpeper, Virginia

From 7 p.m. to 7:30 p.m. the Board of Directors will hold a business meeting to discuss DOC contract, budget, and other related business. Then the board will meet to review cases for eligibility to participate with the program. It will review the previous month's operation (budget and program related business).

**Contact:** Lisa Ann Peacock, Program Director, 502 S. Main St. #4, Culpeper, VA 22701, telephone (703) 825-4562

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Division of Gas and Oil

† **March 27, 1990 - 10 a.m. - Public Hearing**  
Washington Co. Office Building, 205 Academy Drive, Board of Supervisors Room, Abingdon, Virginia. e

A public hearing to receive public comment on the need to make permanent, modify or repeal Emergency Order CBM-1-30790 regarding development of coalbed methane in Virginia.

**Contact:** B. Thomas Fulmer, Virginia Oil and Gas Inspector, 230 Charwood Dr., P. O. Box 1416, Abingdon, VA 24210, telephone (703) 628-8115 or SCATS 676-5501

## DEPARTMENT OF MOTOR VEHICLES

**April 13, 1990 - 10 a.m. - Public Hearing**  
Department of Motor Vehicles, 2300 West Broad Street, Monticello Room, Room 133, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to amend regulations entitled: **VR 485-60-8401. Evidence Required to Permit Registration of Reregistration of Vehicles for Which Proof of Tax Payment and of State Corporation Commission Registration is Required.** The purpose of the proposed amendment is to eliminate the requirement for the owner of a vehicle, with a registered gross weight of 33,000 pounds or more, to complete a certification of tax paid.

Statutory Authority: §§ 46.2-203 and 46.2-649 of the Code of Virginia.

Written comments may be submitted until April 10, 1990.

**Contact:** Jerry M. Fern, Program Manager, Motor Carrier Services, Department of Motor Vehicles, P. O. Box 27412, Richmond, VA 23269, telephone (804) 367-0469

## MOUNT ROGERS ALCOHOL SAFETY ACTION PROGRAM

### Board of Directors

**April 11, 1990 - 1 p.m. - Open Meeting**  
Oby's Restaurant, Marion, Virginia. e (Interpreter for deaf provided if requested)

A regular meeting.

**Contact:** J. L. Reedy, Jr., Director, Mount Rogers ASAP, 1102 N. Main St., Marion, VA 23454, telephone (703) 783-7771

# Calendar of Events

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## BOARD OF NURSING

March 26, 1990 - 9 a.m. - Open Meeting  
March 27, 1990 - 9 a.m. - Open Meeting  
March 28, 1990 - 9 a.m. - Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,  
Richmond, Virginia. e (Interpreter for deaf provided if  
requested)

A regular meeting of the board to consider matters related to nursing education programs, discipline of licensees, licensing by examination and endorsement, and other matters under the jurisdiction of the board. On March 26, 1990, at 1:30 p.m., the board will convene at the General Assembly Building, House Room C, 9th and Broad Streets, Richmond, for the purpose of conducting a public hearing on proposed regulations as published in The Virginia Register on February 12, 1990.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or 662-7197/TDD ☎

\* \* \* \* \*

March 26, 1990 - 1:30 p.m. - Public Hearing  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. e

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **VR 495-01-1. Board of Nursing Regulations.**

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

Written comments may be submitted until April 12, 1990.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909

## OLD DOMINION UNIVERSITY

### Board of Visitors

† April 5, 1990 - To be announced - Open Meeting  
Webb University Center, Hampton/Newport News Room,  
Norfolk, Virginia. e

A meeting to discuss various issues pertaining to the University and to hear standing committee reports. The agenda will be available at least five working days prior to the meeting. The time of the meeting will be posted in the agenda.

## Board of Visitors Executive Committee

† May 14, 1990 - 3 p.m. - Open Meeting  
New Administration Building, ODU Campus, Board Room,  
Room 226, Norfolk, Virginia. e

A meeting to conduct university business on behalf of the full board. Agendas should be available at least five working days prior to the meeting.

Contact: Donna W. Meeks, Secretary to the Board, Old Dominion University, Norfolk, VA 23529-0029, telephone (804) 683-3072

## BOARD FOR OPTICIANS

March 29, 1990 - 9 a.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, 5th  
Floor, Richmond, Virginia. e

A meeting to (i) review correspondence; (ii) review applications; (iii) review enforcement cases; and (iv) conduct routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

## VIRGINIA PEANUT BOARD

† March 27, 1990 - 10 a.m. - Open Meeting  
Tidewater Agricultural Experiment Station, Holland Station,  
Suffolk, Virginia. e

A meeting to review peanut research projects for possible funding in 1990.

Contact: Russell C. Schools, P. O. Box 149, Capron, VA 23829, telephone (804) 658-4573

## PORTSMOUTH LOCAL EMERGENCY PLANNING COMMITTEE

May 9, 1990 - 9 a.m. - Open Meeting  
St. Julien's Annex, Building 307, Victory Boulevard at  
Magazine Road, Portsmouth, Virginia

A regular business meeting.

Contact: Diana H. Creecy, Chairperson, American Red Cross, Portsmouth Chapter, 700 London Boulevard, Portsmouth, VA 23704-2413, telephone (804) 393-1031

## BOARD OF PROFESSIONAL COUNSELORS

† April 12, 1990 - 1 p.m. - Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,

Richmond, Virginia. e

A formal hearing.

† **April 13, 1990 - 9 a.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,  
Richmond, Virginia. e

A meeting to (i) conduct general board business; (ii) respond to board correspondence; and (iii) conduct regulatory review.

**Contact:** Joyce D. Williams, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9912

## BOARD OF PSYCHOLOGY

† **May 24, 1990 - 9 a.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,  
Richmond, Virginia. e

A meeting to (i) conduct general board business; (ii) review applications for licensure, residency, and registration as Technical Assistants; and (iii) discuss regulatory review.

**Contact:** Evelyn B. Brown, Executive Director, 1601 Rolling Hills Dr., Suite 200, Richmond, VA 23229-5005, telephone (804) 662-9913

## REAL ESTATE BOARD

**May 3, 1990 - 9 a.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street, 5th  
Floor, Richmond, Virginia

**June 8, 1990 - 9 a.m.** – Open Meeting  
Omni International Hotel, 777 Waterside Drive, Norfolk,  
Virginia

A regular business meeting to consider (i) investigative cases (files); (ii) matters relating to Fair Housing, (iii) Property Registration; and (iv) Licensing issues (e.g., reinstatement, eligibility requests).

**Contact:** Joan L. White, Assistant Director, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8552 or toll-free 1-800-552-3016

## BOARD OF REHABILITATIVE SERVICES

† **April 26, 1990 - 9:30 a.m.** – Open Meeting  
Woodrow Wilson Rehabilitation Center, Fishersville,  
Virginia. e (Interpreter for deaf provided if requested)

The board will receive department reports, consider regulatory matters and conduct the regular business of

the board.

## Finance Committee

† **April 25, 1990 - 2 p.m.** – Open Meeting  
Woodrow Wilson Rehabilitation Center, Fishersville,  
Virginia. e (Interpreter for deaf provided if requested)

The committee will (i) review monthly financial reports and (ii) review budgetary projections. FY 1991 budget development.

## Legislation and Evaluation Committee

† **April 25, 1990 - 4 p.m.** – Open Meeting  
Woodrow Wilson Rehabilitation Center, Fishersville,  
Virginia. e (Interpreter for deaf provided if requested)

The committee will (i) review pending federal and state legislation and develop criteria for evaluation of department programs.

## Program Committee

† **April 25, 1990 - 3 p.m.** – Open Meeting  
Woodrow Wilson Rehabilitation Center, Fishersville,  
Virginia. e (Interpreter for deaf provided if requested)

The committee will review vocational rehabilitation regulation proposals and explore options for developing amendments to current VR regulations.

**Contact:** Susan L. Urofsky, Commissioner, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0319, toll-free 1-800-552-5019/TDD ☎ or (804) 367-0280/TDD ☎

## SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† **April 18, 1990 - 10 a.m.** – Open Meeting  
General Assembly Building, Capitol Square, 5th Floor West  
Conference Room, Richmond, Virginia. e

A meeting to hear and render a decision on all appeals of denials of on-site sewage disposal system permits.

**Contact:** Deborah E. Randolph, 109 Governor St., Room 500, Richmond, VA 23219, (804) 786-3559

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

**April 15, 1990** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled: **VR 615-01-90. Degree Requirements for Social**

# Calendar of Events

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## Work/Social Work Supervision Classification Series.

The purpose of the proposed action is to initiate the requirement of possession of a degree from an accredited college/university for applicants for position vacancies in the Social Work/SW Supervision series.

Statutory Authority: § 63.1-26 of the Code of Virginia.

Written comments may be submitted until April 15, 1990, to Eddie L. Perry, Human Resources Director Senior, 8007 Discovery Dr., Richmond, Virginia 23229.

Contact: Peggy Friedenberg, Agency Regulatory Liaison, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217

\* \* \* \* \*

## March 26, 1990 - 10 p.m. - Public Hearing

Blair Building, 8007 Discovery Drive, Conference Room A and B, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to amend regulations entitled: **VR 615-48-02. Employment Services Program Policy.** The purpose of the proposed action is to amend Employment Services Program Policy to include provisions of the Job Opportunities and Basic Skills (JOBS) program. These amendments address provisions presented to the department as both optional and mandatory.

Statutory Authority: Title IVA and IVF of the Social Security Act and § 63.1-25 of the Code of Virginia.

Written comments may be submitted until April 12, 1990, to Madeleine Guerin, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Margaret J. Friedenberg, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9182

## COMMONWEALTH TRANSPORTATION BOARD

### † April 19, 1990 - 10 a.m. - Open Meeting

Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. e (Interpreter for deaf provided if requested)

A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to highway system, and any other matters requiring board approval.

Contact: Albert W. Coates, Jr., Assistant Commissioner, Department of Transportation, 1401 E. Broad St., Richmond, VA, telephone (804) 786-9950

## DEPARTMENT OF TRANSPORTATION

### † March 26, 1990 - 10 a.m. - Public Hearing

Tappahannock/Essex Fire Department, Route 627, Airport Road, approximately 0.4 mile west of Route 17, Tappahannock, Virginia. e (Interpreter for deaf provided if requested)

### † March 27, 1990 - 9:30 a.m. - Public Hearing

Suffolk District Office, 1700 North Main Street, Route 460, Suffolk, Virginia. e (Interpreter for deaf provided if requested)

### † April 3, 1990 - 10 a.m. - Public Hearing

Salem District Office, Harrison Avenue north of Main Street and east of VA 311, Salem, Virginia. e (Interpreter for deaf provided if requested)

### † April 6, 1990 - 10 a.m. - Public Hearing

Virginia Highlands Community College, Route 372, which intersects with Route 140, 0.5 mile north of I-81 at Exit 7, Abingdon, Virginia. e (Interpreter for deaf provided if requested)

### † April 9, 1990 - 10 a.m. - Public Hearing

Culpeper District Office, Route 15, 0.5 mile south of Route 3, Culpeper, Virginia. e (Interpreter for deaf provided if requested)

### † April 12, 1990 - 10 a.m. - Public Hearing

Richmond District Office, Pine Forest Drive off Route 1, one mile north of Colonial Heights, Virginia. e (Interpreter for deaf provided if requested)

### † April 13, 1990 - 10 a.m. - Public Hearing

Lynchburg District Office, Route 501, 0.26 mile south of intersection Routes 460 and 501, south of Lynchburg, Virginia. e (Interpreter for deaf provided if requested)

### † April 20, 1990 - 10 a.m. - Public Hearing

Fairfax City Hall, Fairfax, Virginia. e (Interpreter for deaf provided if requested)

### † April 23, 1990 - 10 a.m. - Public Hearing

Staunton District Office, Commerce Road, Route 11 Bypass, north of Staunton, Virginia. e (Interpreter for deaf provided if requested)

A public hearing to receive comments on highway allocations for the coming year and on updating the six-year improvement program for the interstate, primary and urban systems.

Contact: Albert W. Coates, Jr., Assistant Commissioner, Department of Transportation, 1401 E. Broad St., Richmond, VA, telephone (804) 786-9950

## TRANSPORTATION SAFETY BOARD

### † April 27, 1990 - 9:30 a.m. - Open Meeting

Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. e

A meeting to discuss various subjects which pertain to Transportation Safety.

**Contact:** John T. Hanna, Transportation Safety Special Assistant to the Commissioner, 2300 W. Broad St., Richmond, VA 23269-0001, telephone (804) 367-6620 or (804) 367-1752

## VIRGINIA MILITARY INSTITUTE

### Board of Visitors

**March 31, 1990 - 8 a.m. – Open Meeting**  
Virginia Military Institute, Smith Hall Board Room, Smith Hall, Lexington, Virginia. e

A regular Spring meeting of the VMI Board of Visitors to (i) review committee reports; (ii) visit academic departments; and (iii) adopt 1990-91 Operating Budget.

† **May 18, 1990 - 8 a.m. – Open Meeting**  
Virginia Military Institute, Smith Hall Board Room, Smith Hall, Lexington, Virginia. e

A regular meeting to (i) review committee reports; (ii) approve awards, distinctions, and diplomas; (iii) conduct personnel changes; and (iv) elect president pro tem.

**Contact:** Colonel Edwin L. Dooley, Jr., Secretary to the Board, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206

## BOARD FOR THE VISUALLY HANDICAPPED

† **April 28, 1990 - 11 a.m. – Open Meeting**  
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. e (Interpreter for deaf provided if requested)

A regular meeting of the board.

**Contact:** Barbara G. Tyson, Executive Secretary, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3350, toll-free 1-800-622-2155 or (804) 371-3140/TDD e

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

### Advisory Committee on Services

† **May 5, 1990 - 11 a.m. – Open Meeting**  
NOTE: MEETING RESCHEDULED FROM APRIL 28, 1990  
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. e (Interpreter for deaf provided if requested)

The committee meets quarterly to advise the board on matters related to services for blind and visually handicapped citizens of the Commonwealth.

**Contact:** Barbara G. Tyson, Executive Secretary, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3350, toll-free 1-800-622-2155 or (804) 371-3140/TDD e

## STATE WATER CONTROL BOARD

† **April 12, 1990 - 7 p.m. – Public Hearing**  
City Council Chambers of the Municipal Building, 418 Patton Street, 4th Floor, Danville, Virginia. e

A public hearing to receive comments on the proposed Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0060593 for the City of Danville, 279 Park Avenue, Danville, Virginia 24541. The purpose of the hearing is to receive comments on the proposed issuance or denial of the VPDES Permit and the effect of the discharge on water quality or beneficial uses of state waters.

**Contact:** Lori A. Freeman, Hearings Reporter, State Water Control Board, Office of Policy Analysis, 2111 N. Hamilton St., P. O. Box 11143, Richmond, VA 23230-1143, telephone (804) 367-6815

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**April 5, 1990 - 8:30 p.m. – Open Meeting**  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. e

An open board meeting to (i) review enforcement cases; (ii) discuss training programs; and (iii) consider other matters which require board action.

**Contact:** Gerald W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534 or toll-free 1-800-552-3016

## WINCHESTER LOCAL EMERGENCY PLANNING COMMITTEE

† **April 4, 1990 - 3 p.m. – Open Meeting**  
Rouss City Hall, Exhibit Hall, Winchester, Virginia

A meeting to (i) discuss the proposed Hazardous Materials Contingency Plan Exercise; (ii) process public information requests policy; and (iii) discuss future LEPC topics and projects.

**Contact:** L. A. Miller, Fire Chief, 126 N. Cameron St., Fire Department Headquarters, Winchester, VA 22601, telephone (703) 665-5695

# Calendar of Events

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## LEGISLATIVE

### VIRGINIA CODE COMMISSION

† April 24, 1990 - 9:30 a.m. - Open Meeting  
Location to be announced, Bassett, Virginia

The commission will discuss 1990 legislation regarding titles of the Code of Virginia to be revised during the coming year.

Contact: Joan W. Smith, Registrar of Regulations, Virginia Code Commission, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### March 26

Alcoholic Beverage Control Board  
Barbers, Board for  
Nursing, Board of  
Social Services, Department of

#### March 27

† Community Corrections Resources Board  
Goochland County Local Emergency Planning Commission  
Hazardous Materials Training Committee  
Health Services Cost Review Council, Virginia  
Marine Resources Commission  
Medicare and Medicaid, Governor's Advisory Board on  
Nursing, Board of  
† Peanut Board, Virginia

#### March 28

† Chesapeake Bay Local Assistance Board  
† Contractors, Board for  
- Applications Review Committee  
† Indians, Council on  
Lottery Board, State  
Nursing, Board of

#### March 29

Aging, Department for the  
- Long Term-Care Ombudsman Program Advisory Council  
Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for  
Education, Board of  
Mental Health, Mental Retardation and Substance Abuse Services, Department of  
- State Human Rights Committee's Subcommittee to Review Regulations

Opticians, Board for

#### March 30

Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for  
Education, Board of  
Mental Health, Mental Retardation and Substance Abuse Services, Department of  
- State Human Rights Committee

#### March 31

Virginia Military Institute  
- Board of Visitors

#### April 2

† Bicentennial of the United States Constitution, Commission on the

#### April 3

Hopewell Industrial Safety Council  
Labor and Industry, Department of  
- Safety and Health Codes Board

#### April 4

Audiology and Speech Pathology, Board of  
Children, Department for  
- Consortium on Child Mental Health  
† Criminal Justice Services Board  
- Committee on Training  
Medicine, Board of  
- Informal Conference Committee  
† Winchester Local Emergency Planning Committee

#### April 5

† Accountancy, Board for  
Chesterfield County, Local Emergency Planning Committee  
Dentistry, Board of  
† Medicine, Board of  
- Chiropractic Examination Committee  
Middle Virginia Community Corrections Resources Board  
- Board of Directors  
† Old Dominion University  
- Board of Visitors  
Waterworks and Wastewater Works Operators, Board for

#### April 6

Dentistry, Board of

#### April 7

Dentistry, Board of

#### April 9

Alcoholic Beverage Control Board  
† Local Government Advisory Council

#### April 11

Corrections, Board of  
Mount Rogers Alcohol Safety Action Program

- Board of Directors

**April 12**

Air Pollution Control Board, State  
† Professional Counselors, Board of

**April 13**

† Professional Counselors, Board of

**April 17**

† Historic Resources, Department of  
- State Review Board  
Medicine, Board of  
- Advisory Committee on Respiratory Therapy

**April 18**

† Contractors, Board for  
† Sewage Handling and Disposal Appeals Review Board

**April 19**

Auctioneers, Board for  
† Labor and Industry, Department of  
- Virginia Apprenticeship Council  
† Transportation Board, Commonwealth

**April 20**

† Health, Board of  
† Longwood College  
- Board of Visitors  
† Medicine, Board of

**April 23**

Alcoholic Beverage Control Board  
† Arts, Commission for the

**April 24**

† Code Commission, Virginia  
† Health Services Cost Review Council

**April 25**

Education, Board of  
Gloucester Local Emergency Planning Committee  
† Rehabilitative Services, Board of  
- Finance Committee  
- Legislation and Evaluation Committee  
- Program Committee

**April 26**

Children, Department for  
- State-Level Runaway Youth Services Network  
Education, Board of  
† Rehabilitative Services, Board of

**April 27**

Education, Board of  
† Transportation Safety Board

**April 30**

† Cattle Industry Board, Virginia

**May 1**

† Cattle Industry Board, Virginia  
Hopewell Industrial Safety Council

**May 2**

Children, Department for  
- Consortium on Child Mental Health

**May 3**

Chesterfield County, Local Emergency Planning Committee of  
Middle Virginia Community Corrections Resources Board  
- Board of Directors  
Real Estate Board

**May 4**

† Medicine, Board of  
- Advisory Board on Occupational Therapy

**May 5**

† Visually Handicapped, Department for the  
- Advisory Committee on Services

**May 7**

Hearing Aid Specialists, Board for

**May 9**

† Alexandria Local Emergency Planning Committee  
Portsmouth Local Emergency Planning Committee

**May 11**

† Medicine, Board of  
- Executive Committee

**May 14**

Alcoholic Beverage Control Board  
† Old Dominion University  
- Board of Visitors/Executive Committee

**May 18**

† Medicine, Board of  
- Advisory Board on Physical Therapy  
† Virginia Military Institute  
- Board of Visitors

**May 24**

Commerce, Board of  
† Psychology, Board of

**May 31**

Alcoholic Beverage Control Board

**June 7**

Middle Virginia Community Corrections Resources Board  
- Board of Directors

**June 8**

Real Estate Board

# Calendar of Events

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## PUBLIC HEARINGS

**March 26**  
Nursing, Board of  
Social Services, Department of  
† Transportation, Department of

**March 27**  
† Mines, Minerals and Energy  
- Division of Gas and Oil  
† Transportation, Department of

**March 28**  
Human Rights, Council on

**April 3**  
† Transportation, Department of

**April 4**  
Criminal Justice Services Board  
† Environment, Council on the

**April 5**  
† Environment, Council on the

**April 6**  
† Transportation, Department of

**April 9**  
Conservation and Recreation, Department of  
† Transportation, Department of

**April 10**  
Conservation and Recreation, Department of  
† Environment, Council on the

**April 11**  
Conservation and Recreation, Department of

**April 12**  
Architects, Professional Engineers, Land Surveyors and  
Landscape Architects, Board for  
Conservation and Recreation, Department of  
† Transportation, Department of  
† Water Control Board, State

**April 13**  
Motor Vehicles, Department of  
† Transportation, Department of

**April 17**  
Health, Department of

**April 18**  
† Environment, Council on the  
Health, Department of

**April 19**  
Health, Department of

**April 20**  
† Transportation, Department of

**April 23**  
† Transportation, Department of

**April 25**  
Air Pollution Control Board, State

**April 26**  
Housing and Community Development, Department of

**May 2**  
Agriculture and Consumer Services, Department of  
- Pesticide Control Board

**May 7**  
Accountancy, Board for  
Agriculture and Consumer Services, Department of  
- Pesticide Control Board

**May 16**  
Agriculture and Consumer Services, Department of

**May 24**  
† Education, Department of