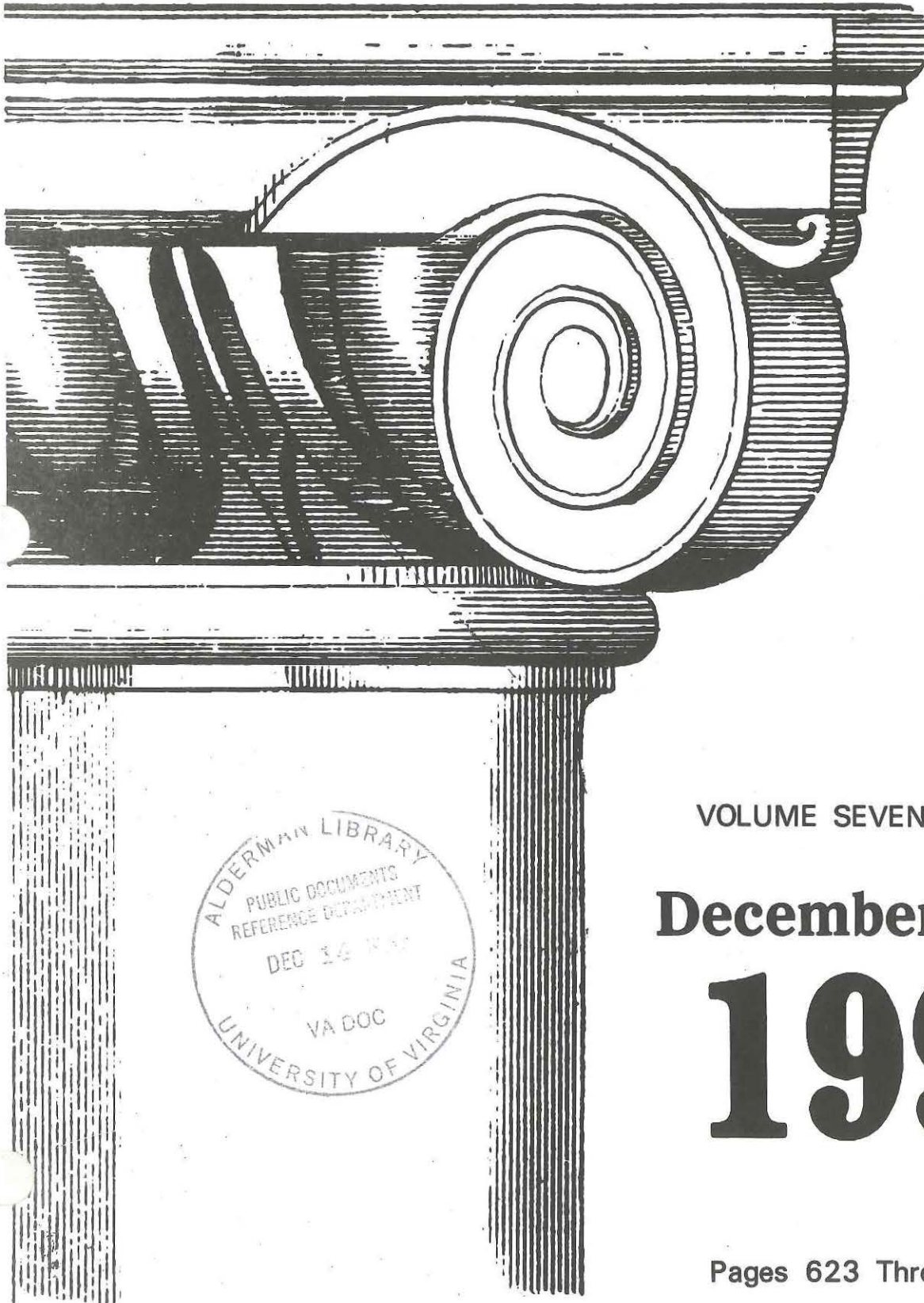


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# THE VIRGINIA REGISTER

OF REGULATIONS

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December 3, 1990

# 1990

Pages 623 Through 850

## 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.

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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 COMMERCE

### Title of Regulation: VR 190-03-01. Regulations Governing Polygraph Examiners.

Statutory Authority: § 54.1-113, 54.1-201 and 54.1-1802 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until February 3, 1991.

(See Calendar of Events section for additional information)

### Summary:

*The proposed regulations apply to approximately 250 licensed polygraph examiners in Virginia. The only substantive changes in the regulations are proposed decreases in examination, licensure, intern license, renewal, and reinstatement fees in order to assure the board's compliance with the requirements of § 54.1-113 of the Code of Virginia.*

VR 190-03-01. Regulations Governing Polygraph Examiners.

### PART I. GENERAL.

#### § 1.1. Definitions.

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

*"Polygraph examination"* means the entire period of contact between a licensee and an examinee.

*"Polygraph test"* means the part of the polygraph examination during which the examinee is connected to a polygraph instrument which is continuously recording the examinee's reactions to questions.

*"Relevant question"* means a question asked of an examinee during a polygraph test which concerns an issue identified to the examinee during the pretest and which is to be reported by the licensee to any other person.

#### § 1.2. Advisory board.

The Polygraph Examiners Advisory Board, consisting of eight members appointed by the director, shall advise the department on any matters relating to the practice of polygraphy and the licensure of polygraph examiners in the Commonwealth of Virginia.

A. The advisory board shall be composed of three Virginia licensed polygraph examiners employed by law-enforcement agencies of the Commonwealth, or any of its political subdivisions; three Virginia licensed polygraph examiners employed in private industry; and two citizen members as defined in §§ ~~54.1-18-1~~ 54.1-107 and ~~54.1-27~~ 54.1-200 of the Code of Virginia. All members must be residents of the Commonwealth of Virginia.

B. Each member shall serve a three-year term. No member shall serve more than two consecutive three-year terms.

#### § 1.3. Renewal of license.

Each examiner's license shall be valid for one calendar year or for such part remaining in the one-year period when the license is issued. Each examiner's license shall be renewed during December of each year, and if not so renewed shall expire on December 31 of that year. A renewal fee of ~~\$100~~ \$80 shall accompany each renewal application for the examiner's license. Each licensee who applies for renewal after January 31 shall pay an additional ~~\$100~~ \$80 late fee ( ~~\$200~~ \$160 total to be paid). Failure of the licensee to receive the notice and application to renew from the department shall not constitute grounds for relief from these requirements for renewal.

#### § 1.4. Reinstatement of examiner's license.

An examiner whose license has expired may, at any time within six months after expiration, obtain a renewal license by paying all renewal and late fees due. Anyone who has not reapplied within six months shall be required to pass the licensing examination and pay a reinstatement fee of ~~\$200~~ \$160 .

### PART II. ENTRY REQUIREMENTS.

#### § 2.1. Application for license and registration.

A. Each application shall be made on forms provided by the department.

B. Each application for an examiner's license shall be accompanied by a fee of ~~\$125~~ \$65 , which is nonrefundable.

C. Each application for an intern registration shall be accompanied by a fee of ~~\$35~~ \$25 , which is nonrefundable.

# Proposed Regulations

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D. A separate application and nonrefundable ~~\$125~~ \$65 fee shall be required from each applicant for each administration of the licensing examination.

E. Each applicant shall submit his fingerprints on forms provided by the department.

## § 2.2. Experience required.

All applicants shall have a high school diploma or its equivalent and a minimum of five years' experience as an investigator, detective, or in a field acceptable to the department which demonstrates the ability to practice polygraph.

## § 2.3. Experience required, exceptions.

A. Two years of the five years of experience required in § 2.2 shall be credited to applicants with an associate degree from an accredited college or university.

B. All five years of experience required in § 2.2 shall be credited to applicants with a bachelor's degree from an accredited college or university.

## § 2.4. Education required.

The applicant shall either successfully complete the required training in detection of deception at a polygraph school approved by the department, or submit evidence of satisfactory completion of substantially equivalent training if the polygraph school at which the applicant received training in the detection of deception is not approved by the department.

## § 2.5. Internship required.

The applicant must complete six months as a registered intern examiner under the personal and direct on-premise supervision of an examiner qualified under § 2.9 who shall supervise each and every polygraph examination administered by the intern. The internship need not be accomplished in Virginia. However, any internship conducted outside of Virginia must comply fully with this regulation.

No intern shall be eligible to sit for the license examination until the intern's supervisor has submitted to the department a written statement that the internship has been satisfactorily completed.

## § 2.6. Examination required.

The applicant must pass all parts of a polygraph examiner licensing examination approved by the department at a single administration in order to be eligible for a polygraph examiner's license.

## § 2.7. Registration of polygraph examiner interns.

A polygraph examiner intern registration shall be issued

to applicants who fulfill the requirements of §§ 2.2 through 2.4.

A. An intern registration shall be valid for 12 months from the date of issue.

B. Each intern shall be supervised by a licensed polygraph examiner who meets the qualifications in § 2.9.

§ 2.8. Continued registration as a polygraph intern after the expiration of the initial intern registration.

A. A person applying for an extension of a polygraph intern registration shall submit the fee referenced in § 2.1(C); and

B. The registration may be extended for no more than one year except that additional extensions will be allowed if the individual repeats the education requirements set forth in § 2.4.

§ 2.9. Qualifications for licensed polygraph examiners to act as supervisors of polygraph interns.

Each supervisor for a registered intern examiner shall have held a valid Virginia examiner's license for three years or submit evidence satisfactory to the department that he has qualifications that are substantially equivalent to those required herein.

§ 2.10. Procedures for licensed polygraph examiners to certify the procedures to be used to supervise an intern during an internship.

A. Each licensee supervising an intern shall file with the application of the intern a description of the following:

1. The frequency of contact between the licensee and the intern; and
2. The procedures to be employed by the licensee in reviewing and evaluating the intern's performance; and
3. The polygraph technique(s) to be used.

B. The licensee supervising the intern shall review the intern's charts prior to the rendering of any opinion or conclusion on any polygraph examination administered by the intern.

## § 2.11. Waiver of requirements.

The department may license by reciprocity any person licensed and in good standing in another jurisdiction where a formal reciprocal licensing agreement has established that the requirements were substantially equivalent to those in Virginia at the time licensure as granted.

The department may waive the internship for any person who practiced polygraphy in the federal jurisdiction.

# Proposed Regulations

## § 2.12. Approval of polygraph school curriculum.

Each school desiring to teach polygraphy shall submit its curriculum to the department for approval. The curriculum shall meet the following minimum requirements:

1. There shall be one type of accepted polygraph instrument per three students in the course;
2. The duration of instruction shall not be less than 240 hours, unless the school has obtained approval from the department for a shorter duration of instruction;
3. Each out-of-state school approved by the state in which it is located shall have the appropriate regulatory agency of that state certify such approval to the department;
4. The curriculum shall encompass the following subject areas:
  - a. Polygraph theory;
  - b. Examination techniques and question formulation;
  - c. Polygraph interrogation;
  - d. Case observation;
  - e. Polygraph case practice;
  - f. Chart interpretation;
  - g. Legal aspects of polygraphy;
  - h. Physiological aspects of polygraphy;
  - i. Psychological aspects of polygraphy;
  - j. Instrumentation;
  - k. History of polygraph; and
  - l. Reviews and examinations.
5. Any person teaching the subjects required by this regulation shall meet the following minimum requirements for the subjects to be taught:
  - a. Legal aspects of polygraph examination. The instructor must be a member of the Virginia Bar.
  - b. Polygraph interrogation. The instructor must have five years experience in the field of interrogation.
  - c. Physiological aspects of polygraphy. The instructor must have a degree in a health related science with coursework in physiology from an accredited institution of higher learning.

d. Psychological aspects of polygraphy. The instructor must have a degree in psychology from an accredited institution of higher learning.

e. All other courses may be taught by individuals having at least five years of experience as a polygraph examiner.

f. The department may make exception to the above qualifications when an instructor is otherwise qualified by education or experience and provides such evidence in writing to the department.

Schools may be required to submit evidence of compliance with this regulation on a quarterly basis and shall allow observations of their compliance by the department's designated representatives.

## PART III. STANDARDS OF PRACTICE.

### § 3.1. Standards of practice to be explained in writing.

At the beginning of each polygraph examination, the examiner shall provide the examinee with a written explanation of the provisions of §§ 3.1 through 3.8.

### § 3.2. Examinee may request tape recording of examination.

The examiner shall tape record the examination administered to any examinee who requests a tape recording. Each examiner shall maintain tape recording equipment and tapes adequate for such recording. The examiner shall safeguard all examination recordings with the records he is required to keep by § 3.17 and make the recordings available to the department, the examinee or the examinee's attorney upon request. The examiner may charge the examinee a fee not to exceed \$25 only if the examinee requests and receives a copy of an examination tape recording.

### § 3.3. Examinee entitled to a copy of written report.

The examinee shall be entitled to a copy of all portions of any written report pertaining to his examination which is prepared by the examiner and provided to any person. The examinee shall make his request in writing to the examiner. The examiner shall comply within 10 business days of providing the written report to any person or receiving the examinee's written request, whichever occurs later. The examiner may collect not more than \$1.00 per page from the examinee for any copy provided.

### § 3.4. Exceptions.

The provisions of §§ 3.1, 3.2, and 3.3 shall not be applicable to any examination conducted by or on behalf of the Commonwealth or any of its political subdivisions when the examination is for the purpose of preventing or detecting crime or the enforcement of penal laws.

# Proposed Regulations

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However, examiners administering examinations as described in this section shall comply with § 3.1 through a verbal explanation of the provisions of §§ 3.5, 3.6, and 3.7.

## § 3.5. Pretest procedure.

Prior to administering any polygraph test, the examiner shall inform the prospective examinee of all the issues to be covered during the polygraph test and of all the items to be reported by the examiner to any other person.

## § 3.6. Written consent to examine.

The examiner shall obtain written permission from the prospective examinee to administer the examination after fulfilling the requirements of § 3.1, and before proceeding further with the administration of the examination.

## § 3.7. Examination standards of practice.

To protect the rights of each examinee, the examiner shall comply with the following standards of practice by advising each examinee in the manner prescribed of each of the following standards of practice and shall not proceed to examine or continue the examination if it is or becomes apparent to the examiner that the examinee does not understand any one of these standards:

1. All questions to be asked during the polygraph test(s) shall be reduced to writing and read to the examinee.
2. The examinee or the examiner may terminate the examination at any time.
3. If the examination is within the scope of § 40.1-51.4.3 of the Code of Virginia, the examiner shall explain the provisions of that statute to the examinee.
4. No questions shall be asked concerning any examinee's lawful religious affiliations, lawful political affiliations, or lawful labor activities. This provision shall not apply to any such affiliation which is inconsistent with the oath of office for public law-enforcement officers.
5. The examinee shall be provided the full name of the examiner and the name, address, and telephone number of the Department of Commerce.

## § 3.8. Sexual preference or sexual activity questions.

Examiners shall not ask questions during any part of a polygraph examination concerning any examinee's sexual preferences or sexual activities.

This section shall not be applicable to any examination conducted by, on behalf of, or required by any state or local government agency in the Commonwealth or its political subdivisions.

## § 3.9. Number of examinations.

An examiner shall not perform more than 12 polygraph examinations in any 24-hour period.

## § 3.10. Number of questions to be asked on a polygraph test.

An examiner shall not ask more than 16 questions on a single polygraph test.

Nothing in this section shall prohibit an examiner from conducting more than one polygraph test during a polygraph examination.

## § 3.11. Interval between polygraph test questions.

Examiners shall allow on every polygraph test a minimum time interval of 10 seconds between the examinee's answer to a question and the start of the next question.

## § 3.12. Polygraph test chart markings.

Examiners shall record at a minimum the following information on each polygraph test chart produced:

1. The name of the examinee;
2. The date of the examination;
3. The time that each test begins;
4. The examiner's initials;
5. Any adjustment made to component sensitivity;
6. The point at which each question begins and each answer is given;
7. Each question number; and
8. Each answer given by the examinee.

## § 3.13. Polygraph test evaluation.

Examiners shall render only three evaluations of polygraph tests:

1. Deception indicated;
2. No deception indicated; or
3. Inconclusive.

Examiners may include in their report any information revealed by the examinee during the polygraph examination.

Nothing in this section shall prohibit an examiner from explaining the meaning of the above evaluations.



## § 3.14. Chart analysis.

An examiner shall not render a verbal or written report based upon polygraph test chart analysis without having conducted at least two polygraph tests. Each relevant question shall have been asked at least once on each of at least two polygraph tests.

## § 3.15. Hiring or retention recommendations.

Examiners shall not make hiring or retention recommendations based solely on the results of a polygraph examination.

This section shall not prohibit an examiner from making a hiring or retention decision for the examiner's full-time employer.

## § 3.16. Display of license.

Each licensed polygraph examiner and registered polygraph examiner intern shall post, in a conspicuous place for the examinee, his license or registration, or a legible copy of his license or registration to practice in Virginia.

## § 3.17. Records.

The licensed polygraph examiner or registered polygraph examiner intern shall maintain the following for at least one year from the date of each polygraph examination:

1. Polygraphic charts.
2. Questions asked during the examination;
3. A copy of the results and the conclusions drawn;
4. A copy of any written report provided in connection with the examination.
5. Tape recordings of examinations made in compliance with § 3.2.

## § 3.18. Grounds for fines, denial, suspension or revocation of licenses or denial or withdrawal of school approval.

The department may fine, deny, suspend, or revoke any license or registration, or deny or withdraw school approval upon a finding that the applicant, licensee, registrant, or school:

1. Has misrepresented information furnished when applying for any license or registration, renewal of license or registration, or approval; or
2. Has violated or aided or abetted another in violating ~~Chapter 1.1~~ Chapters 1 through 3 of Title 54-54.1 or §§ ~~54-016~~ 54.1-1800 through ~~54-022~~ 54.1-1805 of the Code of Virginia, or any regulation or rule issued pursuant to those laws; or

3. Has been convicted of any misdemeanor directly related to the occupation or any felony; or

4. Has made any misrepresentation or false promise or caused to be printed or otherwise disseminated any false or misleading advertisement; or

5. Has allowed one's license or registration to be used by anyone else; or

6. Has failed, within a reasonable time, to provide information requested by the department.

## BOARD FOR HEARING AID SPECIALISTS

**Title of Regulation:** VR 375-01-02. Board for Hearing Aid Specialists Regulations.

**Statutory Authority:** §§ 54.1-113 and 54.1-201 of the Code of Virginia.

**Public Hearing Date:** N/A – Written comments may be submitted until February 3, 1991.

(See Calendar of Events section for additional information)

### Summary:

*The proposed regulations apply to approximately 350 licensed hearing aid specialists and approximately 30 temporary permit holders in Virginia. The only substantive changes in the regulations are the addition of a section for application fees (fee was not changed, but was not previously stated in the regulations) and a section clarifying the fee for licensure of physicians (this fee also was not changed, but was not previously stated in the regulations). This is to assure the board compliance with the requirements of § 54.1-113 of the Code of Virginia.*

VR 375-01-02. Board for Hearing Aid Specialists 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:

*"Audiologist"* means any person who accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting hearing and related communicative disorders or who assists persons in the perception of sound and is not authorized by another regulatory or health regulatory board to perform any such services.

# Proposed Regulations

"Licensed sponsor" means a licensed hearing aid specialist who is responsible for training one or more individuals holding a temporary permit.

"Licensee" means any person holding a valid license under this chapter.

"Otolaryngologist" means a licensed physician specializing in ear, nose and throat diseases.

"Otologist" means a licensed physician specializing in diseases of the ear.

"Temporary permit holder" means any person who holds a valid temporary permit under this chapter.

## PART II. ENTRY REQUIREMENTS.

### § 2.1. Entry requirements.

The applicant must meet the following entry requirements:

1. Submit an application fee of \$60.

2. The applicant must be at least 18 years of age.

3. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a hearing aid specialist in such a manner as to safeguard the interests of the public.

4. The applicant shall have successfully completed high school or a high school equivalency course.

5. The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

6. The applicant shall have training and experience which covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories and services:

- a. Basic physics of sound;
- b. Basic maintenance and repair of hearing aids;
- c. The anatomy and physiology of the ear;
- d. Introduction to psychological aspects of hearing loss;

e. The function of hearing aids and amplification;

f. Visible disorders of the ear requiring medical referrals;

g. Practical tests of proficiency in the required techniques as they pertain to the fitting of hearing aids;

h. Pure tone audiometry, including air conduction, bone conduction, and related tests;

i. Live voice or recorded voice speech audiometry, including speech reception, threshold testing and speech discrimination testing.

j. Masking when indicated;

k. Recording and evaluating audiograms and speech audiology to determine the proper selection and adaptation of hearing aids;

l. Taking earmold impressions;

m. Proper earmold selection;

n. Adequate instruction in proper hearing aid orientation;

o. Necessity of proper procedures in after-fitting checkup; and

p. Availability of social service resources and other special resources for the hearing impaired.

7. The applicant shall provide one of the following as verification of completion of the above training and experience:

a. An affidavit on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or

b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training.

### § 2.2. Examination.

A. The applicant shall pass an examination administered by the board with a minimum score of 75 on each section of the examination.

B. Any applicant failing to achieve a passing score on all sections in two successive attempts to take the examination must reapply.

C. If the temporary permit holder fails to achieve a passing score on any section of the examination in two successive attempts to take the examination, the temporary

permit shall expire upon receipt of the examination failure letter resulting from the second attempt.

D. The examination fee shall be \$40. The reexamination fee shall be \$25 for each of the three sections taken.

E. Physicians licensed to practice in Virginia and certified by the American Board of Otolaryngology or eligible for such certification shall not be required to pass an examination as a prerequisite to obtaining a license as a hearing aid specialist.

## § 2.3. Temporary permit.

A. A temporary permit shall be issued for a period of 12 months and will be extended once for not longer than 6 months.

B. The application for a temporary permit shall include an affidavit signed by the licensed sponsor certifying that he assumes full responsibility for the competence and proper conduct of the temporary permit holder and will not assign the permit holder to carry out independent field work until he is adequately trained for such independent activity.

C. The licensed sponsor shall return the temporary permit to the board should the training program be discontinued for any reason.

D. The application fee for a temporary permit shall be \$60.

## § 2.4. License by endorsement.

Applicants holding a current license/certificate as a hearing aid specialist in another state or territory of the United States, based on requirements equivalent to and not conflicting with the provisions of these regulations, may be granted a license without further examination. The fee for endorsement shall be \$60.

## § 2.5. License for physicians.

*The fee for a license for physicians shall be \$60.*

### PART III. RENEWAL.

## § 3.1. License renewal required.

A. Licenses issued under these regulations shall expire on December 31 of each even-numbered year. The Department of Commerce shall mail a renewal notice to the licensee outlining the procedures for renewal. Failure to receive this notice shall not relieve the licensee of the obligation to renew.

B. Each licensee applying for renewal shall return the renewal notice and a fee of \$110 to the Department of Commerce prior to the expiration date shown on the

license. If the licensee fails to receive the renewal notice, a copy of the license may be submitted with the required fee.

C. If the licensee fails to renew the license within 30 days after the expiration date, an additional fee of \$110 shall be required.

D. If the licensee fails to renew within six months of the expiration date on the license, the licensee must apply to have the license reinstated by submitting a reinstatement form and a renewal fee of \$110 plus an additional \$110 fee.

E. Upon receipt of the application for reinstatement and the fee, the board may grant reinstatement of the license if the board is satisfied that the applicant continues to meet the requirements for the license. The board may require requalification, reexamination, or both, before granting the reinstatement.

F. The board may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline an extant licensee. Upon such denial, the applicant may request that a hearing be held.

G. All fees are nonrefundable.

### PART IV. STANDARDS OF PRACTICE.

## § 4.1. Business records and practice.

The following regulations shall apply with reference to the licensee's official records and public access.

A. The licensee shall keep on record with the board the location of the licensee's records, which shall be accessible to the board, with or without notice, during reasonable business hours. The licensee shall notify the board in writing of any change of address within 30 days of such change.

B. The licensee shall be accessible to the public for expedient, reliable and dependable services, repairs, and accessories.

§ 4.2. The licensee shall deliver to each purchaser at the time of a sale, repair or service:

1. A receipt signed by the licensee and showing licensee's business address, license number and business telephone number, and

a. The make and model of the hearing aid to be furnished, repaired or serviced and, in addition, serial numbers on models to be repaired and serviced; and

b. The full terms of the sale clearly stated.

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2. If an aid which is not new is sold or rented, the purchase agreement and the hearing aid container shall be clearly marked "used" or "reconditioned," whichever is applicable, with terms of warranty, if any.

§ 4.3. When first contact is established with any purchaser or prospective purchaser, the licensee shall:

1. Provide a DISCLOSURE FORM prescribed by the board containing information that the person will need to obtain service/maintenance when the order is taken outside the specialist's office. The DISCLOSURE FORM shall include:

- a. Address and telephone number where the specialist can be reached.
- b. Days and hours contact can be made;
- c. Whether service/maintenance will be provided in the office or in the person's home;
- d. If the specialist has an office, address of the office as listed with the board; and
- e. If the specialist has no office in Virginia, a clear statement that there is no office in Virginia;

2. Advise that person that hearing aid specialists are not licensed to practice medicine; and

3. Advise that person that no examination or representation made by the specialist should be regarded as a medical examination, opinion, or advice.

- a. A statement that this initial advice was given to the purchaser shall be entered on the purchase agreement in print as large as the other printed matter on the receipt.
- b. Exemption: Specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of subdivisions 2 and 3 of § 4.3.

§ 4.4. The following terminology shall be used on all purchase agreements:

1. The undersigned seller agrees to sell and the undersigned purchaser agrees to purchase hearing aid(s) and accessories, according to terms set forth below:

- a. The purchaser was advised that the seller is not a physician licensed to practice medicine; and
- b. No examination or representation made by the seller should be regarded as a medical examination, opinion, or advice.

2. Exemption: Specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of subdivisions a and b § 4.4.

§ 4.5. Any person engaging in the fitting and sale of hearing aids for a child under 18 years of age shall:

1. Ascertain whether such child has been examined by an otolaryngologist for recommendation within six months prior to fitting; and
2. No child shall be fitted without such recommendation.

§ 4.6. Each licensee or holder of a temporary permit, in counseling and instructing adult clients and prospective adult clients related to the testing, fitting, and sale of hearing aids, shall be required to recommend that the client obtain a written statement signed by a licensed physician stating that the patient's hearing loss has been medically evaluated within the preceding six months and that the patient may be a candidate for a hearing aid. Should the client decline the recommendation:

1. A statement of such declination shall be obtained from the client over his signature.
2. Fully informed adult patients (18 years of age or older) may waive the medical evaluation because of personal or religious beliefs.
3. The hearing aid specialist is prohibited from actively encouraging a prospective user to waive a medical examination.

§ 4.7. The information provided in subdivisions 1 and 2 of § 4.6 must be made a part of the client's record kept by the hearing aid specialist.

§ 4.8. Testing procedures.

It shall be the duty of each licensee and holder of a temporary permit engaged in the fitting and sale of hearing aids to use appropriate testing procedures for each hearing aid fitting. All tests and case history information must be retained in the records of the specialist. The established requirements shall be:

1. Air Conduction Tests A.N.S.I. standard frequencies of 500-1000-2000-4000 Hertz. Appropriate masking must be used if the difference between the two ears is 40 dB or more at any one frequency.
2. Bone Conduction Tests are to be made on every client—A.N.S.I. standards at 500-1000-2000-4000 Hertz. Proper masking is to be applied if the air conduction and bone conduction readings for the test ear at any one frequency differ by 15 dB or if lateralization occurs.
3. Speech testings shall be made before and after

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fittings, and the type of test(s), method of presentation, and results noted.

4. The specialist shall check for the following conditions and, if they are found to exist, shall refer the patient to a physician unless the patient can show that his present condition is under treatment or has been treated:

- a. Visible congenital or traumatic deformity of the ear.
- b. History of active drainage from the ear within the previous 90 days.
- c. History of sudden or rapidly progressive hearing loss within the previous 90 days.
- d. Acute or chronic dizziness.
- e. Unilateral hearing loss of sudden or recent onset within the previous 90 days.
- f. Audiometric air bone gap equal to or greater than 15 dB at 500 Hertz, 1000 Hertz, and 2000 Hertz.
- g. Visible evidence or significant cerumen accumulation or a foreign body in the ear canal.
- h. Tinnitus as a primary symptom.
- i. Pain or discomfort in the ear.

5. All tests shall have been conducted no more than six months prior to the fitting.

#### § 4.9. Calibration statement required.

A. Audiometers used in testing the hearing impaired must be in calibration.

B. Calibration must be done once a year or more often, if needed.

C. A certified copy of an electronic audiometer calibration made within the past 12 months must be submitted to the board annually no later than November 1.

#### § 4.10. Grounds for discipline.

The board may fine any licensee or suspend or revoke any license issued under the provisions of Chapter 15 of Title 54.1 of the Code of Virginia and the regulations of the board at any time after a hearing conducted pursuant to the provisions of the Administrative Process Act, Chapter 1.1:1 of Title 9 of the Code of Virginia when the licensee has been found in violation of:

1. Improper conduct, including but not limited to:

- a. Obtaining or renewing a license by false or fraudulent representation;

- b. Obtaining any fee or making any sale by fraud or misrepresentation;

- c. Employing to fit and sell hearing aids any person who does not hold a valid license or a temporary permit, or whose license or temporary permit is suspended;

- d. Using, causing, or promoting the use of any misleading, deceptive, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, whether disseminated orally or published;

- e. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type;

- f. Representing that the service or advice of a person licensed to practice medicine or audiology will be used in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true; or using the words "physician," "audiologist," "clinic," "hearing service," "hearing center," or similar description of the services and products provided when such use is not accurate;

- g. Directly or indirectly giving, or offering to give, favors or anything of value to any person who in their professional capacity uses their position to influence third parties to purchase products offered for sale by a hearing aid specialist; or

- h. Failing to provide expedient, reliable and dependable services when requested by a client or client's guardian.

2. Failure to include on the sales contract a statement regarding home solicitation, as required by federal and state law.

3. Incompetence or negligence in fitting or selling hearing aids.

4. Failure to provide required or appropriate training resulting in incompetence or negligence by a temporary permit holder under the licensee's sponsorship.

5. Violation of any other requirement or prohibition of Part IV of these rules.

6. Violating or cooperating with others in violating any provisions of Chapter 15 of Title 54.1 of the Code of Virginia or any regulation of the board.



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7. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or of a misdemeanor involving moral turpitude there being no appeal pending therefrom or the time for appeal having elapsed. Any pleas of nolo contendere shall be considered a conviction for the purpose of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the law of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

All previous rules of the Board for Hearing Specialists are repealed.



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## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

**NOTICE:** The Virginia Housing Development Authority is exempted from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

**Title of Regulation:** VR 400-02-0011. Rules and Regulations for Allocation of Low Income Housing Tax Credits.

**Statutory Authority:** § 36-55.30:3 of the Code of Virginia.

**Public Hearing Date:** N/A – Written comments may be submitted until December 14, 1990.

(See Calendar of Events section for additional information)

### Summary:

*The proposed amendments to the rules and regulations for the allocation of federal low-income housing tax credits ("Credits") available under § 42 of the Internal Revenue Code (the "IRC") will impose on applicants for Credits from the pools or subpools ("nonprofit pools or subpools") of Credits designated by the authority for developments in which certain nonprofit organizations materially participate in the development and operation thereof, as required by the IRC, certain additional requirements for eligibility for such Credits. These additional requirements are intended to assure that the nonprofit organizations have a substantial ownership interest in the development and that the nonprofit organizations not be formed by a for-profit entity for the principal purpose of being included in such nonprofit pools or subpools.*

VR 400-02-0011. Rules and Regulations for Allocation of Low-Income Housing Tax Credits.

### § 1. Definitions.

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

*"Applicant"* means an applicant for federal credits or state credits or both under these rules and regulations and, upon and subsequent to an allocation of such credits, also means the owner of the development to whom the federal credits or state credits or both are allocated.

*"Estimated highest per bedroom credit amount for new construction units"* means, in subdivision 11 of § 6, the highest amount of federal credits and 50% of state credits estimated by the executive director to be allocated per bedroom to any development in the state (or, if the executive director shall so determine, in each pool or subpool) composed solely of new construction units.

*"Estimated highest per bedroom credit amount for*

*rehabilitation units"* means, in subdivision 11 of § 6, the highest amount of federal credits and 50% of state credits estimated by the executive director to be allocated per bedroom to any development in the state (or, if the executive director shall so determine, in each pool or subpool) composed solely of rehabilitation units.

*"Estimated highest per unit credit amount for new construction units"* means, in subdivision 10 of § 6, the highest amount of federal credits and 50% of state credits estimated by the executive director to be allocated per unit to any development in the state (or if the executive director shall so determine, in each pool or subpool) composed solely of new construction units.

*"Estimated highest per unit credit amount for rehabilitation units"* means, in subdivision 10 of § 6, the highest amount of federal credits and 50% of state credits estimated by the executive director to be allocated per unit to any development in the state (or, if the executive director shall so determine, in each pool or subpool) composed solely of rehabilitation units.

*"Federal credits"* means the low-income housing tax credits as described in § 42 of the IRC.

*"IRC"* means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

*"Low-income housing units"* means those units which are defined as "low income units" under § 42 of the IRC.

*"Qualified low-income buildings" or "qualified low-income development"* means the buildings or development which meets the applicable requirements in § 42 of the IRC to qualify for an allocation of federal credits thereunder.

*"State code"* means Chapter 1.4 of Title 36 of the Code of Virginia.

*"State credits"* means the low-income housing tax credits as described in the state code.

*"Virginia taxpayer"* means any individual, estate, trust or corporation which, in the determination of the authority, is subject to the payment of Virginia income taxes and will be able to claim in full against such taxes the amount of state credits reserved or allocated to such individual, estate, trust or corporation under these rules and regulations.

### § 2. Purpose and applicability.

The following rules and regulations will govern the allocation by the authority of federal credits pursuant to § 42 of the IRC and state credits pursuant to the state code.

Notwithstanding anything to the contrary herein, acting at the request or with the consent of the applicant for

federal credits or state credits or both, the executive director is authorized to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the IRC and the state code.

The rules and regulations set forth herein are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of the federal credits and state credits. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time.

Any determination made by the authority pursuant to these rules and regulations as to the financial feasibility of any development or its viability as a qualified low-income development shall not be construed to be a representation or warranty by the authority as to such feasibility or viability.

Notwithstanding anything to the contrary herein, all procedures and requirements in the IRC and the state code must be complied with and satisfied.

### § 3. General description.

The IRC provides for federal credits to the owners of residential rental projects comprised of qualified low-income buildings in which low-income housing units are provided, all as described therein. The aggregate amount of such credits (other than federal credits for developments financed with certain tax-exempt bonds as provided in the IRC) allocated in any calendar year within the Commonwealth may not exceed the Commonwealth's annual state housing credit ceiling for such year under the IRC. An amount equal to 10% of such ceiling is set-aside for developments in which certain qualified nonprofit organizations materially participate in the development and operation thereof. Federal credit allocations (other than credits for developments financed with certain tax-exempt bonds as provided in the IRC) are counted against the Commonwealth's annual state housing credit ceiling for the calendar year in which the federal credits are allocated. The IRC provides for the allocation of the Commonwealth's state housing credit ceiling to the housing credit agency of the Commonwealth. The authority has been designated by executive order of the Governor as the housing credit agency under the IRC and, in such capacity, shall allocate for each calendar year federal credits to qualified low-income buildings or developments in accordance herewith.

Federal credits may be allocated to each qualified low-income building in a development separately or to the development as a whole.

Federal credits may be allocated to such buildings or development either (i) during the calendar year in which

such building or development is placed in service or (ii) if the building or development meets the requirements of § 42 (h)(1)(E) of the IRC, during one of the two years preceding the calendar year in which such building or development is expected to be placed in service. Prior to such allocation, the authority shall receive and review applications for reservations of federal credits as described hereinbelow and shall make such reservations of federal credits to qualified low-income buildings, subject to satisfaction of certain terms and conditions as described herein. Upon compliance with such terms and conditions and, as applicable, either (i) the placement in service of the qualified low-income buildings or development or (ii) the satisfaction of the requirements of § 42 (h)(1)(E) of the IRC with respect to such buildings or the development, the federal credits shall be allocated to such buildings or the development as a whole in the calendar year for which such federal credits were reserved by the authority.

Except as otherwise provided herein or as may otherwise be required by the IRC, these rules and regulations shall not apply to federal credits for any development or building to be financed by certain tax-exempt bonds in an amount so as not to require under the IRC an allocation of federal credits hereunder.

The authority is authorized by the state code to establish the amount, if any, of state credits to be allocated to any buildings or development qualified for and claiming federal credits. The amount of state credits is calculated as a percentage of federal credits. Such percentage is established by the authority as provided herein. The state code provides for a maximum allocation of \$3,500,000 state credits in any calendar year. The state credits will be available for buildings or developments for which federal credits shall be allocated in 1990 and subsequent years or, in the case of any development or building to be financed by certain tax-exempt bonds in an amount so as not to require under the IRC an allocation of federal tax credits hereunder, for which such bonds shall be issued in 1990 and subsequent years. In the event that legislation is adopted by the General Assembly to defer the date set forth in §§ 36-55.63 A, 58.1-336 A or 58.1-435 A of the state code, then the year 1990 in the preceding sentence shall likewise be deferred and the provisions of these rules and regulations relating to state credits shall not become effective until the date set forth in such legislation.

The authority shall charge to each applicant fees in such amount as the executive director shall determine to be necessary to cover the administrative costs to the authority, but not to exceed the maximum amount permitted under the IRC. Such fees shall be payable at such time or times as the executive director shall require.

### § 4. Adoption of allocation plan; solicitations of applications.

The IRC requires that the authority adopt a qualified allocation plan which shall set forth the selection criteria to be used to determine housing priorities of the authority

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which are appropriate to local conditions and which shall give certain priority to and preference among developments in accordance with the IRC. The executive director from time to time may cause housing needs studies to be performed in order to develop the qualified allocation plan and, based upon any such housing needs study and any other available information and data, may direct and supervise the preparation of and approve the qualified allocation plan and any revisions and amendments thereof in accordance with the IRC. The IRC requires that the qualified allocation plan be subject to public approval in accordance with rules similar to those in § 147(f)(2) of the IRC. The executive director may include all or any portion of these rules and regulations in the qualified allocation plan.

The executive director may from time to time take such action he may deem necessary or proper in order to solicit applications for federal credits and state credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications and the selection thereof as he shall consider necessary or appropriate.

### § 5. Application.

Application for a reservation of federal credits or state credits or both shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with the IRC and the state code and to make the reservation and allocation of the federal credits and state credits in accordance with these rules and regulations. The application shall include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain where and what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information must be included in the application: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, and syndication and legal fees and other costs.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, by one or more persons having ownership interests in the applicants or by one or more

entities within the exclusive control of the applicant or the above described persons, (ii) lease of such site by the applicant or by the above described persons or entities for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding option or contract between the applicant or the above described persons or entities and the fee simple owner of such site, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. No application shall be considered for a reservation or allocation of federal credits or state credits unless such evidence is submitted with the application and the authority determines that the applicant or the above described persons or entities own, lease or have the right to acquire or lease the site of the proposed development as described in the preceding sentence.

The application shall include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of federal credits requested by the application and certifying that under the existing facts and circumstances the applicant will be eligible for the amount of federal credits requested.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application; and any such criteria and assumptions shall be indicated on the application form or instructions.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of federal credits and state credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations.

After receipt of the applications, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such individuals a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by



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the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of federal credits and state credits to buildings or developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

### § 6. Review and selection of applications; reservation of federal credits.

The executive director may divide the amount of federal credits into separate pools and may further subdivide those pools into subpools. The division of such pools and subpools may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, or occupants; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling, shall be available for reservation and allocation to buildings or developments in which "qualified nonprofit organizations" materially participate in the development and operation thereof, as described in the IRC. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling be available for developments other than those described in the preceding sentence. The executive director may establish such pools or subpools ("nonprofit pools or subpools") of federal credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools or subpools are so established, the executive director may rank the applications therein and reserve federal credits (and, if applicable, state credits) to such applications before ranking applications and reserving federal credits (and, if applicable, state credits) in other pools and subpools, and any such applications in such nonprofit pools or subpools not receiving any such reservation of federal credits (and, if applicable, state credits) shall be assigned to such other pool or subpool as shall be appropriate. However, in the event that the amount of federal credits reserved within such nonprofit pools or subpools is less than the total amount made available therein, such amount of unreserved federal credits may, to the extent permitted by the IRC, be reallocated from time to time by the executive director to such other pools or subpools and in such amounts as he shall determine.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. With respect to all reservations and allocations of federal credits, a "qualified nonprofit organization" (as

described in § 42(h)(5)(C) of the IRC) is to materially participate (within the meaning of § 469(h) of the IRC) in the development and operation of the development throughout the "compliance period" (as defined in § 42 (i)(1) of the IRC); and

2. With respect to only these reservations of federal credits approved or ratified by the board on or after December 18, 1990, and with respect to only those allocations made pursuant to such reservation, (i) the "qualified nonprofit organization" described in the preceding subdivision 1 is to own an interest in the development (directly or through a partnership) as required by the IRC; (ii) such qualified nonprofit organization is to, prior to the allocation of federal credits to the buildings or development, own an interest in the development which shall constitute not less than 10% of all of the general partnership interests of the ownership entity thereof and which will result in such qualified nonprofit organization receiving not less than 10% of the development fees paid to all of the general partners in connection with the development; (iii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; and (iv) the executive director of the authority shall have determined that the qualified nonprofit organization was not or will not be formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools or subpools (as defined below) established by the executive director. In making the determination required by this subdivision 2 (iv), the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, and the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more

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than 90% of the Commonwealth's annual state housing credit ceiling be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools or subpools ("nonprofit pools or subpools") of federal credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools or subpools are so established, the executive director may rank the applications therein and reserve federal credits (and, if applicable, state credits) to such applications before ranking applications and reserving federal credits (and, if applicable, state credits) in other pools and subpools, and any such applications in such nonprofit pools or subpools not receiving any such reservation of federal credits (and, if applicable, state credits) shall be assigned to such other pool or subpool as shall be appropriate; provided, however, that if additional federal credits are later made available by federal legislation for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools or subpools have been so assigned to other pools or subpools as described above, the executive director may, in such situations, designate all or any portion of such additional federal credits for the nonprofit pools or subpools (or for any other pools or subpools as he shall determine) and may, if additional federal credits have been so designated for the nonprofit pools or subpools, rank the applications therein and reserve federal credits to such applications in accordance with the IRC and these rules and regulations. In the event that the amount of federal credits reserved within such nonprofit pools or subpools is less than the total amount made available therein, such amount of unreserved federal credits may, to the extent permitted by the IRC, be redesignated from time to time by the executive director to such other pools or subpools and in such amounts as he shall determine. Notwithstanding anything to the contrary herein, no allocation of credits shall be made from any nonprofit pools or subpools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or subpools may receive a reservation or allocation of credits in any amount greater than \$500,000. For the purposes of implementing this limitation, the executive director may determine that more than one application for more than one development which he deems to be a single development shall be considered as a single application.

The authority staff shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Either (i) sole fee simple ownership of the site of the proposed development by the applicant, by one or more persons having ownership interests in the applicant, or by one or more entities within the exclusive control of the applicant or the above described persons or (ii) lease of such site by the applicant or by the above described persons or entities

for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons and families (10 points);

2. Approval by local authorities of the plan of development for the proposed development or a letter from such authorities stating that such approval is not required (15 points), proper zoning for such site or a letter from the applicable local authorities stating that no zoning requirements are applicable (15 points), availability of all requisite public utilities for such site (15 points), completion of plans and specifications or, in the case of rehabilitation for which plans and specifications will not be used, work write-up for such rehabilitation (20 points multiplied by the percentage of completion of such plans and specifications or such work write-up), and building permit (10 points);

3. Issuance of a loan commitment or commitments to provide the financing for the proposed development without any conditions within the discretion or control of the lender (in the case of an unconditional commitment or commitments to provide permanent financing for a term of 15 years or more, 50 points or, in the case of any other unconditional commitment or commitments, 25 points) or any other written evidence of the intent of the lender or lenders to provide such financing (10 points);

4. Issuance of a commitment or commitments to provide equity funding for the proposed development from a financially sound syndicator or investor (or other source of such funding) without any conditions within the discretion or control of the syndicator or investor (25 points) or any other written evidence of the intent of such syndicator or investor to provide such equity funding (10 points);

5. The quality of the proposed development's amenities, building materials and energy efficiency (the development shall be ranked by the executive director on a scale from 0 to 5 for each of the first two categories and at either 0 or 5 for the last category and the application shall be assigned points equal to the sum of the products of each such ranking multiplied by 3);

6. Evidence that the members of the development team for the proposed development have the demonstrated experience, qualifications and ability to perform their respective functions (the development team shall be ranked by the executive director on a scale from 0 to 10, and the application shall be assigned points equal to 5 multiplied by the number of such ranking);

7. Increase in the housing stock attributable to new construction or adaptive reuse of units or to the rehabilitation of units determined by the applicable

local governmental unit to be uninhabitable (75 points multiplied by the percentage of such units in the proposed development);

8. The percentage by which the total of the amount of federal credits and 50% of the amount of state credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the weighted average of the estimated highest per unit credit amount for new construction units and the estimated highest per unit credit amount for rehabilitation units based upon the number of new construction units and rehabilitations units in the proposed development (if the per unit credit amount of the proposed development equals or exceeds such weighted average, the proposed development is assigned no points; if the per unit credit amount of the proposed development is less than such weighted average, the difference is calculated as a percentage of such weighted average, and the proposed development receives one point for each percentage point);

9. The percentage by which the total of the amount of federal credits and 50% of the amount of state credits per bedroom in such low-income housing units (the "per bedroom credit amount") of the proposed development is less than the weighted average of the estimated highest per bedroom credit amount for new construction units and the estimated highest per bedroom credit amount for rehabilitation units based upon the number of new construction units and rehabilitation units in the proposed development (if the per bedroom credit amount of the proposed development equals or exceeds such weighted average, the proposed development is assigned no points; if the per bedroom credit amount of the proposed development is less than such weighted average, the difference is calculated as a percentage of such weighted average, and the proposed development receives one point for each percentage point);

10. Letter addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, either or both of the following:

"The (name of locality) supports the allocation of federal housing tax credits available under IRC Section 42 requested by (name of applicant) for (name of development)." (10 points)

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality)." (10 points)

11. Participation in the ownership of the proposed development by any organization exempt from federal

taxation (10 points) or participation other than ownership in the development, construction or rehabilitation, operation or management of the proposed development by any organization exempt from federal taxation (5 points);

12. Commitment by the applicant to give first leasing preference to individuals and families on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located (5 points); and

13. Commitment by the applicant to lease low-income housing units in the proposed development only to one or more of the following: persons 62 years or older; homeless persons or families; or physically or mentally disabled persons (10 points).

With respect to items 8 and 9 above only, the term "new construction units" shall be deemed to include adaptive reuse units and units determined by the applicable local governmental unit to be uninhabitable which are intended to be rehabilitated. Also, for the purpose of calculating the points to be assigned pursuant to such items 8 and 9 above, all credit amounts shall be those requested in the applicable application, and the per unit credit amount and per bedroom credit amount for any building located in a qualified census tract or difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding the use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of federal credits as provided in the IRC.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Notwithstanding any other provisions herein, any application which is assigned a total number of points less than a threshold amount of 150 points shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of federal tax credits.

Each application to which the total number of points assigned is equal to or more than the above-described threshold amount of points shall be assigned bonus points as follows:

1. The percentage determined by dividing (i) the amount of investment proceeds (net of the cost of intermediaries and amounts paid for historic tax credits) expected by the authority to be generated with respect to the development and to be used for the cost of land and for costs determined by the authority to be reasonable and to be includable in the eligible basis of the proposed development by (ii) the total amount of federal credits for the proposed

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development during the credit period (200 points multiplied by the percentage as so determined);

2. Commitment by the applicant to use income limits below those required by the IRC in order for the development to be a qualified low-income development (the product of (i) 100 points multiplied by the percentage of low-income housing units subject to such commitment and (ii) a fraction the numerator of which is the difference between 60% and the percentage of area median gross income to be used as the income limits for such units and the denominator of which is 60%; and

3. Commitment by the applicant to maintain the development as a qualified low-income housing development beyond the 15-year compliance period as defined in the IRC; such commitment beyond the end of the 15-year compliance period and prior to the end of the 30-year extended use period (as defined in the IRC) being deemed to represent a waiver of the applicant's right under the IRC to cause a termination of the extended use period in the event the authority is unable to present during the period specified in the IRC a qualified contract (as defined in the IRC) for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building (5 points for each full year in such commitment beyond such compliance period - maximum 100 points).

In the event of a tie in the number of points assigned to two or more applicants within the same pool or subpool, or, if none, within the state, the authority shall select one or more of them by lot, if necessary, in order to fully utilize the amount of credits available for reservation within such pool or subpool or, if none, within the Commonwealth.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools or subpools shall have been established, each applicant shall be assigned to a pool or subpool and shall be ranked within such pool or subpool. Those applications awarded more points shall be ranked higher than those applications awarded fewer points.

For each application which may receive a reservation of federal credits, the executive director shall determine the amount, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local

subsidies committed to the development, and the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development (which proceeds or receipts shall in no event be less than the amount used above in the calculation of bonus points for the ranking of the proposed development) and shall examine the development's costs, including developer's fees, for reasonableness. (If the applicant requests any state credits, the amount of state credits to be reserved to the applicant shall be determined pursuant to § 7 prior to the foregoing determination, and any funds to be derived from such state credits shall be included in the above described sources and uses of funds.) The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received, increases in the market value of the development, and increases in operating expenses, rental income and, in the case of variable rate financing, debt service on the proposed mortgage loan.

Under the IRC, the foregoing determination shall also be required for any buildings or development to be financed by certain tax-exempt bonds of the authority in an amount so as not to require under the IRC an allocation of federal credits hereunder. For the purpose of such determination, the owner of the proposed buildings or development shall submit to the authority, as and when required by the executive director, such of the above described information and documents as the executive director may require.

The executive director shall reserve federal credits to applications in descending order of ranking within each pool or subpool, if applicable, until either all federal credits therein are reserved or all applications therein have received reservations. The executive director may rank the applications within pools or subpools at different times for different pools or subpools and may reserve federal credits, based on such rankings, one or more times with respect to each pool or subpool. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of federal credits so reserved exceed either the maximum amount permissible under the IRC or the amount of federal credits available in the pool or subpool from which such federal credits are to be reserved.

If the amount of federal credits available in any pool is determined by the executive director to be insufficient for

the financial feasibility of the proposed development to which such available federal credits are to be reserved, the executive director may permit the applicant to modify such proposed development and his application so as to achieve financial feasibility based upon the amount of such available federal credits. Any such modifications shall be subject to the approval of the executive director.

Any amounts in any pools or subpools not reserved to applications shall be reallocated among the other pools or subpools which are designated by the executive director and in which applications shall not have received reservations in the full amount permissible under these rules and regulations. Such reallocation shall be made pro rata based on the amount originally allocated to all such pools or subpools with excess applications divided by the total amount originally allocated to all such pools or subpools with excess applications. Such reallocations shall continue to be made until either all of the federal credits are reserved or all applications have received reservations.

Notwithstanding anything herein to the contrary, in the event that the executive director determines that the reservation of federal credits to two or more applications for developments to be located within close proximity to each other would create an oversupply of low income housing units in such area which would make the developments financially infeasible, the executive director may, based upon to rankings of such applications, exclude one or more of such applications from receiving a reservation of federal credits as he deems necessary or desirable to reduce such oversupply of units and contribute to the financial feasibility of the other such development or developments described in the other application or applications.

The executive director shall notify each applicant either of the amount of federal credits reserved to such applicant's application or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved federal credits in accordance herewith.

The board shall review and consider the analysis and recommendation of the executive director for the reservation of federal credits (and, if applicable, state credits), and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the federal credits (and, if applicable, state credits) to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the IRC (and, in the case of state credits, the state code) and these rules and regulations. If the board determines not to ratify a reservation of federal credits (and, if applicable, state credits) or to establish any such terms and conditions, the executive director shall so notify the applicant.

The executive director may require the applicant to make a good faith deposit to assure that the applicant will comply with all requirements under the IRC (and, in the

case of state credits, the state code) and these rules and regulations for allocation of the federal credits (and, if applicable, state credits). Upon allocation of the federal credits (and, if applicable, state credits), such deposit (or a pro rata portion thereof based upon the portion of federal credits (and, if applicable, state credits) so allocated) shall be refunded to the applicant.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the federal credits under the IRC, the executive director may at that time allocate the federal credits (and, if applicable, state credits) to such qualified low-income buildings or development without first providing a reservation of such federal credits (and, if applicable, state credits). Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom federal credits (and, if applicable, state credits) have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development at its compliance with the application. If on the basis of such written confirmation and documentation and other available information the executive director determines that the buildings in the development which were to be qualified low-income buildings will not be placed in service within the time period required by the IRC (and, in the case of state credits, the state code) or will not otherwise qualify for such federal credits (and, if applicable, state credits), then the executive director may terminate the reservation of such federal credits (and, if applicable, state credits).

The executive director may establish such deadlines for determining the ability of the applicant to qualify for the federal credits (and, if applicable, state credits) as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such federal credits (and, if applicable, state credits) to other eligible applicants.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the federal credits (and, if applicable, state credits) therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with these rules and regulations and the IRC, reduce the amount of federal credits (and, if applicable, state credits) applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such federal credits (and, if applicable, state credits) or impose additional terms and conditions with respect thereto.



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In the event that any reservation of federal credits is terminated or reduced by the executive director under this section, he may reserve or allocate, as applicable, such federal credits to other qualified applicants in such manner as he shall determine consistent with the requirements of the IRC.

## § 7. Reservation of state credits.

Each applicant may also request a reservation of state credits in his application for a reservation of federal credits. State credits may be reserved only for those applicants (i) to whom federal credits have been reserved or (ii) who will be the owner of any development or buildings to be financed by certain tax-exempt bonds in an amount so as not to require under the IRC an allocation of federal credits hereunder. In the case of (ii) above, the applicant for state credits shall submit an application for federal credits (as well as for state credits), and such application shall be submitted, reviewed, and ranked in accordance with these rules and regulations; provided, however, that a reservation shall be made for the state credits only and not for any federal credits.

In order to be eligible for a reservation and allocation of state credits, the development must be owned by one of the following: (i) an individual who is a Virginia taxpayer, (ii) a corporation (other than an S corporation) which is a Virginia taxpayer, (iii) a partnership or an S corporation in which at least 75% of the state credits received by such partnership or S corporation will be allocated to partners or shareholders who are Virginia taxpayers, or (iv) any other legal entity which is a Virginia taxpayer or, in the case of an entity that is taxed on a pass-through basis with respect to tax credits, in which at least 75% of the state credits received by such entity will be allocated to Virginia taxpayers. If more than one of the foregoing shall be joint owners of the development, then the joint tenancy shall be treated as a partnership for purposes of applying the foregoing ownership test. In the case of tiered partnerships, S corporations, and other entities that are taxed on a pass-through basis with respect to tax credits, the ownership test will be applied by looking through such pass-through entities to the underlying owners. The application shall include such information as the executive director may require in order to determine the owner or owners of the development and the status of such owner or owners or those owning interests therein as Virginia taxpayers. The prior written approval of the authority shall be required for any change in the ownership of the development prior to the end of the calendar year in which all of the buildings in such development shall be placed in service, unless the transferee certifies that it is a Virginia taxpayer or, in the case of a pass-through entity, that 100% of its owners of such entity are Virginia taxpayers.

State credits may be reserved by the executive director to an applicant only if the maximum amount of credits (determined by the use of the full applicable percentage as defined in the IRC, regardless of the amount requested

by the applicant) which could be claimed for any development is determined by the executive director not to be sufficient for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC. The amount of state credits which may be reserved shall be equal to the lesser of (i) the amount requested by the applicant or (ii) the amount which is necessary for such financial feasibility and viability as so determined by the executive director. Such determination shall be made by the executive director in the same manner and based upon the same factors and assumptions as the determination described in § 6 with respect to reservation of federal credits. In addition, the executive director may establish assumptions as to the amount of additional net syndication proceeds to be generated by reason of the state credits. The amount of state credits which may be so reserved shall be based upon a percentage of the federal credits as the executive director shall determine to produce such amount of state credits.

The executive director may divide the amount of state credits into pools and may further divide those pools into subpools based upon the factors set forth in § 6 with respect to the federal credits; however, the state credits need not be so divided in the same manner or proportions as the federal credits. Applicants for state credits shall be assigned points and ranked in the same manner as described in § 6. The executive director shall reserve state credits to applications in descending order of ranking within each pool or subpool, if applicable, until either all state credits therein are reserved or all applicants therein eligible for state credits hereunder have received reservations for state credits. Any amounts in any pools or subpools not reserved to applicants shall be reallocated among the pools or subpools in which applicants eligible for state credits hereunder shall have not received reservations of state credits in the full amount permissible under these rules and regulations. Such allocation shall be made pro rata based on the amount originally allocated to each such pool or subpool with such excess applicants divided by the total amount originally allocated to all such pools or subpools with such excess applicants. Such reallocations shall continue to be made until either all of the state credits are reserved or all applicants for state credits have received reservations.

Section 6 hereof contains certain provisions relating to ratification by the board of reservations of state credits, requirements for good faith deposits, allocation of state credits without any reservation thereof, deadlines for determining the ability of the applicant to qualify for state credits, and reduction and termination of state credits. Such provisions shall be applicable to all applicants for state credits, notwithstanding the fact that the developments or buildings may be financed by certain tax-exempt bonds in an amount so as not to require an allocation of federal credits hereunder. In the event that any reservation of state credits is reduced or terminated, the executive director may reserve or allocate, as applicable, such state credits to other eligible applicants in

such manner as he shall determine consistent with the requirements of the state code.

## § 8. Allocation of federal credits.

At such time as one or more of an applicant's buildings which has received a reservation of federal credits is placed in service or satisfies the requirements of § 42 (h)(1)(E) of the IRC, the applicant shall so advise the authority, shall request the allocation of all of the federal credits so reserved or such portion thereof to which the applicant's buildings or development is then entitled under the IRC, and shall submit such certifications, legal and accounting opinions, evidence as to costs, a breakdown of sources and uses of funds, pro forma financial statements setting forth anticipated cash flows, and other documentation as the executive director shall require in order to determine that the applicant's buildings or development is entitled to such federal credits under the IRC and these rules and regulations. The applicant shall certify to the authority the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to the buildings or the development.

As of the date of allocation of federal credits to any building or development and as of the date such building or such development is placed in service, the executive director shall determine the amount of federal credits to be necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC. In making such determinations, the executive director shall consider the sources and uses of the funds (including, without limitation, any funds to be derived from the state credits), the available federal, state and local subsidies committed to the development, and the total financing planned for the developments as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development (which proceeds or receipts shall in no event be less than the amount used in § 6 in the calculation of bonus points for the ranking of the proposed development) and shall examine the development's costs, including developer's fees, for reasonableness. The executive director shall review the applicant's projected rental income, operating expenses and debt services for the credit period. The executive director may establish such criteria and assumptions as he shall then deem reasonable (or he may apply the criteria and assumptions he established pursuant to § 6) for the purpose of making such determinations, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received, increases in the market value of the development, and increases in operating expenses, rental income and, in the case of variable rate financing, debt service on the proposed mortgage loan. The amount of federal credits allocated to the applicant shall in no event exceed such amount as so determined by the executive director.

In the case of any buildings or development to be financed by certain tax-exempt bonds of the authority in such amount so as not to require under the IRC an allocation of federal credits hereunder, the executive director shall make the foregoing determination as of the date the buildings or the development is placed in service, and for the purpose of such determination, the owner of the buildings or development shall submit to the authority such of the above described information and documents as the executive director may require.

Prior to allocating the federal credits to an applicant, the executive director shall require the applicant to execute, deliver and record among the land records of the appropriate jurisdiction or jurisdictions an extended low-income housing commitment in accordance with the requirements of the IRC. Such commitment shall require that the applicable fraction (as defined in the IRC) for the buildings for each taxable year in the extended use period (as defined in the IRC) will not be less than the applicable fraction specified in such commitment. The amount of federal credits allocated to any building shall not exceed the amount necessary to support such applicable fraction, including any increase thereto pursuant to § 42(f)(3) of the IRC reflected in an amendment to such commitment. The commitment shall provide that the extended use period will end on the day 15 years after the close of the compliance period (as defined in the IRC) or on the last day of any longer period of time specified in the application during which low-income housing units in the development will be occupied by tenants with incomes not in excess of the applicable income limitations; provided, however, that the extended use period for any building shall be subject to termination, in accordance with the IRC, (i) on the date the building is acquired by foreclosure or instrument in lieu thereof or (ii) the last day of the one-year period following the written request by the applicant as specified in the IRC (such period in no event beginning earlier than the end of the fourteenth year of the compliance period) if the authority is unable to present during such one-year period a qualified contract (as defined in the IRC) for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building (such termination shall not be construed to permit, prior to close of the three-year period following such termination, the eviction or termination of tenancy of any existing tenant of any low-income housing unit other than for good cause or any increase in the gross rents over the maximum rent levels then permitted by the IRC with respect to such low-income housing units). Such commitment shall also contain such other terms and conditions as the executive director may deem necessary or appropriate to assure that the applicant and the development conform to the representations, commitments and information in the application and comply with the requirements of the IRC (and, in the case of an allocation of state credits, the state code) and these rules and regulations. Such commitment shall be a restrictive covenant on the buildings binding on all successors to the applicant and shall be enforceable in any state court of

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competent jurisdiction by individuals (whether prospective, present or former occupants) who meet the applicable income limitations under the IRC. Such commitment shall also be required with respect to any development financed by certain tax-exempt bonds in an amount so as not to require an allocation of federal credits hereunder.

In accordance with the IRC, the executive director may, for any calendar year during the project period (as defined in the IRC), allocate federal credits to a development, as a whole, which contains more than one building. Such an allocation shall apply only to buildings placed in service during or after the calendar year for which such allocation is made, and the portion of such allocation allocated to any building shall be specified not later than the close of the calendar year in which such building is placed in service. Any such allocation shall be subject to satisfaction of all requirements under the IRC.

If the executive director determines that the buildings or development is so entitled to the federal credits, he shall allocate the federal credits (or such portion thereof to which he deems the buildings or the development to be entitled) to the applicant's qualified low income buildings or to the applicant's development in accordance with the requirements of the IRC. If the executive director shall determine that the applicant's buildings or development is not so entitled to the federal credits, he shall not allocate the federal credits and shall so notify the applicant. In the event that any such applicant shall not request an allocation of all of its reserved federal credits or whose buildings or development shall be deemed by the executive director not to be entitled to any or all of its reserved federal credits, the executive director may reserve or buildings or developments of other qualified applicants in such manner as he shall determine consistent with the requirements of the IRC.

The executive director may prescribe (i) such deadlines for submissions of requests for allocations of federal credits (and, if applicable, state credits) for any calendar year as he deems necessary or desirable to allow sufficient processing time for the authority to make such allocations within such calendar year, and (ii) such deadlines for satisfaction of all requirements of the IRC (and, in the case of state credits, the state code) as he deems necessary or desirable to allow the authority sufficient time to allocate to other eligible applicants any federal credits for which such requirements are not satisfied.

The executive director may also require the applicant, in the case of any buildings or development which are to receive an allocation of federal credits hereunder and which are to be placed in service in any future year, to make a good faith deposit with respect to the federal credits (and, if applicable, the state credits) to assure that the buildings or the development will be placed in service in accordance with the IRC and that the applicant will otherwise comply with all of the requirements under the IRC.

The executive director may make the allocation of federal credits subject to such terms as he may deem necessary or appropriate to assure that the applicant and the development conform to the representations, commitments and information in the application and comply with the requirements of the IRC and these rules and regulations.

In the event that any development for which an allocation of federal credits is made shall not become a qualified low-income housing project (as defined in the IRC) within the time period required by the IRC or the terms of the allocation, the executive director may terminate the allocation. An allocation of federal credits to an applicant may also be cancelled with the mutual consent of such applicant and the executive director. Upon the termination or cancellation of any federal credits, the executive director may reserve or allocate, as applicable, such federal credits to other qualified applicants in such manner as he shall determine consistent with the requirements of the IRC.

## § 9. Allocation of state credits.

Upon the allocation of federal credits to an applicant who received a reservation of state credits under § 7, the executive director shall allocate state credits to the applicant in an amount equal to the amount of federal credits so allocated times such percentage of federal credits as shall have been determined by the executive director under § 7 but in no event shall such amount of state credits exceed the amount reserved to the applicant under § 7. If the amount of state credits so allocated to the applicant under this § 9 is less than the amount of state credits reserved to the applicant under § 7, then the executive director may reserve or allocate, as applicable, such unallocated state credits to other applicants in such manner as he shall determine consistent with the requirements of the state code.

In the case of any building or development to be financed by certain tax-exempt bonds in an amount so as not to require under the IRC an allocation of federal credits hereunder, the executive director shall, prior to the last day of the calendar year in which such building or development is placed in service, allocate state credits to the applicant in an amount equal to the amount of federal credits to be claimed annually by the applicant times such percentage of federal credits as shall have been determined by the executive director under § 7 but in no event shall such amount of state credits exceed the amount reserved to the applicant under § 7.

Prior to any allocation of state credits, the executive director may require the applicant to confirm the status of the owner or owners as Virginia taxpayers who are eligible for an allocation of state credits under § 7.

The executive director may make the allocation of state credits subject to such terms as he may deem necessary or appropriate to assure that the applicant and the

development conform to the representations, commitments, and information in the application and comply with the requirements of the IRC, the state code, and these rules and regulations.

The state credits allocated may be claimed for the first five taxable years in which the federal credits shall be claimed. The amount of state credits claimed in each such year shall be such percentage of the federal credits so claimed as shall have been established by the executive director pursuant to § 7; provided, however, that the amount of state credits which may be claimed by the applicant in the initial taxable year shall be calculated for the entire development on the basis of a twelve-month period during such initial taxable year, notwithstanding that the federal credits may be calculated on the basis of some (but not all) of the buildings in such development or on the basis of a period of less than twelve months or both; provided, further, that in no event shall the amount of state credits claimed in any year exceed the amount allocated under this § 9.

In the event that any federal credits claimed by the applicant for any taxable year in which the applicant also claimed state credits shall be recaptured pursuant to the IRC, the state credits for such taxable year shall be recaptured in an amount equal to the amount of federal credits recaptured for such taxable year times such percentage as shall have been established by the executive director pursuant to § 7. The applicants receiving state credits shall provide the authority with such information as the executive director may from time to time request regarding any recapture of the federal credits.

On or before such date each year as the executive director may require, each applicant shall apply to the authority to determine the amount of state credits which such applicant may claim for the applicable taxable year. Each such applicant shall submit such documents, certifications and information as the executive director may require. The authority shall certify to the Department of Taxation on forms prepared by the authority that the applicant qualified for the state credits in the amount set forth therein and shall provide such certification to the applicant. Such certification is required to be attached to the applicant's state income tax return to be filed with the Department of Taxation.

Section 8 hereof contains certain provisions relating to (i) the establishment of deadlines for submission of requests for allocation of state credits and for satisfaction of requirements of the IRC and state code and (ii) requirements for good faith deposits. Such provisions shall be applicable to all applicants for state credits, notwithstanding the fact that the developments or buildings may be financed by certain tax-exempt bonds in an amount so as not to require an allocation of federal credits hereunder.

In the event that any allocation of federal credits shall be terminated or cancelled pursuant to § 8 (or, in the

case of any development or buildings to be financed by certain tax-exempt bonds in an amount so as not to require an allocation of federal credits hereunder, in the event that the development shall not become a qualified low-income housing project as defined in the IRC within the time period required by the IRC or by the terms of the allocation of state credits), the executive director may also terminate or cancel the state credits and, if permitted by the state code, may reserve or allocate, as applicable, such state credits to other qualified applicants in such manner as he shall determine consistent with the requirements of the state code.

§ 10. Reservation and allocation of additional federal credits and state credits.

Prior to the initial determination of the "qualified basis" (as defined in the IRC) of the qualified low-income buildings of a development pursuant to the IRC, an applicant to whose buildings federal credits or state credits or both have been reserved may submit an application for a reservation of additional federal credits or state credits or both. Subsequent to such initial determination of the qualified basis, the applicant may submit an application for an additional allocation of federal credits or state credits or both by reason of an increase in qualified basis based on an increase in the number of low-income housing units or in the amount of floor space of the low-income housing units. Any application for an additional allocation of federal credits or state credits or both shall include such information, opinions, certifications and documentation as the executive director shall require in order to determine that the applicant's buildings or development will be entitled to such additional federal credits or state credits or both under the IRC, the state code and these rules and regulations. The application shall be submitted, reviewed, ranked and selected by the executive director in accordance with the provisions of §§ 6 and 7 hereof, and any allocation of federal credits or state credits or both shall be made in accordance with §§ 8 and 9 hereof. For the purposes of such review, ranking and selection and the determinations to be made by the executive director under the rules and regulations as to the financial feasibility of the development and its viability as a qualified low-income development during the credit period, the amount of federal credits or state credits, or both, previously reserved or allocated to the applicant (or, in the case of any development or building to be financed by certain tax-exempt bonds in an amount so as not to require an allocation of federal credits hereunder, the amount of federal credits which may be claimed by the applicant) shall be included with the amount of such federal credits or state credits or both so requested.

§ 11. Notification to the Internal Revenue Service of noncompliance with IRC.

In the event that the executive director shall become aware of noncompliance by any applicant with any of the provisions of § 42 of the IRC, the executive director shall, within 90 days, notify the Internal Revenue Service of

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such noncompliance. Such notification shall identify the applicant and the buildings and shall describe the noncompliance.

## VIRGINIA STATE LIBRARY AND ARCHIVES (LIBRARY BOARD)

**Title of Regulation:** VR 440-02-02. Requirements Which Must Be Met in Order to Receive Grants-In-Aid.

**Statutory Authority:** § 42.1-52 of the Code of Virginia.

**Public Hearing Date:** January 4, 1991 - 2 p.m.  
(See Calendar of Events section for additional information)

### Summary:

*This regulation implements House Document No.14 which addresses local minimum operating expenditure requirements libraries must meet to receive grants by securing the local funds to maintain, develop, and improve information services and fulfill the intent of the state aid law (§ 42.1-48) by increasing the minimum local operating expenditure requirement from two dollars per capita to 50% of the median statewide local operating expenditures.*

*The regulation responds to the need to improve public library service by specifying a reduction of state aid grant funding where a certified librarian is not employed, by improving access through evening hours of service, by installation of a telephone and listed number, and the provision of basic services free of charge.*

VR 440-02-02. Requirements Which Must Be Met in Order to Receive Grants-In-Aid.

In order to qualify for grants-in-aid, all libraries serving more than 5,000 persons shall *must* meet the following requirements by July 1, 1989 1992 :

I. 1. Be organized under the appropriate section of the Code of Virginia. Not more than one library in a county or regional library system or a municipal governmental unit may receive a grant.

II. Submit to the State Library Board:

1. Charter, resolution, or other legal papers under which they are organized.
2. A copy of the by-laws of the board of trustees, a list of trustees, revised as changes occur.
3. A five-year plan, adopted by the governing body of the library service in the area (areas) served. In order to receive continuing grants, this plan must be updated annually.

4. A written statement of policy covering such items as: service, personnel, and maintenance of book collections and other materials.

5. Statistical and financial reports including audits and statements of progress of the plan as requested.

6. A copy of the budget for the expenditure of local funds, not including anticipated state and federal funds. This must be submitted annually.

III. 3. Have local operating expenditures of at least \$1.75 per capita by July 1, 1989 and \$2.00 per capita by July 1, 1991 50% of the median statewide local operating expenditures per capita, two-thirds of which must be from taxation or endowment. The median shall be recalculated each biennium. Libraries obtaining aid for the first time must meet the lower requirement within two years after approval of first grant and the higher within three years or those falling below the 50% median must meet the requirement within five years. Libraries which fall below 50% of the median in local expenditures per capita must submit a plan to the State Library Board for reaching the minimum requirement. The plan must include a schedule of annual increases in local expenditures of not less than 20% of the amount needed to attain local per capita expenditures of 50% of the median within five years.

Local operating expenditures from taxation or endowment for any library, or library system, shall not fall below that of the previous year. In cases where the budgets of all the departments of the local government are reduced below those of the previous year, the library's state grant-in-aid would be reduced. The State Library may require that the amount of such reduction in the library's total expenditure be subtracted from the library's eligibility and that the state grant be reduced accordingly. If the library's budget is reduced and other agencies' budgets are not, then the library would receive no state grant-in-aid and would be ineligible for one until local expenditures shall have again reached or exceeded the local effort at the time of the last previous grant.

The library would be ineligible for any federal funds if local funds are reduced below that of the previous year.

Grants-in-aid shall be used as supplements to local funds.

The amount of any undesignated balance in the local operating budget at the end of the fiscal year which exceeds 10% will be subtracted from the grant which is based on that year's expenditures.

IV. 4. Have certified librarians in positions as required by state law. Libraries failing to employ a certified librarian in the position of director will have their

state aid grant reduced by 25%.

V. 5. Keep open a headquarters library or centrally located branch at least 40 hours a week for a full range of library services. This schedule must include at least ~~four~~ *three consecutive* evening hours and appropriate weekend hours. *Evening hours are defined as the hours after 5 p.m.*

VI. 6. Maintain an up-to-date reference collection and set up procedures for securing materials from other libraries through interlibrary loan.

Organize materials for convenient use through shelf arrangement, classification and cataloging, and provide a catalog of its resources.

Stimulate use of materials through publicity, displays, reading lists, story hours, book talks, book and film discussions and other appropriate means.

Lend guidance in all outlets to individuals in the use of informational, education, and recreational materials.

Lend assistance to civic, cultural, and educational organizations in locating and using materials for program planning, projects, and the education of members.

Maintain a collection of currently useful materials by annual additions and systematic removal of items no longer useful to maintain the purposes of quality of its resources.

*Have a telephone and the number of the telephone listed in the local telephone directory.*

*Provide the basic services listed in this section free of charge to the public as required by law.*

VII. 7. Every regional, county, and city library serving an area of more than 400 square miles, ~~and~~ or more than 25,000 persons, must provide some form of extension service acceptable to the board.

VIII. 8. If a library system has two or more service units, either branches or stations, it must maintain a scheduled, frequent delivery system

IX. 9. The Library Board may, at its discretion, make exceptions for a specified period of time to any single requirement listed above. The exception will be made only if the library can show that a real effort has been made to meet the requirement and that significant progress has been made toward meeting this requirement.

## BOARD OF PROFESSIONAL COUNSELORS

**Title of Regulation:** VR 560-01-02. Regulations Governing the Practice of Professional Counseling.

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

**Public Hearing Date:** January 14, 1991 - 9 a.m.  
(See Calendar of Events section for additional information)

### Summary:

*The proposed regulations establish requirements governing the practice of professional counseling in the Commonwealth. They include requirements necessary for licensure; criteria for the examinations; standards of practice and procedures for the disciplining of licensed professional counselors.*

VR 560-01-02. Regulations Governing the Practice of Professional Counseling.

## PART I. GENERAL PROVISIONS.

### § 1.1. Definitions.

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

*"Applicant"* means any individual who has submitted an official application and paid the application fee for licensure as a professional counselor.

*"Appraisal activities"* has the same meaning as defined in § 54.1-3500 of the Code of Virginia, "selecting, administering, scoring and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements and interests, and shall not include the use of projective techniques in the assessment of personality."

*"Board"* means the Virginia Board of Professional Counselors.

*"Candidate for licensure"* means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

*"Competency area"* means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

*"Counseling"* means assisting an individual, through the counseling relationship, to develop an understanding of personal problems, to define goals, and to plan action reflecting his interests, abilities, aptitudes and needs as they relate to educational progress, occupations and

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careers, and personal or social concerns.

*"Group supervision"* means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

*"Internship"* means supervised, planned, practical, advanced experience obtained in the clinical setting observing and applying the principles, methods and techniques learned in training or educational settings. The internship involves a longer period of time than the practicum.

*"Practicum"* means supervised, planned, practical experience occurring in a clinical setting, for an early introduction to subject matter. It is generally time-bound and for a shorter period of time than an internship, but it allows for demonstration and testing of information, knowledge, and skills acquired.

*"Professional counselor"* means a person trained in counseling and guidance services with an emphasis on individual and group guidance and counseling designed to assist individuals in achieving more effective personal, social, educational and career development and adjustment.

*"Regional accrediting agency"* means one of the regional accreditation agencies recognized by the United States Secretary of Education responsible for accrediting senior postsecondary institutions.

*"Supervision"* means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented face-to-face consultation, guidance and instruction with respect to the clinical skills and competencies of the person supervised.

## § 1.2. Fees required by the board.

A. The board has established the following fees applicable to licensure as a professional counselor:

Registration of supervision .....	\$ 75.
Change of supervisor .....	20.
Application processing .....	100.
Examination .....	150.
Reexamination	
Written .....	75.
Oral .....	75.
Provisional license .....	30.
Renewal of provisional license .....	30.

License renewal .....	75 100 .
Duplicate license .....	15.
Endorsement to another jurisdiction .....	10.
Late renewal .....	10.
Replacement of or additional wall certificate .....	15.
Name change .....	10.
Returned check .....	15.

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board.

## § 1.3. Substance abuse counseling.

VR ~~560-02-01~~ 560-01-03, Regulations Governing the Certification of Substance Abuse Counselors are incorporated by reference in these regulations.

## PART II. REQUIREMENTS FOR LICENSURE.

### § 2.1. Requirements, general.

No person shall practice as a professional counselor in the Commonwealth of Virginia except as provided in these regulations and when licensed by this board.

A. Licensure by the board shall be by examination.

B. Every applicant for licensure examination by the board shall:

1. Meet the education and experience requirements prescribed in § 2.2 of these regulations;
2. Have the institution(s) where the applicant completed the required graduate work sent directly to the executive director of the board, at least 60 days prior to the date of the written examination, official transcripts documenting the applicant's completion of the education requirements prescribed in § 2.2 A; and
3. Submit to the executive director of the board, not less than 60 days prior to the date of the written examination:
  - a. A completed application, on forms provided by the board;
  - b. Documented evidence of having fulfilled the experience requirements of § 2.2 B;
  - c. Endorsement letters from three responsible persons attesting to the applicant's character and



professional integrity; and

d. The licensure application fee prescribed in § 1.2 of these regulations.

*C. The board may license by endorsement those persons who are currently licensed in another state as a professional counselor and who have been licensed in another state through a similar process with equivalent requirements as described in subsection B.*

§ 2.2. Education and experience requirements for licensure examinations.

Every applicant for examination for licensure shall meet the requirements of subsections A and B of this section.

#### A. Education.

The applicant shall have completed 60 semester hours or 90 quarter hours of graduate study that are primarily counseling in nature, including a graduate degree in counseling or a related discipline, from a college or university accredited by a regional accrediting agency.

1. The graduate course work shall have included study in the nine core areas of:

- a. Professional identity, function and ethics;
- b. Theories of counseling and psychotherapy;
- c. Counseling and psychotherapy techniques;
- d. Group dynamics, theories, and techniques;
- e. Theories of human behavior, learning, and personality;
- f. Career development;
- g. Evaluation and appraisal *Appraisal, evaluation and diagnostic procedures;*
- h. Abnormal behavior; and
- i. Supervised practicum or internship.

2. One course may satisfy study in more than one of the nine study areas required in subdivision 1 of this subsection.

#### B. Supervised experience.

##### 1. The applicant.

The applicant for licensure shall have completed 4,000 hours of post-graduate degree experience in counseling practice under supervision satisfactory to the board. *The post-graduate experience shall consist of supervised practice in the following areas:*

*Counseling and psychotherapy techniques.*

*Appraisal, evaluation and diagnostic, procedures.*

*Professional identity, function, and ethics.*

*Case management and record keeping.*

a. The experience shall include 200 hours of individual supervision during the 4,000 hours, with a minimum of one hour per week of face-to-face ~~consultation~~ *supervision* between supervisor and applicant. *The experience shall be continuous and integrated, that is, no credit will be given for satisfying the 4,000 hours of required experience in the absence of approved individual face-to-face supervision and conversely, no credit will be given for individual face-to-face supervision that does not occur as a part of the 4,000 hours of post-graduate experience. The experience shall include supervised practice with various populations, clinical problems and theoretical approaches.*

b. Group supervision will be acceptable for not more than 100 hours of the required 200 hours of individual supervision on the basis of two hours of group supervision being equivalent to one hour of individual supervision, *but in no instance shall group supervision substitute for the required on site individual face-to-face supervision.*

c. A post-graduate degree practicum or internship may count for up to 2,000 hours of the required 4,000 hours of experience.

d. For applicants enrolled in an integrated course of study in an accredited institution leading to a graduate degree beyond the Master's level, supervised experience may begin after the completion of 30 graduate semester hours or 45 graduate quarter hours, including a practicum.

e. *Applicants may not call themselves professional counselors, solicit clients, bill for services rendered, or in any way represent themselves as professional counselors. During the post-graduate supervisory experience, applicants shall use their names, and the initials of their degree. Clients shall be informed of the applicant's supervisee status, the supervisor's name, professional address, and phone number.*

f. *Applicants shall not engage in practice under supervision in any areas for which they have not had appropriate education.*

##### 2. The supervisor.

a. A person who provides supervision for a prospective applicant for licensure as a professional counselor shall be licensed as a professional counselor, psychologist, school psychologist, clinical



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psychologist, clinical social worker, or psychiatrist with at least one-half of the individual face-to-face supervision rendered by a licensed professional counselor .

(1) Supervision by relatives of a prospective applicant will not be approved.

(2) The supervisor of a prospective applicant shall assume full responsibility for the clinical activities of that prospective applicant specified within the supervisory contract for the duration of the supervised experience. *In every instance there shall be an identifiable individual who is appropriately credentialed to provide supervision in the jurisdiction where the applicant provides counseling services.*

(3) Supervisors shall only be approved to provide supervision in areas for which they possess documented skills, training, and experience.

(4) Supervisors shall provide the board with documentation regarding their areas of expertise in a form specified by the board.

(5) *At least one-half of the required individual face-to-face supervision shall occur on site where the counseling services are provided and be provided by the board approved supervisor of record.*

b. Persons who do not meet the requirements of § 2.2 B 2 a but were approved by the board prior to July 31, 1988, to provide supervision to prospective applicants for licensure may continue to provide supervision to that individual, provided that the supervisory arrangement was registered with the board prior to July 31, 1988.

### 3. Registration of supervision.

a. Applicants who render counseling services in a nonexempt agency shall:

(1) With their supervisor, register with the board their supervisory contract on the appropriate forms for board approval before starting to practice under supervision;

(2) Have submitted directly to the board an official transcript of their relevant coursework in counseling; and

(3) Pay the registration fee prescribed by the board in § 1.2 of these regulations.

b. Applicants who render counseling services in an exempt agency, as defined in § 54.1-3500 of the Code of Virginia, may register their supervision with the board, as outlined above. Board approval and

successful completion of a planned supervision arrangement in an exempt setting will assure its acceptability at the time of application.

*c. The board may accept as equivalent post-graduate supervised experience that occurs in another jurisdiction provided that the board's requirements are met.*

### 4. Documentation of supervision.

Applicants shall document successful completion of their supervised experience on appropriate forms at the time of application. Supervised experience obtained prior to July 31, 1988, that was not registered with the board may be accepted towards licensure if this supervision met the requirements of the board which were in effect at the time the supervision was rendered.

*The supervisor shall conduct an annual evaluation of the applicant and report to the board the total number of hours of the experience and the number of hours of individual face-to-face on site hours of supervision.*

## PART III. EXAMINATIONS.

### § 3.1. General examination requirements.

A. Every applicant for initial licensure by the board as a professional counselor shall take a written examination and an oral examination as prescribed by the board.

B. The board may waive examination requirements if the applicant for licensure has been certified or licensed in another jurisdiction by standards and procedures equivalent to the board's.

### C. Examination schedules.

A written and an oral examination will be given at least twice each year. The board may schedule such additional examinations as it deems necessary.

1. The executive director of the board shall notify all candidates in writing of the time and place of the examinations for which they have been approved to sit.

2. The candidate shall submit the applicable fees and a case study as prescribed in § 3.3 C.

3. If the candidate fails to appear for the examination without providing written notice at least one week before the examinations, the examination fee shall be forfeited.

4. The executive director will notify all candidates in writing of their success or failure on any examinations.

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## D. Deferrals by candidate; time limit.

A candidate approved by the board to sit for an examination shall take that examination within two years from the date of such initial board approval. If the candidate has not taken the examination by the end of the two-year period here prescribed:

1. The initial board approval to sit for such examination shall then become invalid; and
2. In order to be considered for such examination later, the applicant shall file a complete new application with the board.

## § 3.2. Written examination.

A. The written examination will be a competency-based validated examination and will cover the core areas of counseling.

B. The board will establish passing scores on the written examination.

## § 3.3. Oral examination.

A. Successful completion of the written examination requirement shall be a prerequisite to taking the oral examination.

B. Candidates who pass the written examination will be notified by the board of the time and place of the oral examination and will be instructed to submit a case study.

C. The case study shall be a report of a case performed in the candidate's counseling practice during the last six months and shall be prepared as follows:

1. The report shall be not less than six or more than eight double-spaced typewritten pages in length. The names of persons in the study shall be disguised to protect clients' identities. The name and address of the candidate shall appear on a cover page.

2. The report case study shall be a brief summary of biographical data, personal social history, and any relevant medical history of a client, presenting the problem, diagnosis, treatment plan and prognosis summary of the presenting problem, diagnosis, and formulation and implementation of the treatment plan. This should include supporting biographical data, personal social history and relevant medical history. The report should focus on the candidate's role in facilitating the change process, including theoretical position, dialogue and tools and techniques used in the treatment plan clearly state candidate's theoretical position. It should delineate tools and techniques used and the counselor's role in facilitating the change process consistent with the theoretical.

D. The oral examination shall consist of an interview

between the board or its designees and the candidate for the purpose of:

1. Reviewing the candidate's education, training and experience;
2. Evaluating the candidate's professional, emotional, and social maturity; the extent and nature of professional identity; and application of Standards of Practice as defined in § 6.1 of these regulations;
3. Assessing the candidate's case study; and
4. Evaluating the candidate's *breadth of knowledge* of and competency to engage in the *independent practice of counseling*.

E. Following the oral examination, the examination committee will make a recommendation to the board. A majority decision of the board will determine whether the candidate has passed the oral examination.

## § 3.4. Reexamination.

A. Reexamination will be required only on the examination failed.

B. After paying the *written* reexamination fee, a candidate may be reexamined *for the written exam* within an 18-month period without filing a new application *and without presenting evidence of additional education and experience*. *In the case of a reexamination for the oral, a new case study must be provided*.

C. To be reexamined, a candidate shall notify the board and pay the appropriate fee no less than 60 days before a scheduled examination.

D. A candidate who fails any examination two times shall reapply and submit documentation of additional education and experience as required by the board.

## PART IV. LICENSURE RENEWAL; REINSTATEMENT; NAME CHANGE.

### § 4.1. Annual renewal of licensure.

All licensees shall renew licenses on or before June 30 of each year.

A. Every license holder who intends to continue to practice shall submit to the executive director on or before June 30 of each year:

1. A completed application for renewal of the license; and
2. The renewal fee prescribed in § 1.2.

B. Failure to receive a renewal notice from the board

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shall not relieve the license holder from the renewal requirement.

## § 4.2. Late renewal; reinstatement.

A. A person whose license has expired may renew it within four years after its expiration date by paying the penalty fee prescribed in § 1.2 as well as the license fee prescribed for each year the license was not renewed.

B. A person who fails to renew a license for four years or more and wishes to resume practice shall:

1. Pay the oral examination fee prescribed in § 1.2;
2. Take an oral examination; and
3. Upon approval for reinstatement, pay the penalty fee prescribed in § 1.2 and the license fee prescribed for each year the license was not renewed.

## § 4.3. Legal name change.

A. An individual practicing under a license issued by the board shall ensure that the current license bears the current legal name of that individual.

B. A licensee whose name is changed by marriage or court order shall promptly:

1. Notify the board of such change and provide a copy of the legal paper documenting the change.
2. Pay the "name change" fee prescribed in § 1.2.
3. Request and obtain from the board a new license bearing the individual's new legal name.

## PART V. ADVISORY COMMITTEES.

### § 5.1. Advisory committees.

A. The board may establish examining and advisory committees to assist it in evaluating candidates for licensure.

B. The board may establish an advisory committee to evaluate the mental and emotional competence of any licensee or candidate for licensure when such competence is in issue before the board.

## PART VI. STANDARDS OF PRACTICE. UNPROFESSIONAL CONDUCT; DISCIPLINARY ACTIONS; REINSTATEMENT.

### § 6.1. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the

primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons licensed by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.

2. Be able to justify all service rendered to clients as necessary for diagnostic or therapeutic purposes.

3. 2. Practice only within the competency areas for which they are qualified by training or experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of professional counselors.

5. Use only those educational credentials in association with their licensure and practice as a professional counselor that have been earned at a college or university accredited by a regional accrediting agency and that are counseling in nature. Those credentials include the title "Doctor" as well as academic designations following one's name such as M.Ed. and Ph.D.

6. Use only indicators of current counseling-related credentials awarded by independent credentialing agencies (such as American Association of Marriage and Family Therapists, Certified Rehabilitation Counselors, Certified Clinical Mental Health Counselors) in association with their licensure and practice as professional counselors.

7. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.

8. Ensure that clients are aware of fees and billing arrangements before rendering services.

9. Keep confidential their counseling relationships with clients, with the following exceptions: (i) when the client is in danger to self or others; and (ii) when the professional counselor is under court order to disclose information.

10. Disclose counseling records to others only with the expressed consent of the client.

11. Ensure that the welfare of clients is in no way compromised in any experimentation or research involving those clients.

12. Not engage in dual relationships with clients that might compromise the client's well-being or impair the counselor's objectivity and professional judgment (to include such activities as counseling close friends or

relatives, engaging in sexual intimacies with a client):

13. When advertising their services to the public, ensure that such advertising is neither fraudulent nor misleading.
3. Be aware of the areas of competence of related professions and make full use of other professional, technical and administrative resources to secure for clients the most appropriate services.
4. Strive, through continuing education to stay abreast of new developments, concepts and practices which are important to providing appropriate professional services.
5. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes and attempt to terminate a private service or consulting relationship when it becomes clear that the consumer is not benefiting from the relationship.
6. Avoid offering services to a client who is receiving services from another mental health professional without attempting to inform such other professionals in order to avoid confusion and conflict for the consumer.
7. Provide counseling services for the purpose of diagnosis, treatment or personalized advice only in the context of a professional relationship, not by means of public lectures or demonstrations, newspapers or magazine articles, radio or television programs, mail or similar media.
8. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients.
9. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment.
10. Avoid any action that may violate or diminish the legal and civil rights of clients and safeguard the rights of each family member or group who is receiving services.
11. Be sensitive to multicultural and gender differences among clients.
12. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.
13. Inform clients (i) of the purposes of an interview, testing or evaluation session and (ii) the ways in which information obtained in such sessions will be used before asking the client to reveal personal information or allowing such information to be divulged.
14. Consider the validity, reliability and appropriateness of tests selected for use with clients and carefully interpret the performance of individuals from groups not represented in standardized norms.
15. Represent accurately their competence, education, training and experience.
16. Use only those educational and professional credentials that have been earned at a college or university accredited by a regional accrediting agency, or by a national certifying agency, and that are counseling in nature. Those credentials include the title "Doctor" as well as academic and professional certification designations following one's name, such as M.Ed., Ph.D., N.B.C.C.
17. Avoid improper direct solicitation of clients and announce professional services fairly and accurately in a manner which will aid the public in forming their own informed judgments, opinions and choices and which avoids fraud and misrepresentation through sensationalism, exaggeration of superficiality.
18. Provide clients with accurate information of what to expect in the way of tests, reports, billing, therapeutic regime and schedules before rendering services.
19. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destructions of records which are no longer useful.
20. Obtain expressed client permission before taping or otherwise recording sessions with clients.
21. Disclose counseling records to others only with the expressed informed consent of the client and ensure the accuracy and indicate the validity of any client information which is disclosed.
22. Keep confidential their counseling relationships with clients, with the following exceptions: (i) when the client is in danger to self or others; and (ii) when the professional counselor is under court order to disclose information.
23. Avoid public behavior which is in violation of accepted professional, moral and legal standards.
24. Avoid dual relationships with clients, supervisees and supervisors that might compromise the client's or supervisee's well being, impair the counselor's or supervisor's objectivity and professional judgment or increase the risk of client or supervisee exploitation. This prohibition includes, but is not limited to, such activities as counseling close friends, employees or relatives, engaging in sexual intimacies with clients, supervisees or supervisors.

## Proposed Regulations

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25. *Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.*

26. *Report to the board known or suspected violations of the laws and regulations governing the practice of professional counselors.*

§ 6.2. Grounds for revocation, suspension, or denial of renewal of license.

A. In accordance with subdivision 7 of § 54.1-2400 of the Code of Virginia, the board may, after a hearing, revoke, suspend or decline to renew a board license for just cause or fines .

B. Action by the board to revoke, suspend or decline to renew a license shall be taken in accord with the following:

1. Conviction of a felony or misdemeanor involving moral turpitude.
2. Procuring of license by fraud or misrepresentation.
3. Conducting one's practice in such a manner as to make it a danger to the health and welfare of one's clients or to the public, or if one is unable to practice counseling with reasonable skill and safety to clients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or result of any mental or physical condition.
4. Negligence in professional conduct or nonconformance with the Standards of Practice (§ 6.1 B of these regulations).
5. Performance of functions outside the demonstrable areas of competency.
7. Violation of or aid to another in violating any provision of Chapter 35 of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of professional counseling, or any provision of these regulations.

C. Petition for rehearing.

A petition may be made to the board for reinstatement upon good cause shown or as a result of substantial new evidence having been obtained that would alter the determination reached in subsection B of this section.

D. *Reinstatement procedure.*

*Reference powers of board to provide monetary penalties § 54.1-2401.*

§ 6.3. Reinstatement following disciplinary action.

A. Any person whose license has been revoked or denied renewal by the board under the provisions of § 6.2

may, two years subsequent to such board action, submit a new application to the board for licensure.

B. The board in its discretion may, after a hearing, grant the reinstatement sought in subsection A of this section.

C. The applicant for such reinstatement, if approved, shall be licensed upon payment of the appropriate fees applicable at the time of reinstatement.



DEPARTMENT OF HEALTH REGULATORY BOARDS  
 VIRGINIA BOARD OF PROFESSIONAL COUNSELORS  
 1601 Rolling Hills Drive  
 Richmond, Virginia 23229-5005  
 (804) 662-9912

Application for Certification as a  
 Substance Abuse Counselor

**INSTRUCTIONS** PLEASE TYPE OR PRINT USE BLACK INK

1. Applicants must complete all sections.
2. Completed applications should be mailed to the above address.
3. Applications must be received NOT LESS THAN 60 DAYS PRIOR TO THE DATE OF THE WRITTEN EXAMINATION.
4. Fees: An application fee of \$50 must be submitted with the application. APPLICATIONS WILL NOT BE PROCESSED WITHOUT THE APPROPRIATE FEE. THE APPLICATION FEE IS NOT REFUNDABLE. (Make check or money order payable to the Treasurer of Virginia.)

**I. GENERAL INFORMATION**

NAME (LAST, FIRST, MIDDLE INITIAL, SUFFIX, MAIDEN NAME)	SOCIAL SECURITY NUMBER	DATE OF BIRTH
MAILING ADDRESS (STREET AND/OR BOX NO., CITY, STATE, ZIP)	HOME PHONE NUMBER	PLACE OF BIRTH
BUSINESS ADDRESS (IF DIFFERENT THAN ABOVE)	BUSINESS PHONE NUMBER	

LIST ALL OF THE STATES IN WHICH YOU NOW HOLD OR HAVE EVER HELD AN OCCUPATIONAL LICENSE/CERTIFICATE TO PRACTICE IN ORDER OF ATTAINMENT.

STATE	LICENSE/CERTIFICATE NUMBER	ISSUE DATE	TYPE OF LICENSE/CERTIFICATE

**ANSWER THE FOLLOWING QUESTIONS:**

- |  |     |    |
|--|-----|----|
|  | YES | NO |
|--|-----|----|
1. Have you ever been denied the privilege of taking an occupational licensure or certification examination? If yes, state what type of occupational examination and where. - -
  2. Have you ever failed an examination for licensure or certification? If so, how many times \_\_\_\_ Where? - -
  3. Have you ever had any of the following disciplinary actions taken against an occupational license to practice or are any such actions pending? - -
    - (a) Suspension/revocation
    - (b) probation
    - (c) reprimand/cease and desist
 If yes, explain in detail \_\_\_\_\_
  4. Have you ever been convicted of a violation of or pled nolo contendere to any federal, state, or local statute regulation or ordinance or entered into any plea bargaining relating to a felony or misdemeanor (excluding traffic violations, except convictions for driving under the influence)? - -
  5. Have you ever been physically or emotionally dependent upon the use of alcohol/drugs or been treated by, consulted with, or under the care of a professional for substance abuse? If yes, please provide a letter from the treating professional stating the diagnosis, treatment, and prognosis. - -

- |  |     |    |
|--|-----|----|
|  | YES | NO |
|--|-----|----|
6. Have you ever received treatment or been hospitalized for a nervous, emotional, or mental disorder? If yes, please provide a letter from your treating professional summarizing diagnosis, treatment, and prognosis. - -
  7. Have you ever been censured, warned, or requested to withdraw from any health care facility, agency, or practice? - -

**II. SUPERVISED COUNSELING EXPERIENCE**

INDICATE BELOW PERSON(S) DESIGNATED AS YOUR SUPERVISOR OF SUBSTANCE ABUSE COUNSELING SUPERVISED EXPERIENCE TO WHOM VERIFICATION FORM(S) WILL BE SENT. VERIFICATION OF SUPERVISION FORMS MUST BE RETURNED TO THE BOARD OFFICE BY THE SUPERVISOR, NOT THE APPLICANT.

SUPERVISOR'S NAME		
INSTITUTION OR BUSINESS NAME & ADDRESS		
CURRENT ADDRESS (IF DIFFERENT FROM ABOVE)		
DATES APPLICANT EMPLOYED	TOTAL HOURS OF ONE TO ONE SUPERVISION	
FROM _____ TO _____		
DESCRIPTION OF SUPERVISION	TOTAL HOURS OF GROUP SUPERVISION	
DESCRIPTION OF APPLICANT'S PROFESSIONAL WORK DURING THE SUPERVISION		
SUPERVISOR'S NAME		
INSTITUTION OR BUSINESS NAME & ADDRESS		
CURRENT ADDRESS (IF DIFFERENT FROM ABOVE)		
DATES APPLICANT EMPLOYED	TOTAL HOURS OF ONE TO ONE SUPERVISION	
FROM _____ TO _____		
DESCRIPTION OF SUPERVISION	TOTAL HOURS OF GROUP SUPERVISION	
DESCRIPTION OF APPLICANT'S PROFESSIONAL WORK DURING THE SUPERVISION		

II. EDUCATIONAL EXPERIENCE							
EDUCATIONAL INSTITUTIONS ATTENDED		DATES ATTENDED				DEGREE	CONFERRED
HIGH SCHOOL / COLLEGE	CITY AND STATE	FROM	TO				
A		MON	YR	MON	YR		
B							
C							
D							
E							
F							

\*Applicants are to have the high school they graduated from submit an official transcript directly to the Board. Applicants with GED certificates must provide official documentation to the Board of that certificate.

**G. SUBSTANCE ABUSE COUNSELOR EDUCATIONAL REQUIREMENTS:**

Applicants are required to document 400 hours in a substance abuse educational program from one of the following: (1) an accredited university or college; (2) an integrated program approved by the Board; or (3) an individualized program of seminars and workshops approved by the Board at the time of application. APPLICANTS MUST VERIFY THE COURSE WORK DESCRIBED BELOW THROUGH OFFICIAL COLLEGE TRANSCRIPTS SENT DIRECTLY TO THE BOARD FOR COLLEGE/UNIVERSITY PROGRAMS. COPIES OF SEMINAR/WORKSHOP CERTIFICATES MUST BE SUBMITTED TO THE BOARD TO DOCUMENT HOURS ACCUMULATED IN SEMINARS/WORKSHOPS.

**SUBSTANCE ABUSE EDUCATIONAL REQUIREMENTS  
EXPERIENTIAL AND DIDACTIC TRAINING (220 hours)**

Content	Institution/Agency	Course Number And Title/Workshop Title	Clock Hours
Knowledge of Drugs, Alcohol, and Substance Abuse Treatment			
Case Management			
Counseling Principles and Techniques			
Information and Referral			
Recovery Process			

\*One semester credit is equivalent to 15 clock hours  
One quarter credit is equivalent to 10 clock hours

**SUBSTANCE ABUSE EDUCATIONAL TASKS**

H. A total of 180 hours of the following tasks must be documented, with at least four hours performed in each task (see Section 2.2.B.2.c. of the Board of Professional Counselors' Regulations governing the Certification of Substance Abuse Counselors).

TASK	NUMBER OF HOURS	INSTITUTION/AGENCY	COURSE NUMBER AND TITLE/WORKSHOP TITLE
Intake			
Assisting in Developing a Treatment Plan			
Facilitating Transportation			
Individual and Group Counseling			
Continuous Client Evaluation			
Referral			
Crisis Intervention			
Case Finding			
Client Follow-up			
Contact			
Working with Families			
Seeking and Using Collateral Support			
Reporting and Record Keeping			
Coordination of Treatment Plan			
Outreach			
Case consultation			
Identification of Treatment Gaps and Obstacles			
Assisting in Program Development			
Identifying, Mobilizing, and Coordinating Community Resources			
Education and Prevention			
Staff Training			
Program Consultation			

**III. REFERENCES**

List the names of three individuals who are acquainted with your professional work and who will be submitting letters of reference.

Name and Address	Title







# Proposed Regulations

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**Title of Regulation:** VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.

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

**Public Hearing Date:** January 14, 1991 - 9 a.m.  
(See Calendar of Events section for additional information)

## Summary:

The proposed regulations establish requirements governing the practice of substance abuse counseling in the Commonwealth. They include requirements necessary for licensure; criteria for the examinations; standards of practice, and procedures for the disciplining of certified substance abuse counselors.

VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.

## PART I. GENERAL PROVISIONS.

### § 1.1. Definitions.

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

"Applicant" means an individual who has submitted a completed application with documentation and the appropriate fees to be examined for certification as a substance abuse counselor.

"Board" means the Virginia Board of Professional Counselors.

"Candidate" means a person who has been approved to take the examinations for certification as a substance abuse counselor.

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Didactic" means teaching-learning methods which impart facts and information, usually in the form of one-way communication (includes directed readings and lectures).

"Substance abuse counseling" means applying a counseling process, treatment strategies and rehabilitative services to help an individual to:

1. Understand his substance use, abuse or dependency; and
2. Change his drug-taking behavior so that it does not interfere with effective physical, psychological, social or vocational functioning.

"Clinical supervision" means the ongoing process performed by a clinical supervisor who monitors the performance of the person supervised and provides regular, documented face-to-face consultation, guidance and education with respect to the clinical skills and competencies of the person supervised.

"Clinical supervisor" means one who provides case related supervision, consultation, education and guidance for the applicant. The supervisor must be credentialed as defined in §§ 2.1 A and 2.3 D of these regulations.

### § 1.2. Cross-referencing.

These regulations are incorporated by reference in VR 560-01-02 Regulations Governing the Practice of Professional Counseling.

### § 1.3. Fees required by the board.

A. The board has established the following fees applicable to the certification of substance abuse counselors:

Registration of supervision .....	\$ 25
Application processing .....	50
Examination .....	100
Reexamination .....	100
Certification renewal .....	50
Duplicate certificate .....	15
Late renewal .....	10
Replacement of or additional wall certificate .....	15
Name change .....	10
Returned check .....	15

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the Board of Professional Counselors.

## PART II. REQUIREMENTS FOR CERTIFICATION.

### § 2.1. Certification, general.

No person shall use the title of "certified substance abuse counselor" in the Commonwealth of Virginia except as provided in these regulations.

A. A certified substance abuse counselor shall be employed to deliver substance abuse counseling in a state-approved public or private facility under the supervision of an appropriately licensed professional—a professional counselor, clinical psychologist, psychologist,

clinical social worker, medical doctor credentialed as a psychiatrist or addictionologist—who shall assume ultimate responsibility for the professional activities of the certified substance abuse counselor.

B. A candidate for certification as a substance abuse counselor shall meet all the requirements of these regulations, including passing the examination prescribed in § 3.1 General examination requirements.

C. Prerequisite to examination.

Every prospective applicant for examination for certification by the board shall:

1. Meet the educational requirements prescribed in § 2.2 of these regulations;
2. Register their supervision with the board at least one year before applying, using the appropriate form and paying the fees prescribed by the board. The board, in its discretion, may waive this one-year period for applicants who have met the work experience requirements prescribed in § 2.3.
3. Meet the experience requirements prescribed in § 2.3;
4. Meet the requirements of character and professional integrity prescribed in § 2.4; and
5. Submit to the executive director of the board, at least 60 days prior to the date of the written examination:
  - a. A completed application form;
  - b. Documented evidence of having fulfilled the education, supervision, experience and references required in subdivisions 1, 2, 3, and 4 of this subsection; and
  - c. The examination fee prescribed in § 1.3 of these regulations.

D. Every applicant for examination shall take the examination at the time prescribed by the board.

§ 2.2. Educational requirements.

A. An applicant for examination for certification as a substance abuse counselor shall:

1. Have a high school diploma or general educational development (GED) certificate; and
2. Have completed 400 hours of substance abuse education.

B. Substance abuse education.

1. The education will include 220 hours spent in receiving didactic training in substance abuse counseling. Each applicant shall have received a minimum of 10 clock hours in each of the following six areas:

- a. Understanding the dynamics of human behavior;
- b. Signs and symptoms of substance abuse;
- c. Counseling and treatment approaches, including information on the group therapy process;
- d. Continuum of care and case management skills;
- e. Recovery process and relapse prevention methods;
- f. Ethics and professional identity.

2. The education shall also consist of 180 hours of experience performing the following tasks with substance abuse clients:

- a. Screening clients to determine eligibility and appropriateness for admission to a particular program.
- b. Intake of clients by performing the administrative and initial assessment tasks necessary for admission to a program.
- c. Orientation of new clients to program's rules, goals, procedures, services, costs and the rights of the client.
- d. Assessment of client's strengths, weaknesses, problems, and needs for the development of a treatment plan.
- e. Treatment planning with the client to identify and rank problems to be addressed, establish goals, and agree on treatment processes.
- f. Counseling, the client utilizing specialized skills to facilitate agreed upon changes in the client.
- g. Case management activities which bring services, agencies, people and resources together in a planned framework of action to achieve established goals.
- h. Crisis intervention responses to clients' needs during acute mental, emotional or physical distress.
- i. Education of clients by providing information about drug abuse and available services and resources.
- j. Referral of clients in order to meet identified needs unable to be met by the counselor and assisting the client in effectively utilizing those resources.

# Proposed Regulations

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k. Reporting and charting information about client's assessment, treatment plan, progress, discharge summaries and other client-related data.

l. Consultation with other professionals to assure comprehensive quality care for the client.

Each of these tasks shall be performed for at least eight hours under supervision and shall be verified as a part of the application by the supervisor.

## § 2.3. Experience requirements.

A. An applicant for certification as a substance abuse counselor shall have had 2,000 hours of supervised experience in the delivery of clinical substance abuse counseling services.

B. The work experience shall be supervised by a licensed professional or certified substance abuse counselor working under the supervision of a licensed professional satisfactory to the board. In every instance there shall be an identifiable licensed professional who is appropriately credentialed to provide supervision and who is ultimately responsible for services provided by the trainee.

C. The supervised experience shall include at least a minimum of two hours per week of face-to-face consultation between the supervisor and the applicant.

D. Supervision shall be provided under this section according to the following requirements:

1. The supervision contract provided by the board shall be completed and signed by the applicant and the supervisor.

2. The supervisor shall assume responsibility for the professional activities of the applicant.

3. The supervisor shall not provide supervision for activities for which the prospective applicant has not had appropriate education.

4. The supervisor shall provide supervision only for those counseling services which he is qualified to render.

5. Group supervision involving up to six members in a group will be acceptable for one hour of the two hours per week of supervision required in subsection C of this section, substituting on the basis of two hours of group supervision equaling one hour of individual supervision. In no case shall a person receiving supervision receive less than one hour of face-to-face individual supervision per week.

6. Supervision must be provided by a professional who has had specialized training or experience in alcoholism or drug abuse counseling and who is a licensed professional counselor, licensed clinical

psychologist, licensed psychologist, licensed clinical social worker, or medical doctor credentialed as a psychiatrist, addictionologist or a certified substance abuse counselor working under the supervision of a licensed professional satisfactory to the board.

7. At the time of formal application for certification, the individual providing supervision shall document for the board the applicant's total hours of supervision, length of work experience, competence in counseling and any needs for additional supervision or training.

## § 2.4. Character and professional integrity.

A. Along with the application, the applicant shall submit endorsement letters from three responsible persons attesting to the applicant's character and professional integrity.

B. If the applicant has been under treatment for alcohol or other drug problems within the last two years, the applicant shall provide a written statement from the certified or licensed individual responsible for the treatment. The written statement shall address the capability of the applicant to assume the responsibilities of a certified substance abuse counselor.

## § 2.5. Continuing supervision.

The certified substance abuse counselor shall keep the board informed of his current supervisor's name, business address and phone number. The board shall be informed within 30 days of any changes in the certified substance abuse counselor's supervision.

## PART III. EXAMINATIONS.

### § 3.1. General examination requirements.

A. Every applicant for certification as a substance abuse counselor shall pass a written examination in order to be certified.

B. A written examination will be given at least once each year. The board may schedule such additional examinations as it deems necessary.

1. The executive director of the board shall notify all applicants in writing of the time and place of the examination for which they have been approved to sit.

2. If the applicant fails to appear for the examination without providing written notice at least one week before the examination, the examination fee shall be forfeited.

3. The executive director will notify all applicants in writing of their success or failure on any examination.

4. The applicant shall submit the applicable fees as

prescribed in § 1.3.

## § 3.2. Written examination.

The written examination shall consist of objective, multiple-choice, or essay questions.

### PART IV. RENEWAL AND REINSTATEMENT.

## § 4.1. Annual renewal of certificate.

Every certificate issued by the board shall expire on June 30 of each year.

A. Along with the renewal application, the certified substance abuse counselor shall submit the renewal fee prescribed in § 1.3.

B. Failure to receive a renewal notice and application form(s) shall not excuse the certified substance abuse counselor from the renewal requirement.

## § 4.2. Reinstatement.

A. A person whose certificate has expired may renew it within four years after its expiration date by paying the penalty fee prescribed in § 1.3 and the certification fee prescribed for each year the certificate was not renewed.

B. A person who fails to renew a certificate for four years or more shall:

1. Pay the late renewal fee prescribed in § 1.3 and the certification fee prescribed for each year the certificate was not renewed.
2. Provide evidence satisfactory to the board of current ability to practice as evidenced by:
  - a. Continuous practice of substance abuse counseling during the preceding two years,
  - b. Continuing education in substance abuse counseling consisting of at least 20 hours per year for the preceding two years, or
  - c. At least, 40 hours of substance abuse education in the 12 months preceding reapplication.

### PART V. STANDARDS OF PRACTICE; DISCIPLINARY ACTIONS; REINSTATEMENT.

## § 5.1. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons certified by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.
2. Be able to justify all service rendered to clients as necessary for diagnostic or therapeutic purpose.
3. Practice only within the competency area for which they are qualified by training or experience.
4. Report to the board known or suspected violations of the laws and regulations governing the practice of certified substance abuse counselors.
5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.
6. Keep confidential their counseling relationships with clients, except: (i) when the client is a danger to self or others; and (ii) when the counselor is under court order to disclose information.
7. Disclose counseling records to others only with written consent of the client.
8. Avoid dual relationships with clients that might compromise the client's well-being or impair the counselor's objectivity and professional judgment (includes such activities as counseling close friends or relatives and engaging in sexual intimacies with a client).

## § 5.2. Grounds for revocation, suspension, or denial of renewal of certificate; petition for rehearing.

A. In accordance with § 54.1-2400(7) of the Code of Virginia, the board may revoke, suspend or decline to renew a certificate based upon the following conduct:

1. Conviction of a felony or misdemeanor involving moral turpitude.
2. Procuring a certificate by fraud or misrepresentation.
3. Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public; or if one is unable to practice counseling with reasonable skill and safety to clients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.
4. Negligence in professional conduct or nonconformance with the standards of practice outlined in § 5.1 B of these regulations.

## Proposed Regulations

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5. *Performance of functions outside the board-certified area of competency.*

6. *Violation of or aid to another in violating any provision of Chapter 35 of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of the profession regulated, or any provision of these regulations.*

**B. *Petition for rehearing.***

*A petition may be made to the board for a rehearing upon good cause shown or as a result of substantial new evidence having been obtained which would alter the determination reached in subsection A of this section.*

**§ 5.3. *Reinstatement following disciplinary action.***

**A. *Any person whose certificate has been revoked or denied renewal by the board under the provisions of § 5.2 must submit a new application for certification to the board.***

**B. *The board in its discretion may, after a hearing, grant the reinstatement sought in subsection A of this section.***

**C. *The applicant for such reinstatement, if approved, shall be certified upon payment of the appropriate fees applicable at the time of reinstatement.***





VERIFICATION OF SUPERVISION FORM

DEPARTMENT OF HEALTH PROFESSIONS  
BOARD OF PROFESSIONAL COUNSELORS  
1601 Rolling Hills Drive  
Richmond, Virginia 23229-5005

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HEALTH PROFESSIONS  
BOARD OF PROFESSIONAL COUNSELORS  
1601 Rolling Hills Drive  
Richmond, Virginia 23229-5005  
(804) 662-9912

LICENSURE VERIFICATION

TO WHOM IT MAY CONCERN:

An application for licensure as a Professional Counselor has been filed with this Board by \_\_\_\_\_, who lists you as an employment supervisor.

Since the Board cannot assess any application without evaluating the applicant's professional experience, we request that you complete this standardized form adding any comments of your own which you consider pertinent.

Thank you in advance for your cooperation.

1. Institution's Name \_\_\_\_\_
2. Institution's Function \_\_\_\_\_
3. Are you licensed? \_\_\_\_\_ License Title (i.e., counselor, psychologist, etc.) \_\_\_\_\_ License No. \_\_\_\_\_ If not licensed, attach vita.
4. Applicant's position \_\_\_\_\_
5. Dates of Employment \_\_\_\_\_ Total hours per week \_\_\_\_\_  
Period of supervision by you \_\_\_\_\_  
Total overall supervised experience hours \_\_\_\_\_
6. Number of hours per week of face-to-face supervision \_\_\_\_\_
7. Total overall number of hours of face-to-face supervision \_\_\_\_\_
8. Duties performed by applicant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. If any of the above items was considered an internship, please describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
10. In your opinion, is the applicant competent to practice counseling? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
11. Further Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor's Name (Please Print)

\_\_\_\_\_  
Supervisor's Signature

APPLICANTS FOR PROFESSIONAL COUNSELOR LICENSURE IN THE COMMONWEALTH OF VIRGINIA ARE REQUIRED TO SEND A LICENSURE VERIFICATION FORM TO EVERY JURISDICTION IN WHICH THEY CURRENTLY HOLD, OR HAVE HELD, A LICENSE TO PRACTICE AS A PROFESSIONAL COUNSELOR OR OTHER HEALTH PRACTITIONER FOR THE PURPOSE OF LICENSURE VERIFICATION. THE STATE LICENSURE BOARD MUST RETURN THE FORM TO THE BOARD OF PROFESSIONAL COUNSELORS.

TO: \_\_\_\_\_ Board of Professional Counselors  
(State)

FROM: \_\_\_\_\_  
(Applicant)

RE: Verification of Licensure in Another Jurisdiction \_\_\_\_\_

I am applying for licensure as a professional counselor in Virginia. Please furnish the information requested below and return the form to the Board of Professional Counselors at the address given above.

License Number Held \_\_\_\_\_

Date of Initial Licensure \_\_\_\_\_

Is the applicant currently licensed and in good standing? \_\_\_\_\_

If the applicant's license has expired, is the applicant eligible to renew his or her license? Yes \_\_\_\_\_ No \_\_\_\_\_

If no, please explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has there ever been any disciplinary action taken against the applicant's license? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that the information given is correct.

\_\_\_\_\_  
(Authorized Licensure Official)

SEAL

\_\_\_\_\_  
Date

LICVERFI

\_\_\_\_\_  
Jurisdiction

NAME OF APPLICANT FOR LICENSURE (PRINT)

COMMONWEALTH OF VIRGINIA  
 DEPARTMENT OF HEALTH PROFESSIONS  
 BOARD OF PROFESSIONAL COUNSELORS  
 1601 Rolling Hills Drive  
 Richmond, Virginia 23229-5005  
 (804) 662-9912

LICENSURE VERIFICATION OF SUPERVISOR

OUT OF STATE SUPERVISORS OF PROFESSIONAL COUNSELOR TRAINEES IN THE COMMONWEALTH OF VIRGINIA ARE REQUIRED TO VERIFY THAT THEY CURRENTLY HOLD A LICENSE TO PRACTICE AS A PROFESSIONAL COUNSELOR, CLINICAL PSYCHOLOGIST, PSYCHOLOGIST, CLINICAL SOCIAL WORKER OR PSYCHIATRIST FOR THE PURPOSE OF LICENSURE VERIFICATION. THE STATE LICENSURE BOARD MUST RETURN THE FORM TO THE BOARD OF PROFESSIONAL COUNSELORS.

TO: \_\_\_\_\_ Board of Professional Counselors  
 (State)

FROM: \_\_\_\_\_  
 (Supervisor)

RE: Verification of Licensure in Another Jurisdiction

Please furnish the information requested below and return the form to the Board of Professional Counselors at the address given above.

License Number Held \_\_\_\_\_

Date of Initial Licensure \_\_\_\_\_

Is the supervisor currently licensed and in good standing? \_\_\_\_\_

If the supervisor's license has expired, is the applicant eligible to renew his or her license? Yes \_\_\_ NO \_\_\_

If no, please explain. \_\_\_\_\_

Has there ever been any disciplinary action taken against the supervisor's license? Yes \_\_\_ No \_\_\_

If yes, please explain. \_\_\_\_\_

I certify that the information given is correct.

\_\_\_\_\_  
 (Authorized Licensure Official)

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Jurisdiction

DEPARTMENT OF HEALTH PROFESSIONS  
 BOARD OF PROFESSIONAL COUNSELORS  
 1601 Rolling Hills Drive, Suite 200  
 Richmond, Virginia 23229-5005  
 (804) 662-9912

Professional Counselor  
 Licensure Application

INSTRUCTIONS		PLEASE TYPE OR PRINT	USE BLACK INK
1. Applicants must complete all sections. 2. Completed applications should be mailed to the above address. 3. Applications must be received NOT LESS THAN 60 DAYS PRIOR TO THE DATE OF THE WRITTEN EXAMINATION. 4. Fees: An application fee of \$100 must be submitted with the application. APPLICATIONS WILL NOT BE PROCESSED WITHOUT THE APPROPRIATE FEE. THE APPLICATION FEE IS NOT REFUNDABLE. (Make check or money order payable to the Treasurer of Virginia.)			
<b>I. GENERAL INFORMATION</b>			
NAME (LAST, FIRST, MIDDLE INITIAL, SUFFIX, MAIDEN NAME)		SOCIAL SECURITY NUMBER	DATE OF BIRTH
MAILING ADDRESS (STREET AND/OR BOX NO., CITY, STATE, ZIP)		HOME PHONE NUMBER	PLACE OF BIRTH
BUSINESS ADDRESS (IF DIFFERENT THAN ABOVE)		BUSINESS PHONE NUMBER	
LIST ALL OF THE STATES IN WHICH YOU NOW HOLD OR HAVE EVER HELD AN OCCUPATIONAL LICENSE OR CERTIFICATE TO PRACTICE IN ORDER OF ATTAINMENT.			
STATE	LICENSE/CERTIFICATE NUMBER	ISSUE DATE	TYPE OF LICENSE/CERTIFICATE
ANSWER THE FOLLOWING QUESTIONS:			YES NO
A. Have you ever been denied the privilege of taking an occupational licensure or certification examination? If yes, state what type of examination and where. _____			<input type="checkbox"/> <input type="checkbox"/>
B. Have you ever had any disciplinary action taken against an occupational license to practice or are any such actions pending? If yes, explain in detail. _____			<input type="checkbox"/> <input type="checkbox"/>
C. Have you ever failed an examination for occupational licensure or certification? If so, how many times? _____ Where? _____			<input type="checkbox"/> <input type="checkbox"/>
D. Have you ever been convicted or pled nolo contendere to a violation of any federal or state statute or to a violation of a local regulation or ordinance or entered into any plea bargaining relating to a felony or misdemeanor (excluding traffic violations, except for driving under the influence)? If yes, explain in detail. _____			<input type="checkbox"/> <input type="checkbox"/>
E. Have you ever been physically or emotionally dependent upon the use of alcohol or drugs or been treated by, consulted with, or under the care of a professional for substance abuse? If yes, please provide a letter from the treating professional stating the diagnosis, treatment, and prognosis. _____			<input type="checkbox"/> <input type="checkbox"/>
F. Have you ever received treatment or been hospitalized for a nervous, emotional, or mental disorder? If yes, please provide a letter from your treating professional summarizing diagnosis, treatment, and prognosis. _____			<input type="checkbox"/> <input type="checkbox"/>

**III. POST-GRADUATE DEGREE INTERNSHIP**

Have you had a post-graduate degree internship or practicum? YES  NO

Location: \_\_\_\_\_

Hours per week: \_\_\_\_\_ Dates: \_\_\_\_\_ to \_\_\_\_\_

(Submit Verification of Supervision Form)

**IV. PROFESSIONAL EXPERIENCE**

List in chronological order your entire post-graduate degree professional experience. (Attach additional sheets if needed.)

DATE Month and Year	INSTITUTION (Name and Address)	DUTIES	SUPERVISOR OR DEPARTMENT HEAD
From _____ To _____			

**V. STANDARDS OF PRACTICE**

The Standards of Practice limit your practice to your demonstrated areas of competence. Please list below your specialized areas of practice that can be supported by documentation of training or education.

CLIENT POPULATION(S)	COUNSELING TECHNIQUES USED	ASSESSMENT INSTRUMENTS USED

-3-

**II. SUPERVISED COUNSELING EXPERIENCE**

Applicants must have completed 4,000 hours of post-graduate degree training, with a total of 200 hours of face-to-face supervision provided by their supervisor(s).

SUPERVISOR'S NAME \_\_\_\_\_

INSTITUTION OR BUSINESS NAME & ADDRESS \_\_\_\_\_

CURRENT ADDRESS IF DIFFERENT FROM ABOVE \_\_\_\_\_

DATES APPLICANT EMPLOYED FROM _____ TO _____	DESCRIPTION OF SUPERVISION	TOTAL HOURS OF FACE-TO-FACE SUPERVISION	TOTAL HOURS OF GROUP SUPERVISION

DESCRIPTION OF APPLICANT'S PROFESSIONAL WORK DURING THE SUPERVISED COUNSELING EXPERIENCE \_\_\_\_\_

SUPERVISOR'S NAME \_\_\_\_\_

INSTITUTION OR BUSINESS NAME & ADDRESS \_\_\_\_\_

CURRENT ADDRESS IF DIFFERENT FROM ABOVE \_\_\_\_\_

DATES APPLICANT EMPLOYED FROM _____ TO _____	DESCRIPTION OF SUPERVISION	TOTAL HOURS OF FACE-TO-FACE SUPERVISION	TOTAL HOURS OF GROUP SUPERVISION

DESCRIPTION OF APPLICANT'S PROFESSIONAL WORK DURING THE SUPERVISED COUNSELING EXPERIENCE \_\_\_\_\_

-2-

**VI. EDUCATION**

State in chronological order the name and location of each undergraduate and graduate institution you attended.

NAME OF INSTITUTION	YEARS ATTENDED	DEGREE RECEIVED	MAJOR

**VII. REFERENCES**

Please submit references from three individuals other than your supervisors who are acquainted with your professional work.

NAME AND ADDRESS	TITLE	YEARS KNOWN APPLICANT

**THE FOLLOWING STATEMENT MUST BE EXECUTED BY A NOTARY PUBLIC. THIS FORM IS NOT VALID UNLESS PROPERLY NOTARIZED.**

The individual whose name is signed to this statement appeared before me, acknowledged the below-signed signature to be his or hers, and having been duly sworn by me, made oath that the statements in this document are true.

\_\_\_\_\_  
Applicant's Signature

State of \_\_\_\_\_ City/County of \_\_\_\_\_ on this, the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ My Commission expires \_\_\_\_\_  
(month)

\_\_\_\_\_  
Signature of Notary

(Seal)

# Proposed Regulations

## REAL ESTATE BOARD

**Title of Regulation:** VR 585-01-1. Virginia Real Estate Board Licensing Regulations.

**Statutory Authority:** §§ 54.1-113, 54.1-201 and 54.1-2105 of the Code of Virginia.

**Public Hearing Date:** December 19, 1990 - 2 p.m.  
(See Calendar of Events section for additional information )

### Summary:

*The proposed regulations apply directly to approximately 15,000 brokers, 70,000 salespersons, 3,100 firms, 75 rental location agents and 35 proprietary schools either licensed or registered by the board in Virginia. The only substantive changes in the regulations are proposed increases in license and renewal fees in order to assure the board's compliance with the requirements of § 54.1-113 of the Code of Virginia.*

VR 585-01-1. Virginia Real Estate Board Licensing Regulations.

### PART I. GENERAL.

#### § 1.1. Definitions.

The following words and terms, when used in these regulations, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

*"Actively engaged"* means employment by or affiliation as an independent contractor with a licensed real estate firm or sole proprietorship in performing those activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia for an average of at least 20 hours per week.

*"Associate broker"* means any individual licensee of the board holding a broker's license other than one who has been designated as the principal broker.

*"Firm"* means any partnership, association, or corporation, other than a sole proprietorship, which is required by § 2.1 B of these regulations to obtain a separate brokerage firm license.

*"Inactive status"* refers to any broker or salesperson who is not under the supervision of a principal broker or supervising broker, not affiliated with a firm or sole proprietorship and who is not performing any of the activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

*"Licensee"* means any person, partnership, association, or corporation holding a license by the Real Estate Board

to act as a real estate broker or real estate salesperson, as defined, respectively, in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

*"Principal"* means a party who has engaged a real estate broker to perform real estate purchases, sales or rental services in a principal-agent relationship.

*"Principal broker"* means the individual broker who shall be designated by each firm to assure compliance with Title 54.1, Chapter 21 of the Code of Virginia, and these regulations, and to receive communications and notices from the board which may affect the firm or any licensee employed by or affiliated with the firm. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of the principal broker. The principal broker shall have responsibility for the activities of the firm and all its licensees.

*"Principal to a transaction"* means a party to a real estate transaction in the capacity of a seller, buyer, lessee or lessor, or having some other direct contractual connection to such transaction.

*"Sole proprietor"* means any individual broker, not a corporation, who is trading under the broker's own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

*"Supervising broker"* means the individual associate broker who shall be designated by the firm to supervise the activities of any one of its offices.

### PART II. ENTRY.

#### § 2.1. Necessity for license or registration.

It shall be unlawful for any person, partnership, association or corporation, to act as a real estate broker, real estate salesperson, or rental location agent or to advertise or assume to act as such real estate broker, real estate salesperson, or rental location agent without a salesperson or broker license or rental location agent registration issued by the Real Estate Board. No partnership, association or corporation shall be granted a license unless every member, and officer of such partnership, association or corporation, who actively participates in its brokerage business shall hold a license as a real estate broker, and unless every employee and every independent contractor who acts as a salesperson for such partnership, association or corporation shall hold a license as a real estate salesperson; provided, however, that a person who holds a license as a real estate broker may act as a salesperson for another real estate broker.

#### A. Individual license.

A real estate broker's license shall not be issued to an

# Proposed Regulations

individual trading under an assumed or fictitious name, that is, a name other than the individual's full name, until the individual signs and acknowledges a certificate provided by the board, setting forth the name under which the business is to be organized and conducted, the address of the individual's residence, and the address of the individual's place of business. Each certificate must be attested by the Clerk of Court of the county or jurisdiction wherein the business is to be conducted. The attention of all applicants and licensees is directed to §§ 59.1-69 through 59.1-76 of the Code of Virginia.

## B. Partnership, association, or corporation.

Every partnership, association, or corporation must secure a real estate license for its brokerage firm before transacting real estate business. Application for such license shall disclose, and the license shall be issued to, the name under which the applicant intends to do or does business and holds itself out to the public. This license is separate and distinct from the individual broker license required of each partner, associate, and officer of a corporation who is active in the brokerage business.

1. Partnership. Each partnership acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the partnership; the name and style of the firm; the address of the Virginia office of the firm; the length of time for which it is to continue; and the percentage or part of the partnership owned by each partner. Every change in the partnership must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

2. Association. Each association acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the association; the name and style of the firm; the address of the Virginia office of the firm; the length of time for which it is to continue; and the percentage of part of the association owned by each associate. Every change in the association must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

3. Corporation. Each corporation acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each officer of the corporation; the name and style of the corporation; the address of the Virginia office of the firm; the corporation's place of business, and the names and addresses of the members of the Board of Directors.

a. Every change of officers must be evidenced by

filing a new certificate with the board within 30 days after the change is effective.

b. The board will not consider the application of any corporation or its officers, employees, or associates until the corporation is authorized to do business in Virginia.

## C. Branch office license.

If a real estate broker maintains more than one place of business within the state, a branch office license shall be issued for each branch office maintained. Application for the license shall be made on forms provided by the board and shall reveal the name of the firm, the location of the branch office, and the name of the supervising broker for that branch office. Only the branch office license shall be maintained at the branch office location.

## § 2.2. Qualifications for licensure.

Every applicant to the Real Estate Board for a sales person's or broker's license shall have the following qualifications:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate broker or a real estate salesperson in such a manner as to safeguard the interests of the public.

2. The applicant shall meet the current educational requirements by achieving a passing grade in all required courses of § 54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing examination and applies for licensure. See § 7.6 of these regulations for educational requirements for salespersons.

3. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

4. The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

5. The applicant shall be at least 18 years old.

# Proposed Regulations

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6. The applicant, within 12 months prior to making application for a license, shall have passed a written examination provided by the board or by a testing service acting on behalf of the board. Complete applications must be received within the 12-month period.

7. The applicant shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board and the testing service with regard to conduct at the examination shall be grounds for denial of application.

## § 2.3 Additional qualifications for brokers.

An applicant for a license as a real estate broker shall meet the following requirements in addition to those set forth in § 2.2 of these regulations:

### A. New broker applicants.

1. The applicant shall meet the current educational requirements of § 54.1-2105 of the Code of Virginia.

2. The applicant shall have been actively engaged as defined in § 1.1 of these regulations as a real estate salesperson for a period of 36 of the 48 months immediately preceding application.

### B. Previous brokers.

Any person who has previously held a Virginia real estate broker's license which license was not revoked, suspended or surrendered in connection with a disciplinary action may be issued a broker's license without first having to meet the experience requirements of § 2.3 A 2 of these regulations by:

1. Completing the current educational requirements of § 54.1-2105 of the Code of Virginia; and

2. Passing a written examination provided by the board or by a testing service selected by the board.

## § 2.4 Concurrent licenses.

Concurrent licenses shall be issued by the board to brokers active in more than one separate legal entity upon receipt of a concurrent license form and written affidavits stating that written notice of the applicant's concurrent licensure status has been provided to the principal broker of each firm with which the applicant has been associated. Payment will be required for each license.

## § 2.5 Qualifications for licensure by reciprocity.

Every applicant to the Real Estate Board for a license

by reciprocity shall have the following qualifications, except that § 2.4 A 5 shall only be applicable for salesperson applicants:

A. An individual who is currently licensed as a real estate salesperson or broker in another jurisdiction may obtain a Virginia real estate license without taking the Virginia written licensing examination by meeting the following requirements:

1. The applicant shall be at least 18 years of age.

2. The applicant shall have received the salesperson or broker's license by virtue of having passed in the jurisdiction of original licensure a written examination deemed to be substantially equivalent to the Virginia examination.

3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia real estate license law and the regulations of the Real Estate Board.

4. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

5. At the time of application for a salesperson's license, the applicant must have been actively engaged in real estate for 12 of the preceding 36 months or have met educational requirements that are substantially equivalent to those required in Virginia.

6. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.

7. The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

B. Additional qualifications for reciprocal licensure as a broker.

An individual who is currently licensed as a real estate broker in another jurisdiction may obtain a Virginia real

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estate broker's license without taking a written examination by meeting the following requirements in addition to those set forth in § 2.5 A 1 through A 4, A 6 and A 7.

1. The applicant shall have been licensed as a real estate broker and actively engaged as a real estate broker or salesperson in the current jurisdiction of licensure for at least 36 of the 48 months immediately prior to making application in Virginia. (See § 1.1 of these regulations for the definition of "actively engaged.")

2. The applicant shall have met broker educational requirements that are substantially equivalent to those required in Virginia.

## § 2.6. Activation of license.

Any inactive licensee may affiliate that license with a licensed real estate firm or sole proprietorship by completing an activate form prescribed by the board. Further, any licensee who has not been actively licensed with a licensed real estate firm or sole proprietorship for a period of greater than three years shall be required to meet the educational requirements for a salesperson or broker in effect at the time the license activate form for issuance of such license is filed with the board.

## § 2.7. Rental location agent.

An applicant for registration as a rental location agent need not be employed by or affiliated with a real estate broker, but shall apply in writing upon forms provided by the board, and shall meet the following requirements:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a rental location agent as defined in § 54.1-2102 of the Code of Virginia.

2. The applicant shall be at least 18 years old.

3. A rental location agent shall not be concurrently registered with more than one rental location agency.

4. The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

## § 2.8. Rental location agency.

A. Each business operating as a rental location agency, whether in the form of a sole proprietorship, association, partnership, or corporation, shall obtain from the board a firm registration as a rental location agency.

B. Every rental location agency shall be supervised by a supervising rental location agent designated by the agency and registered with the board. The supervising rental location agent shall have responsibility for supervising the activities of the agency and all its registrants.

C. Each rental location agent registration shall be issued only to the agency where the agent is affiliated or employed. The supervising rental location agent shall keep such registrations in his custody and control for the duration of the agent's employment or association with that agency.

D. When any rental location agent is discharged or in any way terminates his employment or affiliation with an agency, it shall be the duty of the supervising rental location agent to notify the board of the termination by returning the registration by certified mail to the board within 10 calendar days. The supervising rental location agent shall indicate on the registration the date of termination, and shall sign the registration before returning it.

## § 2.9. Application and registration fees.

All application fees for licenses and registrations are nonrefundable.

A. Application fees for original licenses or registrations are as follows:

Salesperson by education and examination .....	\$50
Salesperson by reciprocity .....	\$ 65 75
Broker by education and examination .....	\$ 60 70
Broker by reciprocity .....	\$ 85 100
Broker concurrent license .....	\$60
Rental location agent .....	\$ 30 60
Rental location agency .....	\$ 75 100
Firm license .....	\$ 75 100
Branch office license .....	\$ 25 50
Transfer application .....	\$ 30 35
Activate application .....	\$ 30 35
Certification of licensure .....	\$ 30 35

B. Examination fees are as follows:



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Preregistration for sales and brokers .....	\$15
Late registration for sales and brokers .....	\$25
Walk-in registration for sales and brokers .....	\$27

## PART III. RENEWAL OF LICENSE/REGISTRATION.

### § 3.1. Renewal required.

Licenses issued under these regulations for salespersons, brokers, and firms shall expire two years from the last day of the month in which they were issued, as indicated on the license. Registrations issued under these regulations for rental location agents and rental location agencies shall expire every two years on June 30.

### § 3.2. Qualification for renewal.

#### A. Continuing education requirements.

As a condition of renewal, and pursuant to § 54.1-2105 of the Code of Virginia, all brokers and salespersons either active or inactive, resident or nonresident, shall be required to satisfactorily complete a course of not less than six classroom hours during each licensing term.

1. Schools and instructors shall be those as required under § 54.1-2105 of the Code of Virginia, and § 7.2 of these regulations.

2. The specific course content and curriculum shall be prescribed and approved by the board. The course curriculum shall be provided to each school in final form prior to the course offering and updated periodically to reflect recent developments in federal, state, and local real estate law, regulations and case decisions.

a. Continuing education courses offered in other jurisdictions must meet Virginia's statutory requirements and must conform to the board's specifically prescribed course content and curriculum as described in § 54.1-2105 of the Code of Virginia. Such courses must be approved in advance of offering to be certified for course credit for licenses.

b. Correspondence courses will not be approved for credit for continuing education.

3. Attendance. Credit for continuing education course completion is to be given only for attendance in its entirety. It will be the instructor's responsibility to ensure compliance with this regulation.

4. Certification of course completion. It shall be the responsibility of the licensee to provide continuing education course completion certification. Proof of course completion shall be made on a form prescribed

by the board. Failure to provide course completion certification will result in the license not being renewed and reinstatement will therefore be required.

5. Credit earned by instructors. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses. Verification of instructor compliance with the continuing education course required must be verified by the director or dean of the school at which the course was taught.

B. Applicants for renewal of a license shall meet the standards for entry as set forth in §§ 2.2 3 and 2.2 4 of these regulations.

### § 3.3. Procedures for renewal.

A. The board will mail a renewal application form to the licensee or registrant at the last known home address. The board will mail a firm renewal notice to the business address of the firm. These notices shall outline the procedures for renewal. The board will notify the firm 30 days after the expiration of the licenses of salespersons and brokers associated with the firm. Failure to receive these notices shall not relieve the licensee or the registrant of the obligation to renew.

B. Prior to the expiration date shown on the license or registration, each licensee or registrant desiring to renew his license or registration shall return to the board the renewal application forms and the appropriate fee as outlined in § 3.4 of these regulations.

### § 3.4. Fees for renewal.

All fees for renewals are nonrefundable and are as follows:

Salesperson .....	\$ 35 50
Broker .....	\$ 50 70
Concurrent broker .....	\$50
Firm .....	\$ 75 100
Rental location agent .....	\$ 30 60
Rental location agency .....	\$ 75 100
Branch office .....	\$ 15 50

### § 3.5. Board discretion to deny renewal.

The board may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline an extant license.

## PART IV. REINSTATEMENT.

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## § 4.1. Failure to renew - reinstatement required.

A. All applicants for reinstatement must meet all requirements set forth in §§ 3.2 A and 3.2 B of these regulations. Applicants for reinstatement must have completed the continuing education requirement prior to the license expiration date. If the continuing education requirement was not completed during that licensing term, then the individual is not eligible for reinstatement and must reapply as a new applicant.

B. Additional fees for reinstatement are required as follows:

1. If the renewal fee is not received by the board within 30 days of the expiration date noted on the license or registration, a reinstatement fee equal to twice the renewal fee is required.
2. If the reinstatement fee is not received by the board within 180 days of the expiration date noted on the license or registration, a reinstatement fee equal to four times the renewal fee is required.

C. After 12 months, reinstatement is not possible under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.

D. While a license may be reinstated with additional fee for up to one year following expiration, any real estate activity conducted subsequent to the expiration shall constitute unlicensed activity and may be subject to prosecution under Chapter 1 of Title 54.1 of the Code of Virginia.

## § 4.2. Board discretion to deny reinstatement.

The board may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline an extant license.

### PART V. STANDARDS OF PRACTICE.

#### § 5.1. Place of business.

A. Within the meaning and intent of § 54.1-2110 of the Code of Virginia, a place of business shall be an office where:

1. The principal broker, either through his own efforts or through the efforts of his employees or associates, regularly transacts the business of a real estate broker as defined in § 54.1-2100 of the Code of Virginia; and
2. The principal broker and his employees or associates can receive business calls and direct business calls to be made.

B. No place of business shall be in a residence unless it

is separate and distinct from the living quarters of the residence and is accessible by the public.

C. Each place of business and each branch office shall be supervised and personally managed by an on-premises real estate broker who shall supervise only that office and shall be at the office or within easy access during regular business hours.

D. Every individual, partnership, association, or corporation acting as a real estate broker may display signage on the outside of each place of business maintained in the Commonwealth for the purpose of transacting business as a real estate broker. If displayed, the sign shall state the name of such individual, partnership, association, or corporation, as set forth in the license issued by the board, and contain the words "real estate," "realty" or other words or phrases designating a member of a generally recognized association or organization of real estate brokers, whichever is applicable.

E. Every principal broker shall have readily available in the firm's main place of business his license and the license of every salesperson and broker associated with or employed by the firm. The licenses shall be displayed together, not individually, in such a manner that the public can readily determine the names of the licensees.

F. Notice in writing, accompanied by all the current licenses, shall be given to the board in the event of any change of business name or location. Such notice shall be mailed to the board within 10 days of the change of name or location, whereupon the board shall reissue the license for the unexpired period.

#### § 5.2. Maintenance of licenses.

A. Salespersons and individual brokers shall at all times keep the board informed of their current home address. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board of any change of address.

B. Salespersons and brokers shall only be issued a license to the place of business of the sole proprietorship or firm with which the salesperson or broker is affiliated or at which such licensee is employed. The license shall be issued after the sole proprietor or principal broker files a written request on a form supplied by the board.

C. Salespersons and brokers on inactive status shall receive written acknowledgement of payment from the board at the time they renew their license, but no license shall be issued since they are not affiliated with a sole proprietorship or firm.

D. When any salesperson or broker is discharged or in any way terminates his employment or affiliation with a sole proprietorship or firm, it shall be the duty of the sole

# Proposed Regulations

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proprietor or principal broker to return the license by certified mail to the board so that it is received within 10 calendar days of the date of termination. The sole proprietor or principal broker shall indicate on the license the date of termination, and shall sign the license before returning it.

E. The board, upon receipt of a transfer application or request for placement of a license on inactive status from a salesperson or associate broker, will notify the former principal broker of the licensee's change of affiliation or status at the firm's address of record. If the license has not been received by the board by the date on which above notification is issued, then it shall be the duty of the former principal broker to return the license by certified mail to the board so that it is received within 10 calendar days of the date of the above notification.

F. All certificates of licensure in any form are the property of the Real Estate Board. Upon termination of a licensee, closing of a firm, death of a licensee, change of licensee name or address such licenses must be returned with proper instruction to the board within 10 days.

## § 5.3. Maintenance and management of escrow accounts and financial records.

### A. Maintenance of escrow accounts.

1. Each firm or sole proprietorship shall maintain in the name by which it is licensed one or more separate escrow accounts in a federally insured depository in Virginia into which all down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's principal or expended on behalf of the principal, or other escrow funds received by him or his associates on behalf of his principal or any other person shall be deposited unless all parties to the transaction have agreed otherwise in writing. The principal broker shall and the supervising broker may be held responsible for these accounts. All such accounts shall be labeled "escrow" and the account(s) shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account will necessarily include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by § 6.12 5 of these regulations, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the

licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by § 6.12 5 of these regulations.

### B. Disbursement of funds from escrow accounts.

1. Upon acceptance of a contract (ratification), earnest money deposits and down payments received by the principal or supervising broker or his associates shall be placed in an escrow account and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated, the principal or supervising broker shall hold such funds in escrow until (i) all parties to the transaction have agreed in writing as to their disposition, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the broker can pay the funds to the party who is entitled to receive them in accordance with the clear and explicit terms of the contract which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to each party by either (i) hand delivery receipted for by the addressee, or (ii) by regular and certified mail, that this payment will be made unless a written protest from that party is received by the broker within 30 days of the delivery or mailing, as appropriate, of that notice. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this regulation.

2. Unless otherwise agreed in writing by all parties to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

3. On funds placed in an account bearing interest, written disclosure at contract writing shall be made to the principals involved in the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from a property management account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all parties to the transaction, expenses incidental to closing a transaction, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or

down payment.

## C. Maintenance of financial records.

1. A complete record of financial transactions conducted under authority of the principal broker's Virginia license or the rental location agent's registration shall be maintained in the principal broker's place of business, or in a designated branch office, or in the office of the rental location agency. When the principal broker's office or the main office of the rental location agency is located outside of Virginia and the firm has a branch office in Virginia, these records shall be maintained in the Virginia office. These records shall show, in addition to any other requirements of the regulations, the following information: from whom money was received; the date of receipt; the place of deposit; the date of deposit; and, after the transaction has been completed, the final disposition of the funds.

2. The principal broker shall maintain a bookkeeping system which shall accurately and clearly disclose full compliance with the requirements outlined in § 5.3 of these regulations. Accounting records which are in sufficient detail to provide necessary information to determine such compliance shall be maintained.

## § 5.4. Advertising by licensees.

The name under which the broker does business and the manner in which the broker advertises shall not imply that the property listed or marketed by the broker for others is "for sale by owner." A broker shall not advertise in any newspaper, periodical, or sign to sell, buy, exchange, rent, or lease property in a manner indicating that the offer to sell, buy, exchange, rent, or lease such property is being made by a person not licensed as a real estate broker. No advertisement shall be inserted in any publication where only a post office box number, telephone number, or street address appears. Every broker, when advertising real estate in any newspaper or periodical, shall affirmatively and unmistakably indicate that the party advertising is a real estate broker.

### A. Definitions.

The following definitions apply unless a different meaning is plainly required by the context:

"Advertising" means any communication, whether oral or written, between a licensee or an entity acting on behalf of one or more licensees and any other person or business entity. It shall include, but is not limited to, telephonic communications, insignias, business cards, advertisements, telephone directory, listing agreements, contracts of sale, billboards, signs, letterheads, as well as radio, television, magazine, and newspaper advertisements; and

"Institutional advertising" means advertising in which

neither the licensed name nor any other identification of any licensed individual is disclosed, no real property is identified, and a service mark is identified.

"Service mark" means the trade name, service mark, or logo, whether or not registered under any federal or state law, which is owned by an entity other than the licensee and which the licensee has obtained permission to use through agreement, license, franchise, or otherwise;

B. Every salesperson or associate broker is prohibited from advertising and marketing under the licensee's own name in any manner offering on behalf of others to buy, sell, exchange, rent, or lease any real property. All advertising and marketing must be under the direct supervision of the principal broker or supervising broker and in the name of the firm. The name of the firm must be displayed on all display signs and other types of advertising and marketing and must be printed in a size equal to or greater than the size of the name of the salesperson or broker.

C. Notwithstanding the above restrictions, where a salesperson or associate broker is the owner of or has any ownership interest in the property being advertised, the licensee shall advertise with the notice that the owner is a real estate licensee, but such advertisement must not indicate or imply that the licensee is operating a real estate brokerage business.

### D. Service marks and institutional advertising.

1. All institutional advertising shall state that the service being advertised is real estate brokerage, and shall state, if applicable, that each licensed firm or sole proprietorship displaying or using the service mark is an independently owned and operated business.

2. Disclosure that the licensed firm or sole proprietorship is independently owned and operated shall not be required in the following categories of written noninstitutional advertising:

a. "For sale" and "for lease" signs located on the premises of specific property for sale or lease;

b. Advertising by a licensed firm or sole proprietorship in newspapers, magazines, or other publications of a single specific property for sale or lease when the advertisement occupies no more than 28 of the standard classified advertising lines of the newspaper, magazine, or other publications in which the advertisement is published;

c. Telephone directory advertisements disclosing that the licensed brokerage firm or sole proprietorship is independently owned and operated is required in "display" advertisements and in "in column informational" or "business card" advertisements, or their equivalent, appearing in telephone directories.

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3. In oral, noninstitutional advertising, the speaker shall disclose affirmatively the licensee's name, and except in the case of telephone communication, shall disclose that the licensed firm or sole proprietorship is independently owned and operated.

## PART VI. STANDARDS OF CONDUCT.

### § 6.1. Grounds for disciplinary action.

The board has the power to fine any licensee or registrant, and to suspend or revoke any license or registration issued under the provisions of Title 54.1, Chapter 21 of the Code of Virginia, and the regulations of the board, at any time after a hearing conducted pursuant to the provisions of the Administrative Process Act, Title 9, Chapter 1.1:1 of the Code of Virginia where the licensee has been found to have violated or cooperated with others in violating any provision of Title 54.1, Chapter 21 of the Code of Virginia, or any regulation of the board.

### § 6.2. Disclosure of interest.

A. If a selling agent or listing agent knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire real property, the agent must disclose that information to the owner in writing in the contract.

B. A licensee selling property in which he has any interest must disclose that he is a real estate licensee to any purchaser in writing in the contract.

### § 6.3. Disclosure of agency relationships.

All licensees shall promptly disclose their agency relationship(s) to all actual and prospective buyers and sellers, lessors and lessees and optionors and optionees in these ways:

A. As soon as the licensee has substantive discussions about specific property(ies) with a principal or prospective principal, the licensee shall disclose to the principal or prospective principal the person(s) whom the licensee represents in a principal-agency relationship, and;

B. Further, this disclosure shall be made in writing at the earliest practical time, but in any case not later than the time when specific real estate assistance is first provided. This written disclosure shall be acknowledged by the principals.

### § 6.4. Licensees dealing on own account.

Any licensee failing to comply with the provisions of Title 54.1, Chapter 21 of the Code of Virginia or the regulations of the Real Estate Board in performing any acts covered by §§ 54.1-2100 and 54.1-2101 of the Code of Virginia, may be charged with improper dealings,

regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.

### § 6.5. Provision of records to the board.

A licensee of the Real Estate Board shall upon request or demand, promptly produce to the board or any of its agents any document, book, or record in a licensee's possession concerning any real estate transaction in which the licensee was involved as a broker or salesperson, or for which the licensee is required to maintain records for inspection and copying by the board or its agents. These records shall be made available at the licensee's place of business during regular business hours.

### § 6.6. Unworthiness and incompetence.

Actions constituting unworthy and incompetent conduct include:

1. Obtaining a license by false or fraudulent representation;
2. Holding more than one license as a real estate broker or salesperson in Virginia except as provided in these regulations;
3. As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license;
4. As a currently licensed real estate broker, sitting for a real estate licensing examination;
5. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;
6. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury;
7. Having been found in a court or an administrative body of competent jurisdiction to have violated the Virginia Fair Housing Act, the Fair Housing Laws of any jurisdiction of the United States including without limitation Title VIII of the Civil Rights Act of 1968, or the Civil Rights Act of 1866, there being no appeal therefrom or the time for appeal having elapsed; and

8. Failing to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public, or otherwise engaging in improper, fraudulent, or dishonest conduct.

## § 6.7. Conflict of interest.

Actions constituting a conflict of interest include:

1. Being employed by, affiliated with or receiving compensation from a real estate broker other than the licensee's principal broker, without the written consent of the principal broker;
2. Acting for more than one party in a transaction without the written consent of all principals for whom the licensee acts;
3. Acting as an agent for any principal in a real estate transaction outside the licensee's brokerage firm(s) or sole proprietorship(s).

## § 6.8. Improper brokerage commission.

Actions resulting in an improper brokerage commission include:

1. Paying a commission or other valuable consideration to any person for acts or services performed in violation of Title 54.1, Chapter 21 of the Code of Virginia, or these regulations; provided, however, that referral fees and shared commissions may be paid to any real estate firm licensed in this or another jurisdiction, or to any referral firm in the United States, the members of which are brokers licensed in this or another jurisdiction and which only disburses commissions or referral fees to its licensed member brokers;
2. Notwithstanding the provisions of § 54.1-2102 of the Code of Virginia, accepting a commission or other valuable consideration, as a real estate salesperson or associate broker, for the performance of any of the acts specified in Title 54.1, Chapter 21 of the Code of Virginia or the regulations of the board, from any person except the licensee's principal broker at the time of the transaction;
3. Receiving a fee or portion thereof including a referral fee or a commission or other valuable consideration for services required by the terms of the real estate contract when such costs are to be paid by either one or both principals to the transaction unless such fact is revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;
4. Offering or paying any money or other valuable consideration for services required by the terms of the real estate contract to any party other than the principals to a transaction which results in a fee being

paid to the licensee; without such fact being revealed in writing to the principal(s) prior to the time of ordering or contracting for the services.

5. Making a listing contract or lease which provides for a "net" return to the seller/lessor, leaving the licensee free to sell or lease the property at any price he can obtain in excess of the "net" price named by the seller/lessor;

6. Charging money or other valuable consideration to or accepting or receiving money or other valuable consideration from any person or entity other than the licensee's principal for expenditures made on behalf of that principal without the written consent of the principal;

## § 6.9. Improper dealing.

Actions constituting improper dealing include:

1. Making an exclusive agency contract or an exclusive right-to-sell contract which does not have a definite termination date;
2. Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized agent, or on any terms other than those authorized by the owner or the owner's authorized agent;
3. Placing a sign on any property without the consent of the owner of the property or the owner's authorized agent;
4. Causing any advertisement for sale, rent, or lease to appear in any newspaper, periodical, or sign without including in the advertisement the name of the firm or sole proprietorship;
5. Acting in the capacity of settlement agent in a real estate closing by a salesperson, except:
  - a. When the salesperson is under the direct supervision of the principal/supervising broker;
  - b. When the salesperson is under the direct supervision of a licensed officer of the corporation or a licensed partner of the partnership under which the salesperson is licensed;
  - c. When the settlement agent is a member of the Virginia State Bar or a law firm, the members of which are members of the Virginia State Bar; or
  - d. When the settlement agent is a title insurance company or an agency thereof or a firm regularly engaged in the business or closing real estate transactions;

## § 6.10. Misrepresentation/omission.

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Actions constituting misrepresentation or omission, or both, include:

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity and the licensee or registrant did in fact have at least that quantity for sale or rent;
2. Failing to disclose in a timely manner to a prospective purchaser/licensee, or seller/lessor, any material information related to the property reasonably available to the licensee or registrant;
3. Failing as a licensee to promptly tender to the buyer and seller every written offer or counter-offer to purchase obtained on the property involved;
4. Failing to include the complete terms and conditions of the real estate transaction in any offer to purchase or rent, including identification of all those holding any deposits;
5. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:
  - a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;
  - b. Changes in terms or extensions of time for any of the items listed in § 6.10 5 whether by renewal, deferral of action, or other means without the prior written consent of the principals to the transaction;
  - c. Acceptance, release, or substitution of security for any of the items listed in § 6.10 5 a without the prior written consent of the principals to the transaction.
6. Making any misrepresentation; and
7. Making a false promise through agents, salespersons, advertising, or other means.

## § 6.11. Delivery of instruments.

Actions constituting improper delivery of instruments include:

1. Failing to make prompt delivery to each party to a document, complete and legible copies of any written or printed listings, contracts, residential leases, addenda or other agreements being negotiated by a salesperson or broker at the time such listings, contracts, residential leases, addenda or other

agreements signed by the parties are secured;

2. Failing to make prompt delivery of fully executed copies of the contract or lease, and addenda signed by the seller/lessor and purchaser/lessee, to both purchaser/lessee and seller/lessor after obtaining a proper acceptance of the offer to purchase or rent;
3. Failing to provide in a timely manner to all parties to the transaction written notice of any material changes to the transaction;
4. Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of moneys received by the licensee, duly signed and certified by the principal or supervising broker or his authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his broker, and if the disbursement of moneys received by the licensee is disclosed on the applicable settlement statement, the licensee shall not be required to provide the separate statement of receipts and disbursements; and
5. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which the licensee possesses.

## § 6.12. Record keeping and escrow funds.

Actions constituting improper record keeping and maintenance of escrow funds include:

1. Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing a complete and legible copy of each contract and agreement, notice and closing statement related to a real estate transaction, and all other documents material to that transaction available and accessible to the broker;
2. Having received moneys on behalf of others and failed to maintain a complete and accurate record of such receipts and their disbursements for a period of three years from the date of the closing;
3. Failing, within a reasonable time, to account for or to remit any moneys coming into a licensee's possession which belong to others;
4. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement; and
5. Commingling the funds of any person by a principal or supervising broker or his employees or associates with his own funds, or those of his corporation, firm, or association; or failure to deposit such funds in an account or accounts designated to receive only such

funds as required by these regulations, see § 5.3 A 1.

## § 6.13. Rental location agents.

Actions constituting improper activities of a rental location agent include:

1. Accepting or agreeing to accept any fee as a rental location agent without giving the person paying or agreeing to pay such fee a contract or receipt in which the agent sets forth a definite termination date for the services to be provided. The termination date shall not be later than one year from the date of the original agreement or acceptance of a fee. The rental location agent shall agree in the contract or receipt to repay, upon request, within 10 days of the expiration date, any amount of fee collected over and above the sum of the service charge if no rental is obtained. The rental location agent shall further agree in the contract or receipt that if rental information provided by the agent is not current or accurate, the full fee shall be repaid upon request within 10 days of the delivery of the inaccurate rental information;

2. Referring, as a rental location agent, a prospective tenant to any property for which the agent has not verified the availability of the property within seven working days prior to the referral; and

3. Failing, as a rental location agent, to maintain a written registry of all lists of rentals provided to customers and of all advertisements published or caused to be published by the agent, together with the address of the property listed or advertised, the date of verification of the availability, and the name, address, and telephone number, if any, of the party who offered the property for rent. This registry shall be kept for a period of three years from the date of the lists or the publication of any advertisement listed in it.

## § 6.14. Principal broker's responsibility for acts of licensees.

Any unlawful act or violation of any of the provisions of Title 54.1, Chapter 21 or of Title 54.2, Chapter 5 of the Code of Virginia or of the regulations of the board by any real estate salesperson, employee, partner or affiliate of a principal broker, may not be cause for disciplinary action against the principal broker unless it appears to the satisfaction of the board that the principal broker knew or should have known of the unlawful act or violation.

## § 6.15. Effect of disciplinary action on subordinate licensees.

Action by the board resulting in the revocation, suspension, or denial of renewal of the license of any principal broker or sole proprietor shall automatically result in an order that the licenses of any and all individuals affiliated with or employed by the affected

firm be returned to the board until such time as they are reissued upon the written request of a sole proprietor or principal broker pursuant to § 5.2 B.

## PART VII. SCHOOLS.

### § 7.1. Definitions.

As used in these regulations, unless a different meaning is plainly required by the context:

"Accredited colleges, universities and community colleges," as used in § 54.1-2105 2 of the Code of Virginia, means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers.

"Equivalent course" means any course encompassing the principles and practices of real estate and approved by the board.

"Proprietary school" means a privately owned school, not under the authority of the Department of Education, but approved by the Real Estate Board to teach real estate courses.

### § 7.2. Proprietary school standards.

Every applicant to the Real Estate Board for a proprietary school certificate shall meet the following standards:

#### A. Educational environment.

All schools must be in a building conducive to academic purposes, with library facilities readily accessible to students at times other than their regularly scheduled class hours. Classroom arrangement should allow for workshop-type instruction and small-group activity. Facilities must meet necessary building code standards, fire safety standards, and sanitation standards.

#### B. Instructor qualifications.

Every applicant to the Real Estate Board for approval as an instructor shall have one of the following qualifications:

1. Baccalaureate degree in real estate, or in business with a concentration in real estate or a closely related field; or
2. Baccalaureate degree, a real estate license, and two years of discipline-free active real estate experience within the past five years; or
3. Seven years of discipline-free active experience



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acquired in the real estate field in the past 10 years and an active broker's license.

## C. Courses.

All real estate courses must be acceptable to the board and are required to have a monitored, final written examination.

D. All schools must establish and maintain a record for each student. The record shall include: the student's name and address; the course name and clock hours attended; and the date of successful completion. Records shall be available for inspection during normal business hours by authorized representatives of the board.

## § 7.3. Fees.

A. The application fee for original certificate for a proprietary school shall be \$100.

B. The renewal fee for proprietary school certificates expiring annually on June 30 shall be \$50.

C. The Board in its discretion may deny renewal of a certificate. Upon such denial, the certificate holder may request that a hearing be held.

## § 7.4. Posting school certificate of approval and registration.

School certificates of approval and registration, and instructor certificates must be displayed in each approved school facility in a conspicuous place readily accessible to the public.

## § 7.5. Withdrawal of approval.

The board may withdraw approval of any school for the following reasons:

1. The school, instructors, or courses no longer meet the standards established by the board.
2. The school solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations.
3. The school distributes to any person copies of examination questions, or otherwise communicates to any person examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.
4. The school, through an agent or otherwise, advertises its services in a fraudulent, deceptive or misrepresentative manner.
5. Officials, instructors or designees of the school sit for a real estate licensing examination for any

purpose other than to obtain a license as a broker or salesperson.

## § 7.6. Course content of real estate principles and practices.

The following shall be included in the three-semester-hour or six-quarter-hour course which shall not have less than 45 classroom hours:

1. Economy and social impact of real estate
2. Real estate market and analysis
3. Property rights
4. Contracts
5. Deeds
6. Mortgages and deeds of trust
7. Types of mortgages
8. Leases
9. Liens
10. Home ownership
11. Real property and title insurance
12. Investment
13. Taxes in real estate
14. Real estate financing
15. Brokerage and agency contract responsibilities
16. Real estate marketing
17. Real property management
18. Search, examination, and registration of title
19. Title closing
20. Appraisal of residential and income producing property
21. Planning subdivision developments and condominiums
22. Regulatory statutes
23. Housing legislation
24. Fair housing statutes
25. Real Estate Board regulations

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## § 7.7. Related subjects.

"Related subjects," as referred to in § 54.1-2105 of the Code of Virginia, shall be real estate related and shall include, but are not limited to, courses in property management, land planning and land use, business law, real estate economics, and real estate investments.

## § 7.8. Required specific courses.

Brokerage shall be a required specific course with three semester hours or six quarter hours constituting a complete course.

## § 7.9. Credit for broker-related courses.

No more than three semester hours or three quarter hours of broker-related courses shall be accepted in lieu of specific broker courses.

## § 7.10. Broker-related course approval procedure.

Schools intending to offer equivalent broker courses must submit to the board for approval a copy of the syllabus of the particular course with a cover letter requesting approval. In addition, the school must accompany these materials with a copy of a comparable course syllabus from an accredited university, college, or community college to establish equivalency.

\* \* \* \* \*

NOTICE: The forms used in administering the Virginia Real Estate Board Licensing Regulations are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Commerce, 3600 West Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Real Estate Salesperson/Associate Broker License Application  
General Instructions for Completion of All Real Estate Application Forms  
Real Estate Salesperson Application (RE9 - 10/2/90)  
Real Estate Principal Broker/Sole Proprietor License Application  
Real Estate Broker Application (RE11 - 10/2/89)  
Real Estate Concurrent Broker Application (RE10 - 10/2/89)  
Rental Location Agent Registration Application (RE8 - 10/2/89)  
Rental Location Agency Application (RE5 - 10/2/89)  
Real Estate Business License Application (RE7 - 10/2/89)  
Real Estate Branch Office Application (RE12 - 10/11/89)  
Real Estate Activate Application (RE9 - 9/12/89)  
Real Estate Transfer Application

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

**REGISTRAR'S NOTICE:** Due to its length, the Virginia Hazardous Waste Management Regulations filed by the Department of Waste Management are not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Waste Management.

**Title of Regulation:** VR 872-10-1. Virginia Hazardous Waste Management Regulations.

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

**Public Hearing Date:** January 8, 1991 - 11 a.m.  
(See Calendar of Events section for additional information)

### Summary:

All substantive modifications and additions contained in Amendment 11 of the Virginia Hazardous Waste Management Regulations are being made in response to the changes made by the United States Environmental Protection Agency (EPA) in the federal regulations implementing the Resource Recovery and Conservation Act of 1976 (RCRA) and the Hazardous and Solid Waste Amendments of 1984. In order to maintain its authorization to conduct the hazardous waste program in Virginia, the department is required to update its regulations and conform them to the federal requirements on an annual basis.

Amendment 11 to the Virginia Hazardous Waste Management Regulations contains changes that were adopted by the EPA between January 1989 and July 1990. By extending the updating period by six months, the Virginia program will shorten the lag between the effective dates of the federal and the state regulations. Since the changes are so extensive, the department plans to reprint its regulations in toto. For this reason, this amendment will include a nonessential editorial change that pervades the whole regulation changing "Executive Director" to the new title of "Director" and include the statutory changes made by the 1990 session of the General Assembly which increased the penalties from \$10,000 to \$25,000 and created a new "superpenalty" similar to the federal Resource Conservation and Recovery Act § 3008(e). The statutory changes are already in effect.

### Adoption of more stringent federal regulations.

The great majority of the changes in the proposed Amendment 11 are far-reaching and extensive. As discussed below, some of those changes will seriously affect companies already regulated under the Virginia Hazardous Waste Management Regulations while other

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changes will extend the number of regulated entities.

The proposed Amendment 11 contains land disposal restrictions (LDR) for both the "Second Third" and "Third Third" wastes. This inclusion will eliminate the need to promulgate certain sections of the federal regulations that were adopted in June 1989 and were superseded by the June 1, 1990, changes. With the promulgation of the latest LDR regulations, EPA fulfills the Congressional mandate to develop disposal standard for all of the hazardous wastes regulated prior to November 1984, the date of the Hazardous and Solid Waste Amendments.

The changes also include elimination of certain exclusions for mining wastes contained in the Bevill amendment promulgated on September 1, 1989. Several facilities located in the Commonwealth may now be regulated as the result of these federal changes.

In the course of 18 months since the last amendment, EPA changed the description of two listed wastes (F019 and F024) and added eight new listings (F025, F039, K107 through K110, K131, and K132).

On March 29, 1990, EPA promulgated a major revision of the Toxicity Characteristic by adoption a new test and expanding the list of the organic substances for which the waste needs to be tested. It is expected that a great number of waste generators will be affected by this change and that the number of regulated entities in Virginia will at least double. Automotive maintenance industry will be affected extensively. Amendment 11 contains both the March promulgation and the technical corrections published on June 29, 1990.

On June 21, 1990, EPA promulgated standards that limit air emissions at hazardous waste treatment, storage, and disposal facilities requiring a permit under the hazardous waste program. These standards are the first part of a multiphased regulatory effort to control air emissions. The changes establish requirements to limit emissions from process vents and leaks from equipment that contains or contacts hazardous waste streams with 10% or greater total organics.

## Reductions of the regulatory burdens.

On August 1989 EPA amended portions of the closure requirements for the hazardous waste management facilities by allowing, under limited circumstances, a landfill, a surface impoundment, or land treatment unit to remain open after the final receipt of hazardous wastes in order to receive nonhazardous wastes in that unit.

As the result of delistings approved by the EPA, certain wastes managed by two Virginia companies

have also obtained Virginia delisting. The description of the petitioned relief and delisting conditions are shown in the new Appendix 3.8. These delistings became effective in Virginia in September 1989.

In September 1989 EPA exempted wastes generated by the conditionally exempt small quantity generators, waste pesticides disposed by the farmers on their own property, and wastes identified or listed after November 1984 for which EPA had not promulgated LDR requirements. The generators of the exempted wastes have to submit certain certifications to the treatment or disposal facility.

## Corrections, clarifications, and other changes in the federal regulations.

On February 27, 1989, EPA deferred the LDR of certain multisource leachate until the time that the Third Third wastes are restricted. On June 1, 1990, these wastes were listed as F039.

On March 7, 1989, EPA reduced certain requirements pertaining to changes during interim status, allowed simplified permit modifications under certain conditions, and clarified EPA authority to deny permits for the active life of a facility while a permit decision with respect to the post-closure period remains pending.

On May 2, 1989, EPA made editorial changes to § 268.12 by redesignating certain subsections.

On June 27, 1990, EPA corrected the oversight to bring the one of the subsections dealing with the delisting petitions into line with other HSWA requirements. The change expanded the waste analysis to substances beyond those for which the waste was listed.

# FINAL REGULATIONS

For information concerning Final Regulations, see information page.

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Pesticide Control Board

**Title of Regulation:** VR 115-04-03. Rules and Regulations for Enforcement of the Virginia Pesticide Law.

**Statutory Authority:** §§ 3.1-249.28 and 3.1-249.30 of the Code of Virginia.

**Effective Date:** January 2, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. It was adopted as it was proposed in 6:11 V.A.R. 1515-1528 February 26, 1990.

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**Title of Regulation:** VR 115-04-21. Public Participation Guidelines for the Pesticide Control Board.

**Statutory Authority:** §§ 9-6.14:7.1 and 3.1-249.30 of the Code of Virginia.

**Effective Date:** January 2, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. It was adopted as it was proposed in 6:11 V.A.R. 1534-1535 February 26, 1990.

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**Title of Regulation:** VR 115-04-22. Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act.

**Statutory Authority:** §§ 3.1-249.30, 3.1-249.46, 3.1-249.48, 3.1-249.49, 3.1-249.50, and 3.1-249.76 of the Code of Virginia.

**Effective Date:** January 2, 1991.

#### Summary:

The regulation will require an annual business license of 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 requirements of this regulation.) By so doing, it provides a direct,

effective, and equitable means of ensuring the safe and proper application, handling and usage of pesticides. The regulation also requires those subject to its provisions to establish and maintain sufficient general liability coverage, and to keep adequate records involving pesticides.

Because this regulation contains provisions inconsistent with two sections of current regulation, VR 115-04-03, Rules and Regulations for Enforcement of the Virginia Pesticide Law, the Pesticide Control Board has taken action to rescind those two sections.

Before adopting the regulation, the board made the following changes:

As evidenced by its title, the specific purpose of this regulation is to license pesticide businesses. Therefore, the board limited the scope of the final regulation by eliminating definitions and references to bulk pesticide storage facilities. Although so doing reduces the final regulation to approximately one-half its length as proposed, it clarifies the purpose of the regulation, alleviates confusion on the issues of pesticide bulk storage, and gives the board an opportunity to address pesticide bulk storage more clearly after further public review.

The definition "Pesticide dealer" was deleted from the final regulation because the definition "Pesticide business" encompasses the same terminology. Similarly, § 2.2, "Pesticide dealer business licensing requirements" was deleted to avoid redundancy. This deletion, coupled with the exemptions in § 2.1 B clarifies who is required to obtain a business license. Pesticide businesses are still required pursuant to this regulation to maintain records for each transaction of what pesticide was sold, to whom it was sold, and the quantity sold. These records are subject to inspection by the Department of Agriculture and Consumer Services.

The board has modified language in the final regulation to provide exemptions for consultants in certain situations. In addition, the regulation will not require consultants to keep records as they give advise and do not actually apply the pesticides. Since the applicators perform the actual application of pesticides, they are required to keep the records mentioned in the regulation, subject to inspection by the Department of Agriculture and Consumer Services.

The section involving the duties assigned the Commissioner for the suspension of a license has been

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condensed for clarity. However, a change which was made has given the Commissioner greater latitude in summarily suspending a pesticide business license and denying a license in cases where the applicant has in any state a record of violations constituting substantial danger to the public health, safety, or the environment, as determined by the Commissioner. Such violations would include, but are not limited to, evidence of a disregard for proper and safe pesticide use, or in cases of denial of license, a previous denial, suspension, nullification, withdrawal, or revocation by any state or other complete authority. The licensee or applicant will be granted notice and an opportunity to be heard before the Commissioner suspends or denies any pesticide business license. The Commissioner has been given greater latitude in summarily suspending a license, or denying a license in an effort to protect the Commonwealth's public and environment against violations of pesticide laws.

VR 115-04-22. Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act.

## PART I. DEFINITIONS.

### § 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise. An asterisk following a definition denotes that the definition has been taken from the Virginia Pesticide Control Act, Article 1, Chapter 14.1 of Title 3.1, of the Code of Virginia.

"Act" means the Virginia Pesticide Control Act.

[ "Appurtenances" means valves, pumps, fittings, pipes, hoses, plumbing or metering devices that are connected to a bulk pesticide container or used for transferring a bulk pesticide between containers. ]

"Board" means the Pesticide Control Board.\*

"Bond" means a written instrument issued or executed by a bonding, surety, or insurance company licensed to do business in the Commonwealth, or otherwise approved by the board, guaranteeing the fulfillment of the agreement between the licensee and the customer.\*

"Bulk pesticide" means any registered pesticide [ concentrate ] which is transported or held in an individual container in undivided quantities of greater than 55 U.S. gallons liquid measure or [ greater than ] 100 pounds net dry weight. [ For purposes of this regulation, bulk pesticide shall not include material contained in containers approved for transportation in interstate commerce by the United States Department of Transportation. ]

[ "Bulk pesticide storage facility" means any facility or

site where bulk pesticides are being stored for more than 30 consecutive days per year in quantities of greater than 300 U.S. gallons liquid or 100 pounds net dry weight for purposes of repackaging.

"Bulk pesticide storage facility registry" means the annual listing of all bulk pesticide storage facilities in the Commonwealth as derived from written notification of the facility location by the facility's owner or operator.

"Bulk repackaging" means the transfer of bulk quantities of a registered pesticide from one bulk container to another bulk container in an unaltered state in preparation for sale to another person. ]

"Certification" or "certified" means the recognition granted by the Pesticide Control Board to an applicator upon satisfactory completion of board approved requirements.\*

[ "COB" means close-of-business. ]

"Commercial applicator" means any applicator who has completed the requirements as determined by the board, including appropriate training and time in service, to apply for a certification, and who uses or supervises the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.\*

"Commissioner" means the Commissioner of Agriculture and Consumer Services.\*

[ "Dedicated pesticide container" means a pesticide container effectively designed and constructed to hold a specific pesticide and to be reused, repackaged, or refilled. Such containers shall clearly and permanently identify the pesticide to which it is dedicated, and shall include a clearly visible tamper indicator which reveals that the integrity of the container has been either maintained or disrupted. In cases where the tamper indicator is not intact, indicating that the contents may be adulterated or altered, the container shall not qualify as a dedicated container and shall not be eligible for reuse, repackaging, or refilling until such time as it has been cleaned, inspected, and resealed by the registrant or his agent. ]

"Department" means the Department of Agriculture and Consumer Services.\*

[ "Discharge" means any spill, leak, deposit, dumping, or emptying, either accidental or otherwise, that results in a release of a pesticide into a secondary containment, operational area containment, or other area at a bulk pesticide storage facility. Discharge does not include lawful transfer, loading, unloading, repackaging, refilling, distribution, use, disposal, or application of a pesticide.

"Emergency and discharge response plan" means a plan describing procedures to be employed in the event of an emergency such as a fire, flood, or discharge at a bulk pesticide storage facility, and which is designed to result

in the notification of appropriate state and municipal authorities, mitigation of the emergency, stoppage of the discharge, recovery of the discharge, and clean up of the affected area.

"EPA" means the United States Environmental Protection Agency. ]

"FIFRA" means The Federal Insecticide, Fungicide, and Rodenticide Act as amended, and herein incorporated by reference.

"Licensed" or "licensee" means those businesses which, upon meeting the requirements established by the Pesticide Control Board, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.\*

"Limited quantities" means purchases [ , at cost, ] for resale [ , ] of less than \$50,000 annually per outlet [ in of ] products containing [ a nonrestricted use ] pesticide active [ ingredient ingredients ] .

[ "Nonbulk quantity repackaging" means the authorized transfer in nonbulk quantities of a specific bulk pesticide to a bulk container designed to hold the specific bulk pesticide. Nonbulk quantity repackaging may only be carried out at a bulk pesticide storage facility under a specific written authorization and agreement between the facility and the registrant of the bulk pesticide. However, nothing in this definition shall preclude the lawful filling and labeling of either single use dedicated containers or other containers, such as the registrant's original unbroken container, carried out under a written contractual agreement between a contract repackager and the registrant.

"Operational area" means an area or areas at a bulk pesticide storage facility where pesticides are transferred, loaded, unloaded, mixed, repackaged, refilled, or where pesticides are cleaned or washed from containers or from application, handling, storage, or transportation equipment.

"Operational area containment" means any structure or system effectively designed and constructed to intercept and contain discharges, including container or equipment wash water and rainwater, and to prevent escape, runoff, and leaching from the operational area of a bulk pesticide storage facility. ]

"Pest management consultant" means any person, who may or may not apply pesticides himself, who has obtained a business license in accordance with the requirements listed below, and who is authorized by these regulations to provide technical advice, supervision or aid, or recommendations for restricted use pesticide application commercially in Virginia.

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or

mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest, (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (iii) any substance which is intended to become an active ingredient thereof.\*

"Pesticide business" means any person engaged in the business of distributing, applying, or recommending the use of a product, storing, selling, or offering for sale pesticides for distribution directly to the user. The term "pesticide business" does not include wood treaters not for hire or businesses exempted by regulations adopted by the board.\*

[ "Pesticide dealer" means any person or business which sells, distributes, or stores pesticides in Virginia, except that retailers of limited quantities of nonrestricted use pesticides including grocery stores, convenience stores, drug stores, veterinarians, and other businesses who sell pesticides primarily for limited household use are not included in this definition.

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.\*

"Primary containment" means the storage of bulk pesticide in either its original container or other suitable container, including dedicated containers, effectively designed and constructed to contain the pesticide stored therein. ]

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as restricted by the Administrator of the United States Environmental Protection Agency.\*

[ "Secondary containment" means any structure effectively designed and constructed to contain discharges and to prevent escapes, runoff, and leaching of pesticides from bulk pesticide storage facilities and operational areas.

"Unreasonable adverse effects to man or the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide. ]

## PART II. PROCEDURES FOR OBTAINING A BUSINESS LICENSE.

§ 2.1. General requirements for all [ business licensees pesticide businesses; exemptions ] .

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A. Any [ person or ] business [ located operating ] in Virginia, [ or with retail outlets located in Virginia, ] which [ , in exchange for compensation, ] sells, stores, [ distributes, mixes, applies or ] recommends for use [ ; mixes, or applies ] pesticides [ , ] shall obtain a valid pesticide business license pursuant to these regulations. [ Each separate outlet or location of a pesticide business shall be licensed. ]

B. [ An applicant for a pesticide business license shall apply for the license on a form to be obtained from the department, and shall include with his application the annual licensing fee of \$50. All requested information shall be included on the form prior to issuance of the license. Exempted from the provisions of this regulation are the following:

1. Merchants of limited quantities of nonrestricted use pesticides who sell pesticides primarily intended for limited household use;
2. Federal, state and local governmental agencies;
3. Certified applicators not for hire; including, but not limited to, employees of golf courses, hotels, apartment complexes, and office complexes who use or supervise the use of pesticides as part of their job duties only on property owned or leased by themselves or their employer; and
4. Providers of janitorial, cleaning or sanitizing services if the providers use no pesticides other than sanitizers, disinfectants and germicides.

C. Application for a pesticide business license is made by submitting to the department (i) a completed application form and (ii) a check or money order in the amount of the annual business license fee established by the board.

G. D. ] Each applicant [ , or the applicant's designee, ] for a pesticide business license [ , or an employee designated by the applicant, ] shall demonstrate to the commissioner his knowledge of (i) pesticide laws and regulations; (ii) potential hazards of pesticides to man and the environment; and (iii) safe distribution, use, and disposal of pesticides by passing a written examination prior to his being issued a business license. If the applicant is already certified as a commercial applicator, he shall be exempt from the initial examination requirement.

[ E. All licensed pesticide businesses shall maintain written records pertaining to their operations, as required in these regulations.

F. All licensed pesticide business locations or outlets which sell restricted use pesticides, or distribute restricted use pesticides for purposes of selling, shall have a certified commercial applicator present who shall bear immediate responsibility for the correct and safe operation

of the location or outlet. Each business shall notify the department of the name of the commercial applicator assigned to each location or outlet, and shall also notify the department promptly of any change in the applicator assignments during the license period.

G. All licensed pesticide businesses which store, repack and distribute bulk pesticides shall meet the requirements established by the board for the storage, repackaging and distribution of bulk pesticides.

D. H. ] All pesticide business licenses shall expire at midnight on March 31 of each year. Licensees shall renew their licenses annually by application to the department and payment of the annual fee on or before [ COB close of business ] January 31. The department shall charge a 20% penalty in addition to the regular fee for renewal applications filed after January 31.

[ § 2.2. Pesticide dealer business licensing requirements:

A. Any pesticide business which sells, distributes, or stores any pesticide in Virginia shall obtain a valid pesticide business license pursuant to these regulations.

B. A pesticide dealer shall obtain a valid business license for each location or outlet in Virginia from which pesticides are sold or distributed.

C. No pesticide dealer shall allow any location or outlet from which restricted use pesticides are sold or distributed to operate without a certified commercial applicator present who shall bear immediate responsibility for the correct and safe operation of his location or outlet. Each dealer shall notify the department of the name of the commercial applicator designee for each location or outlet under his control, and shall also notify the department promptly of any change in the applicator designee during the licensing period.

D. Any pesticide dealer who stores, repackages and distributes bulk pesticides shall, in addition to meeting the relevant requirements of Parts II, IV, and V of these regulations, satisfy all the requirements of Part III.

E. Retailers of limited quantities of nonrestricted use pesticides including grocery stores, convenience stores, drug stores, veterinarians and other businesses which sell pesticides primarily for limited household use are exempt from the business licensing provisions (§ 2.1-240.46, Article 2, Chapter 14.1, Virginia Pesticide Control Act). This provision shall not apply to retailers of pesticides sold for commercial use.

§ 2.2. § 2.2. ] Commercial applicators' business licensing requirements. Business licensing requirements for commercial applicators. ]

A. Any person [ or business which mixes and applies mixing or applying ] any pesticide commercially in Virginia shall [ either (i) ] obtain a valid pesticide

business license [ issued ] pursuant to [ § 2.1 of ] these regulations [ , or (ii) be employed by a currently licensed pesticide business ] . The business license and [ fees fee ] shall not be considered a substitute for the commercial [ applicator's applicator ] certification and [ fees fee ] . Possession of a business license does not authorize the licensee to apply restricted use pesticides, nor does it allow a reduction of the fee necessary for an applicator's certification.

[ § 2.4. § 2.3. Pest management consultants' business licensing requirements Business licensing requirements for pest management consultants ] .

A. Any person or business which recommends any pesticide for use commercially in Virginia shall obtain a valid [ pesticide ] business license issued pursuant to [ § 2.1 of ] these regulations. This provision shall exclude [ company sales representatives certified in Category 10 - Demonstration and Research, and retail sales personnel of any business which has obtained a pesticide business license sales personnel of a licensed pesticide business, company training, technical and sales representatives certified in the demonstration pesticide applicator category, and governmental employees while performing in an official capacity ] .

[ B. If the pest management consultant is not a certified applicator, he shall meet the requirements of § 2.1 C above prior to being issued a business license.

C. B. ] The specialty categories for a pest management consultant shall conform to the commercial applicator categories established pursuant to the Act. The pest management consultant shall meet the requirements of the specific category or subcategory in which he is making recommendations for pesticide use prior to being issued a business license.

## [ PART III REQUIREMENTS FOR PESTICIDE DEALERS WHO STORE, REPACKAGE, AND DISTRIBUTE BULK PESTICIDES.

### § 2.1. Repackaging and distribution of bulk pesticides.

A. Bulk repackaging of pesticides for sale or distribution may be done provided:

1. The establishment conducting the transfer, sale, or delivery is in compliance with FIFRA, § 7 (Registration of Pesticide Producing Establishments) including an appropriate written authorization from the registrant allowing such repackaging;

2. A representative of the receiving establishment is present both when the product is received and when it is repackaged for sale and distribution;

3. The container into which the bulk pesticide is repackaged is effectively designed and constructed to

hold bulk volumes of the pesticide being repackaged, is in a good state of repair, and otherwise meets the approval of the seller; and

4. There is no change in the:

a. Pesticide formulation;

b. Product labeling, except for the addition of the assigned EPA establishment number of the repackaging site and net contents statement; and

c. Identity of the party accountable for the integrity of the product, i.e., the manufacturer or registrant as evidenced by the assigned EPA product registration number.

B. Repackaging for sale or distribution of bulk pesticides in nonbulk containers shall be prohibited unless the following conditions are met:

1. The repackaging in nonbulk quantities is expressly allowed in the written authorization specified in subdivision A 1 above, including authorization providing for split-shipment or partial delivery of the pesticide insofar as the sum total of the full shipment or completed deliveries falls within the definition of a bulk pesticide;

2. The container is effectively designed and constructed to hold bulk volumes of the pesticide being repackaged, is in a good state of repair and cleanliness, and otherwise meets the approval of the seller;

3. The sale or distribution is to the end-user of the pesticide;

4. The sale or distribution is otherwise in compliance with applicable labeling, product quality, weights and measures, and shipping requirements of these regulations, the Commonwealth, and the federal government; and

5. Notwithstanding the requirements of subdivision B 1 through B 3, repackaging or refilling of containers for sale or distribution in nonbulk quantities in nonbulk containers may occur at a bulk pesticide storage facility provided the respective containers are dedicated containers within the scope and definition of these regulations and the repackaging or refilling is carried out under a written contractual agreement between the repackager and the registrant. The requirements of subdivision B 4 shall be applicable.

C. Pesticides may be repackaged for sale or distribution using only containers which conform to these regulations, maintain the integrity of the product, protect the environment, and meet the approval of the seller of the pesticide.



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D. Scales and meters used for sale from bulk delivery systems shall meet the specifications, tolerances, and other technical requirements for weighing and measuring devices as specified by the department.

E. Appropriate measures shall be taken to prevent adulteration of product when either meters or manifold systems are used to dispense pesticides.

## § 3.2. Bulk pesticide storage facility registry.

A. There is hereby established in the department a bulk pesticide storage facility registry for purposes of program administration and communication with the facilities operating in the Commonwealth. Information supplied by product manufacturers and registrants under subsection B below shall comprise the data base of the registry.

B. Each product manufacturer or registrant who wishes to make a bulk shipment to any establishment within Virginia shall make notification to the department on an annual basis of his intent. Such notification shall include the name and address of each establishment receiving such delivery and an indication whether or not the establishment has been authorized by the registrant to repackage in bulk or nonbulk quantities or dedicated containers. Information with respect to the supplier of the bulk pesticide to the facility obtained by the department pursuant to the foregoing shall be deemed confidential and not available to the public, unless the pertinent manufacturer or registrant authorizes disclosure in writing.

## § 3.3. Bulk pesticide storage facility operation.

### A. Storage.

1. Location. Siting of a bulk pesticide storage facility shall comply with applicable local, Commonwealth, and federal regulations. Appropriate engineering safeguards shall be employed when such facilities are located on a flood plain, in a groundwater recharge area, or near wells or surface water. Under no circumstances shall bulk pesticides be stored underground.

2. Primary containment. Containers and appurtenances used as the primary containment in the storage and handling of bulk pesticides shall be constructed, installed, and maintained to prevent a discharge, and shall be of materials and construction compatible with the pesticides stored and the conditions of storage, including any specifications that may appear on the pesticide labeling.

3. Secondary containment. All bulk pesticide storage facilities shall be constructed with a means of secondary containment to prevent discharges and facilitate the recovery of pesticides should a discharge occur. Secondary containment shall meet the following criteria:

a. Secondary containment shall be constructed of sufficient thickness, density, and composition so as to contain any discharged material.

b. Secondary containment for outside storage shall be maintained to contain a minimum of 110% of the capacity of the largest single container in addition to the displacement of tanks, appurtenances, and other authorized items within the containment area. Suitable measures shall be used for containment of tanks stored under roof with a minimum containment of 100% of the capacity of the largest single tank in addition to the displacement of tanks, appurtenances, and other authorized items within the containment area.

c. The minimum containment capacities shall be maintained at all times. Rainwater or other liquids shall not be allowed to accumulate in the containment area to the point where minimum containment capacity is not maintained.

d. Sloped floor designs or other acceptable means are encouraged to facilitate removal of rainwater or other accumulated liquids in the secondary containment. Liquid-tight sumps may be used for the temporary collection of liquids from the secondary containment area. Minimum capacities of such sumps shall be determined by good engineering standards. Only manually operated pumps shall be used to remove liquids from secondary containment areas or sumps unless the sumps or auxiliary tanks are located within the secondary containment. Tanks used to store these liquids shall be within the secondary containment area unless the tank contains only water. Water from the secondary containment area and sumps may be used for dilution of pesticides or for other purposes if it is reasonably free from pesticide residues. Recovered liquids from the secondary containment area or sump may be used according to label directions when appropriate or disposed of according to applicable Commonwealth and federal requirements.

e. Floor or in-wall drains or valves, siphon tubes, underground appurtenances or automatic sump pumps shall be prohibited within the secondary containment area unless approved by the commissioner. Floor drains or valves to a liquid-tight sump and manually operated pumps may be used provided the integrity of the secondary containment is maintained.

f. In cases where a discharge has occurred, the operator shall contact the department for guidance to determine if such discharge is a reportable quantity (RQ). If such discharge is a RQ, the operator shall also notify the National Response Center at 1-800-424-8802. In no way does this notification release the operator from notifying other state agencies if such a discharge is a reportable

quantity.

## **B. Operations:**

1. Bulk pesticides shall be stored, handled, transported, loaded, and unloaded in a manner to prevent discharge that may result in unreasonable adverse effects on man or the environment. All applicable hazards of the pesticide shall be considered in the handling and loading practices to ensure proper protection of facility personnel and the environment.

2. Effective two years following adoption of these regulations, the operational areas at all bulk pesticide storage facilities shall be designed and constructed to prevent discharges that may reasonably be expected to result in unreasonable adverse effects to man or the environment. All operational area activities shall be carried out within the facility's operational area containment.

3. Prior to repackaging or refilling, bulk containers shall be thoroughly cleaned and inspected, except when a sealed, dedicated reusable bulk container is to be refilled with the same pesticide product bearing the same label as the preceding product and the seal or tamper indicator is otherwise intact.

4. Discharges and rainwater which accumulate in any secondary containment or operational area containment shall be disposed of as provided by the product's original labeling when feasible. If such discharge materials are contaminated or are otherwise unfit for use, reuse, or disposal according to label directions, the facility operator shall contact the department for guidance. Rainwater recovered from containment areas may be used for pesticide dilution or other appropriate use provided it is free of pesticide residue.

5. Upon delivery of the pesticide, the registered product label shall be affixed on the bulk storage container in the proximity of the outlet valve.

6. Locking devices shall be required on bulk pesticide storage containers, and other appropriate measures, such as installation of lighting or security fencing, may also be required in order to discourage ready access by unauthorized personnel to the bulk container storage area when unattended.

7. All pesticides used for custom mixing, tank mixing, or repackaging in the Commonwealth shall be registered and labeled in compliance with both FIFRA and the Act.

## **C. Inspection and maintenance.**

1. The operator of a bulk pesticide storage facility shall inspect and maintain storage containers, appurtenances, operational containment areas, and

secondary containment areas to minimize the risk of a pesticide discharge. A written record of all inspections and maintenance shall be made on the day of the inspection or maintenance and kept at the facility or at the nearest local office from which the facility is administered. A written record of all pesticide discharges onto the operational area or into the secondary containment area shall be maintained for at least three years. The record shall include date, time, type of pesticide, volume, cause (if known), actions to contain, and management of the discharge.

2. The following inspection schedule for a bulk pesticide storage facility shall be required:

a. For bulk pesticide storage containers and appurtenances, at least weekly during the use-season;

b. For secondary containment areas, at least monthly while the bulk pesticide is in storage; and

c. For operational containment areas, at least monthly during the use-season.

3. Inspection records shall contain the name of the person making the inspection, the date of each inspection, conditions noted, and maintenance performed, if needed.

4. Maintenance of the bulk pesticide storage facility shall be performed as necessary in order to ensure that the integrity of the bulk pesticide containers, secondary containment areas, and operational containment areas is maintained.

## **§ 3-4. Emergency and discharge response plan.**

A. The operator of a bulk pesticide storage facility shall prepare a written emergency and discharge response plan for the storage facility. The operator shall keep the plan current at all times. A copy of the plan shall be posted at a prominent location at the storage facility and, if applicable, at the nearest local office from which the storage facility is administered. The operator shall make the plan available for employee review and for inspection by the commissioner or his designee. The operator shall also provide a current copy of the plan to the local fire and police departments.

B. The plan shall include, but is not limited to:

1. The identity and telephone numbers of the persons who are to be contacted in the event of an emergency or discharge;

2. A complete copy of the storage container label registered in Virginia for every bulk pesticide stored at the facility;

3. A complete copy of the Material Safety Data Sheet for every bulk pesticide stored at the facility;

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4. The procedures and equipment to be used in controlling and recovering or otherwise responding to an emergency or a discharge;

5. An identification, by location, of every fixed bulk pesticide storage container located at the facility, and the type of bulk pesticide stored therein. The plan need not include the specific location of each pesticide storage container of less than a 300 gallon capacity, provided that the plan includes the general location within the facility at which storage of such containers occurs.

C. Bulk pesticide storage facilities shall have on the premises equipment needed to mitigate and recover pesticide discharges. The equipment shall reasonably include, but is not limited to, pumps, recovery containers, personal protective equipment, absorbent materials, and other materials used to control and recover pesticide discharges. A checklist of discharge response equipment and its location shall be posted in an area frequented by employees along with the plan.

D. The owner or operator of the bulk pesticide storage facility shall conduct emergency and discharge response training for all new and existing employees of the facility annually before the beginning of the pesticide use-season. New employees shall receive such training within 30 days of employment. The owner, operator, and employees shall be responsible for following the firm's emergency and discharge response plan procedures. ]

## PART [ IV. III ] RECORD KEEPING.

[ § 4-1. § 3.1. ] General record keeping requirements.

A. [ All records Records ] covered in [ §§ 4.2 through 4.4 this regulation ] shall, upon written request, be [ made ] available for inspection by the commissioner or his designee [ , or during normal business hours. Records not readily available ] shall be submitted to the commissioner within 72 hours if so requested in writing.

B. [ All persons Persons ] possessing records covered in this part shall fully comply with the requirements contained in § 8 of FIFRA and regulations pursuant thereto.

[ C. Pesticide businesses shall maintain for a period of two years all records required by this regulation. ]

[ § 4.2. § 3.2 ] Record keeping [ of restricted use pesticide sales ] by licensed pesticide [ dealers businesses ] .

[ A. As a condition of obtaining or renewing a business license, each pesticide dealer shall maintain such records as required in these regulations.

B. A dealer shall maintain for a period of two years records of each restricted use pesticide sold.

C. A dealer shall preserve the following information in his records:

A. Pesticide businesses which sell restricted use pesticides shall maintain a record of each restricted use pesticide sold. Each sales record shall contain the following: ]

1. [ The name Name ] , address, [ and ] certified applicator number or [ dealer business ] license number [ , and certificate or license expiration date ] of the person to whom the restricted use pesticide was sold or delivered;

2. [ The date Date ] of sale;

3. [ The brand Brand ] or common product name [ ; EPA registration number; and ; ]

[ 4. EPA registration number; and ]

[ 4. The quantity 5. Quantity ] of pesticide sold or delivered.

[ B. ] The [ restricted use pesticide sales ] record keeping [ requirements imposed on licensed pesticide dealers requirement ] may be satisfied by invoices, if [ (i) ] such invoices are kept separate from the licensee's other sales records [ , ] and [ (ii) the invoices ] contain the above information.

[ § 4.2. Record keeping by operators of bulk pesticide storage facilities.

A. The operator of a bulk pesticide storage facility shall keep on hand the following records:

1. The beginning and end amounts in each fixed storage container calculated and recorded at the time of each filling of the container or dispensing from the container. Weighing, metering, or direct measurement are acceptable methods for calculating storage amounts;

2. The amounts of bulk pesticide delivered, sold, or used; and

3. The names of persons preparing the information in subdivisions 1 and 2 above, and the dates on which the information was prepared.

§ 4.4. § 3.3 ] Record keeping by commercial applicators [ and pest management consultants ] .

[ A. As a condition of obtaining or renewing a license, each commercial applicator or pest management consultant shall maintain such records as required in this regulation.

B. A licensed commercial applicator shall maintain for a period of two years records of each restricted use pesticide used. A pest management consultant shall also

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maintain for a period of two years records of each restricted use pesticide he has recommended for use.

C. A commercial applicator shall preserve the following information in his records:

A. Commercial applicators shall maintain a record of each restricted use pesticide applied. Each record shall contain the: ]

1. Name, address, and telephone number of customer and address [ or location, if different, ] of site of application [ ; # different ] ;
2. Name and certification number (or certification number of the supervising certified applicator) of the person making the application;
3. Day, month and year of application;
4. Type of plants, crop, animals, or sites treated and principal pests to be controlled;
5. Acreage, area, or number of plants or animals treated;
6. Brand name or common product name [ and EPA registration number ] ;
- [ 7. EPA registration number; ]
- [ 7. Amounts (pounds, gallons, etc.) 8. Amount ] of pesticide concentrate [ or and amount of ] diluent used [ , by weight or volume, ] in mixture applied; and
- [ 8. 9. ] Type of application equipment used.

[ D. A pest management consultant shall preserve the following information in his records:

1. Name, address, and phone number of customer and address of site of application, if different;
2. Type of plants, crop, animals, or sites treated and principal pests to be controlled;
3. Pesticide to be applied, including common name (brand name), type of formulation and company name appearing on the label;
4. Dosage or rate of the pesticide recommended for application;
5. Disposal method, if any, recommended for unused pesticides, pesticide waste, and empty containers; and
6. Date on which each recommendation was made. ]

## PART [ V. IV. ] EVIDENCE OF FINANCIAL RESPONSIBILITY.

[ § 5-1. § 4.1. ] Evidence of financial responsibility required of [ a ] licensed pesticide business.

A. Prior to being issued a pesticide business license, a business shall furnish evidence of financial responsibility, consisting either of: (i) a surety bond to the benefit of the board from a person authorized to do business in Virginia; (ii) a liability insurance policy from a person authorized to do business in Virginia, or a certification thereof, protecting persons who may suffer legal damages as a result of the use of any pesticide by the applicant; or (iii) a plan of self-insurance which meets the requirements set forth below and is approved by the board.

B. If the evidence of financial responsibility consists of a surety bond, the bond shall be in an amount specified in subsection E of this section, and shall cover liability arising out of handling, storage, application, use or misuse, or disposal of any pesticide; it shall also cover liability relating to completed operations.

C. If the evidence of financial responsibility consists of a liability insurance policy, the following conditions shall be met:

1. The certificate of insurance shall include the name of the insurance company, policy number, insurance amount, type of coverage afforded, any exclusions relating to damage arising from the use of pesticides, and expiration date of the policy. The policy shall cover liability arising out of the handling, storage, application, use or misuse, or disposal of any pesticide; it shall also cover liability relating to completed operations [ ; . ]

2. The policy shall be in an amount specified in subsection E [ ; and of this section. ]

3. The licensee shall forward a current certificate of insurance to the board at each insurance renewal date [ which sets forth the same information called for above ] .

D. If the evidence of financial responsibility consists of a plan of self-insurance, the following conditions shall be met:

1. The self-insurer shall submit a written proposal of self-insurance to the board for approval. The proposal shall include a master self-insurance and security agreement and a balance sheet and income statement which reflects the actual financial condition of the business as of the last complete calendar or fiscal year preceding the date of the proposal. These documents shall be certified by a certified public accountant.

2. The self-insurer shall post collateral with the board in the amount of at least \$400,000. The collateral shall consist of the following: (i) negotiable instruments of the United States Government; (ii) escrow deposits

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established for the sole purpose of providing security for self-insurance purposes; (iii) irrevocable letters of credit; or (iv) other security approved upon petition to the board.

3. If the self-insurer is unable to [ ~~discharge~~ fulfill ] his obligations under the Act, he may petition the board to release the collateral posted. If such a withdrawal is necessary, the self-insurer shall replace the security within 72 hours from the time of withdrawal in order to retain his certificate as a self-insurer.

4. A certificate of self-insurance, to be issued by the board, shall be renewed annually following appropriate review by the board. If his financial responsibility furnished no longer complies with this section, the self-insurer shall immediately provide other evidence of financial responsibility.

E. The amount of financial responsibility as provided for in this section shall be [ ~~either (i) at minimum a minimum of (i)~~  \$200,000 for property damage, subject to a \$1,000 deductible provision in the case of licensees holding liability insurance policies, and \$200,000 for personal injury; or (ii) a combined single limit of \$400,000 with a \$1,000 deductible. The board may require [ ~~the provision of~~ ] additional evidence of financial responsibility based upon annual gross revenue of the applicant [ ~~, if self-employed,~~ ] or his employer's business [ ~~, if not,~~ ] and an assessment of the risks of the applicant or his employer's business to persons, property, and the environment. [ ~~Whatever the evidence of financial responsibility decided upon, it shall be maintained at not less than such amount at all times during the licensing period.~~ ] The licensee shall [ ~~maintain at least the minimum coverage at all times during the license period, and shall~~ ] notify the board [ ~~at least~~ ] 10 days prior to any reduction [ ~~at his request of the evidence of financial responsibility, or 10 days prior to or~~ ] cancellation of such financial responsibility by the surety or insurer. If the deductible of an applicant for a business license is greater than \$1,000, evidence of financial responsibility shall be furnished to the board to satisfy the difference between the applicant's deductible and the \$1,000 deductible. This evidence may consist of a financial statement or a personal bond.

## PART [ ~~VI~~ V. ] REVOCATION, SUSPENSION OR DENIAL OF BUSINESS LICENSES.

[ ~~§ 6-1~~ § 5.1. ] Revocation of a business license.

A. In addition to the violative acts listed under § 3.1-249.63 B of the Act, the following are grounds for revocation by the board of a business license:

1. Failure [ ~~of a pesticide dealer, commercial applicator, or pest management consultant~~ ] to (i) submit records to the commissioner upon [ ~~the latter's~~

] written request; or (ii) to permit any person designated by the commissioner to have access to, and to copy such records of business transactions as may be essential to carrying out the purposes of the Act.

2. [ ~~Failure Operation~~ ] of a pesticide [ ~~dealer to operate a business~~ ] location or outlet without a certified commercial applicator [ ~~normally~~ ] assigned to the location or outlet [ ~~as required by this regulation~~ ] .

3. Failure of a self-insurer to provide [ ~~immediately, within 72 hours,~~ ] other evidence of financial responsibility if the financial responsibility [ ~~which he has~~ ] previously furnished no longer complies with the requirements [ ~~in this section of the regulation of the Act or regulations promulgated thereunder~~ ] .

4. [ ~~Opposition to or interference in any way of a licensee Interference~~ ] with the commissioner or his duly authorized agents in carrying out the duties imposed by [ ~~Chapter 14-1 of~~ ] the Act.

5. Conduct by a licensee, as determined during the course of a hearing, which has or might have resulted at any time in substantial danger to, or in unreasonable adverse effects on, the public health, safety, or the environment.

6. Failure of a licensee to notify the department of any change in financial responsibility as specified in subsection E of [ ~~§ 5-1~~ § 4.1 ] of these regulations.

7. Multiple violations of the Act or regulations pursuant thereto within a three-year period.

[ ~~§ 6-2~~ § 5.2. ] Summary suspension by commissioner.

A. The commissioner may suspend the [ ~~pesticide business~~ ] license of any person [ ~~licensed,~~ ] without a hearing, simultaneously with the institution of proceedings for a hearing, if he finds there is a substantial danger to the public health, safety, or the environment which warrants this action. [ ~~Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension. Situations which may warrant suspension include, but are not limited to, the following:~~

1. Operating a pesticide business or pesticide business outlet without a certified commercial applicator on site as required by this regulation, when absence of the applicator presents a substantial danger to the public health, safety, or the environment, as determined by the commissioner.

2. Refusal by a pesticide business, after receipt of a written request, to permit the commissioner or his agent access to and to copy records of business transactions, when such refusal presents a substantial

danger to the public health, safety, or the environment, as determined by the commissioner. ]

[ B. Following the hearing provided for in subsection A above, the commissioner may either: (i) lift the suspension of the license; (ii) continue the suspension of the license on a contingency basis with a specific time frame provided within which the licensee shall meet certain requirements, failing which the commissioner shall recommend revocation of the license to the board; (iii) modify the license; or (iv) recommend to the board revocation of the license.

C. The commissioner may suspend the license of any pesticide dealer if he finds that any licensed dealer outlet for which that dealer bears responsibility is operating without a certified commercial applicator on site. The same provisions for a hearing as in subsection A above shall apply.

D. The commissioner may suspend the license of any licensee if the latter refuses, upon a request in writing from the commissioner specifying the nature or kind of pesticide or device to which such request relates, to furnish to the commissioner or permit any person designated by the commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of Chapter 14.1 of the Act. The same provisions for a hearing as in subsection A above shall apply.

B. The commissioner shall institute proceedings for a hearing pursuant to § 9-6.14:12 of the Code simultaneously with any summary suspension. Subject to any provision of procedure or regulation of the board for the processing of violations not inconsistent with this regulation:

1. The hearing shall be held within 60 days after the suspension; and

2. The hearing officer conducting the hearing shall have the authority to consider and address all matters relating to the summary suspension, including but not limited to the withdrawing, sustaining, or modifying thereof.

The commissioner or a conference officer appointed by the commissioner shall offer the person whose license has an opportunity to appear in an informal conference, authorized by § 9-6.14:11 of the Code, to be held within three days after the summary suspension. The informal conference may consider, subject to any provision of the board for the processing of violations, all matters relating to the summary suspension, including but not limited to the withdrawal, sustaining, or modifying thereof. Nothing in this section authorizing consideration of matters by an informal conference shall be construed to deny a respondent's right to a hearing. ]

[ E. Any license whose licensee has been suspended shall not engage in the activity for which he has been licensed

pending the hearing. ]

C. No person may operate a pesticide business at any time when his license is suspended.

§ 6.3: § 5.3 ] Denial of license by the commissioner.

A. The commissioner shall deny a business license to any applicant who does not submit all the information required on the license application form, or who does not fully comply with all relevant ] requirements for licensing [ listed above set forth in this regulation ] .

B. The commissioner may, after notice to [ an a pesticide business ] applicant [ for a license ] and after opportunity for hearing, deny [ such a pesticide business ] license to [ the an ] applicant [ who has violated the pesticide law or regulations of any state or competent authority so as to evidence a disregard for proper and safe pesticide use; or ] if his license has been denied, suspended, nullified, withdrawn, revoked, or otherwise terminated by [ another any ] state or other competent authority.

C. Any applicant for a [ pesticide business ] license shall not engage in the activity for which he is requesting a license until it shall have been issued by the commissioner.

## PART [ VII: VI ] EFFECT ON OTHER REGULATIONS.

[ § 7.1: § 6.1. ] The provisions of this regulation supersede § 23, "Records," and § 26, "Evidence of Financial Responsibility," of VR 115-04-03, Rules and Regulations for Enforcement of the Virginia Pesticide Law, which are hereby repealed.

# Final Regulations



VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
P.O. Box 526  
Richmond, Virginia 23209



## APPLICATION FOR PESTICIDE BUSINESS LICENSE

In accordance with Section 3.1-249.46 of the Virginia Pesticide Control Act, and regulations adopted thereunder, application is hereby made for a PESTICIDE BUSINESS LICENSE to sell, distribute, store, apply or recommend for use pesticides.

The annual business license fee is \$50.00. Please make check payable to: Treasurer of Virginia. Mail application, check and evidence of financial responsibility to the above address.

Licenses expire on March 31 each year. Licenses must be renewed 60 days prior to expiration each year to avoid payment of a 20 percent penalty.

Please type or print the following information:

NAME OF BUSINESS: \_\_\_\_\_  
STREET/RFD: \_\_\_\_\_ CITY: \_\_\_\_\_  
COUNTY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_  
NAME OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_  
TITLE: \_\_\_\_\_ BUSINESS PHONE: \_\_\_\_\_

This business will engage in the following (CHECK ALL THAT APPLY):

SELLING             DISTRIBUTION             APPLYING PESTICIDES  
 STORAGE             BULK STORAGE             RECOMMENDING FOR USE

Proof of financial responsibility submitted (ATTACH COPY TO APPLICATION):

Liability Insurance Certificate     Surety Bond     Other

I certify that I understand my legal responsibilities for the sale, application, distribution or storage of pesticides, and that I will sell restricted-use pesticides only to individuals who possess a valid pesticide applicators certificate, or to their representative.

SIGNATURE OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

DATE: \_\_\_\_\_

AMOUNT TO REMIT: \$50.00

VDACS ACCT. 857-02-02438

\*\*\*\*\*  
\* FOR DEPARTMENTAL USE ONLY \*  
\* Business License No.: \_\_\_\_\_ \*  
\* Date of Issue: \_\_\_\_\_ \*  
\* Keyed to Database by: \_\_\_\_\_ \*  
\*\*\*\*\*

VDACS-07209  
3/93

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

NOTICE: On November 15, 1990, the Chesapeake Bay Local Assistance Board adopted a final regulation entitled "Chesapeake Bay Preservation Area Designation and Management Regulations" (VR 173-02-01). This regulation includes amendments to the regulation originally proposed in the Virginia Register of Regulations on April 24, 1989. This adoption supersedes previous adoptions of final regulations on July 13, 1989, and September 20, 1989, and is being made to rectify a procedural error found by Judge Holloway in York County Circuit Court September 19, 1990, and addressed in Judge Holloway's Court Order of November 13, 1990.

**Title of Regulation:** VR 173-02-01. Chesapeake Bay Preservation Area Designation and Management Regulations.

**Statutory Authority:** §§ 10.1-2103 and 10.1-2107 of the Code of Virginia.

**Effective Date:** See § 6.5 of this regulation.

### Summary:

This regulation establishes criteria for local government designation of Chesapeake Bay Preservation Areas and for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas. This regulation also identifies the requirements for changes which local governments must incorporate into their comprehensive plans, zoning ordinances, and subdivision ordinances to protect the quality of state waters pursuant to §§ 10.1-2109 and 10.1-2111 of the Chesapeake Bay Preservation Act.

The regulation is divided into six parts dealing with (i) introductory matters, (ii) local government requirements, (iii) Chesapeake Bay Preservation Area criteria, (iv) land use and development performance criteria, (v) implementation, assistance, and determination of consistency, and (vi) enforcement.

Part I, "Introduction," establishes the purpose, authority, and applicability of the regulation and defines terms.

Part II, "Local Government Programs," sets forth the objectives of local programs that implement the regulations and lists the elements that must be included in local programs.

Part III, "Chesapeake Bay Preservation Area Designation Criteria," includes the first set of criteria required by the Code. These criteria describe the characteristics and objectives of Chesapeake Bay Preservation Areas and list the land types that must be included or considered for inclusion in preservation

areas. Chesapeake Bay Preservation Areas are to be subdivided into the more sensitive lands adjacent to the shore, called Resource Protection Areas, and less sensitive upland areas that have the potential to degrade water quality, called Resource Management Areas. In addition, this part provides local governments with the option to identify as an overlay "Intensively Developed Areas," which are allowed certain exemptions from the criteria.

Part IV, "Land Use and Development Performance Criteria," includes the second set of criteria required by the Code, called performance criteria. The performance criteria are subdivided into two groups: (i) general criteria that apply in all Chesapeake Bay Preservation Areas, and (ii) additional or more stringent criteria that apply only in the Resource Protection Areas. This part also sets forth exemptions from the criteria and establishes a local government process for granting exceptions.

Part V, "Implementation, Assistance, and Determination of Consistency," provides guidance in the orderly and timely development of local programs and criteria by which local program consistency will be determined. This part describes the local assistance manual to be provided by the board to local governments. It also addresses the first year requirements covering the mapping and designation of Chesapeake Bay Preservation Areas and the employment of the performance criteria. Finally, it addresses the second year program elements, including (i) necessary changes in local zoning and subdivision ordinances and comprehensive plans, (ii) implementation of a local process to review development proposals in preservation areas for compliance with the Act and regulations, (iii) conditions under which water quality impact assessments will be required for proposal developments, and (iv) review by the board of completed local programs for consistency and, upon request, board certification of local programs.

Part VI, "Enforcement," establishes administrative and legal procedures to secure compliance with the Act by local governments.

VR 173-02-01. Chesapeake Bay Preservation Area Designation and Management Regulations.

## PART I INTRODUCTION.

### § 1.1. Application.

The board is charged with the development of regulations [ including which establish ] criteria that will provide for the protection of water quality [ and conservation of habitat dependent on water quality in Chesapeake Bay Preservation Areas ], and that also will accommodate economic development. All counties, cities,



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and towns in Tidewater Virginia shall comply with these regulations. Other local governments not in Tidewater Virginia [ are encouraged to may ] use the criteria and [ to ] conform their ordinances as provided in these regulations to protect the quality of state waters in accordance with § 10.1-2110 of the Code of Virginia.

## § 1.2. Authority for regulations.

These regulations are issued under the authority of §§ 10.1-2103 and 10.1-2107 of Chapter 21 of Title 10.1 of the Code of Virginia (the Chesapeake Bay Preservation Act, hereinafter "the Act").

## § 1.3. Purpose of regulations.

[ The purpose of these regulations is to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by minimizing the effects of human activity upon these waters and implementing the Act, which provides for the definition and protection of certain lands called Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries. ]

These regulations establish the criteria that counties, cities, and towns (hereinafter "local governments") [ must shall ] use to determine the extent of the Chesapeake Bay Preservation Areas within their jurisdictions. [ They These regulations ] establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas. [ They These regulations ] identify the requirements for changes which local governments [ must shall ] incorporate into their comprehensive plans, zoning ordinances, and subdivision ordinances to protect the quality of state waters pursuant to §§ 10.1-2109 and 10.1-2111 of the Act.

## § 1.4. Definitions.

The following words and terms used in these regulations have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 10.1-2101 of the Act.

"Act" means the Chesapeake Bay Preservation Act found in Chapter 21 (§ 10.1-2100 et seq.) of Title 10.1 of the Code of Virginia.

[ "Best management practice" means a practice, or combination of practices, that is determined by a state or designated area wide planning agency to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. ]

"Board" means the Chesapeake Bay Local Assistance Board.

"Buffer [ zone area ] " means an area of natural or established vegetation managed to protect [ aquatic, wetland, shoreline and other habitat dependent on water quality other components of a Resource Protection Area and state waters ] from significant degradation due to [ man-made land ] disturbances.

"Chesapeake Bay Preservation Area" means any land designated [ by a local government ] pursuant to Part III of these regulations and § 10.1-2107 of the Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

"Department" means the Chesapeake Bay Local Assistance Department.

"Development" means the construction [ , redevelopment ] or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

"Director" means the Executive Director of the Chesapeake Bay Local Assistance Department.

"Floodplain" means [ an area all lands ] that would be inundated [ by flood water ] as a result of a storm event of a 100-year return interval.

"Highly erodible soils" means soils [ (excluding vegetation) ] with an erodibility [ (K) value greater than .35 of all soils on slopes with a gradient exceeding 15%, as identified in local Soil Surveys published by the U.S. Department of Agriculture-Soil Conservation Service, where such surveys exist index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula  $RKLS/T$ , as defined by the "Food Security Act (F.S.A.) Manual" of August, 1988 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance ].

"Highly permeable soils" means soils with a [ high given ] potential [ for transmission of pollutants into groundwater, as identified in the soils information section of the "Field Office Technical Guides" published by the U.S. Department of Agriculture-Soil Conservation Service to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soils Handbook" of July, 1983 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Soil Conservation Service ].

[ "Impervious cover" means a surface composed of any material that significantly impedes or prevents natural

infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface. ]

[ "Infill" means utilization of vacant land in previously developed areas. ]

[ "Intensely Developed Areas" means those areas designated by the local government pursuant to § 3.4 of these regulations. ]

"Local governments" means counties, cities, and towns. These regulations apply to local governments in Tidewater Virginia, as defined in § 10.1-2101 of the Act, but the provisions of these regulations may be used by other local governments.

"Local program" means the measures by which a local government complies with the Act and regulations.

[ "Local program adoption date" means the date a local government meets the requirements of subsections A and B of § 2.2 of Part II. ]

*F* "Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act [ as amended ], in 33 C.F.R. 328.3b, dated November 13, 1986.

[ "Plan of development" means any process for site plan review in local zoning and land development regulations designed to ensure compliance with § 10.1-2109 of the Act and these regulations, prior to issuance of a building permit. ]

"Redevelopment" means the process of developing land that is or has been [ previously ] developed.

"Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

"Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of [ sensitive ] lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters [ and loss of aquatic habitat ].

*at lea* [ "Subdivision" means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term

~~includes resubdivision. ]~~

[ "Substantial alteration" means expansion or modification of a building or development which would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only. ]

"Tidal shore [ ~~the~~ ] " [ or "shore" ] means land contiguous to a tidal body of water [ ~~to an elevation one and one-half times the local tide range above between~~ ] the mean low water level [ and the mean high water level ].

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 62.1-13.2 of the Code of Virginia.

"Tidewater Virginia" means those jurisdictions named in § 10.1-2101 of the Act.

"Tributary stream" means any perennial stream that is so depicted on the most recent U.S. Geological Survey 7-1/2 minute topographic quadrangle map (scale 1:24,000).

"Use" means an activity on the land other than development including, but not limited to, agriculture, horticulture, [ and ] silviculture [ ; and recreation ].

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas, and (v) fisheries or other marine resources facilities.

[ § 1.6. Local government discretion.

These regulations represent minimum criteria to be used by localities. ]

## PART II. LOCAL GOVERNMENT PROGRAMS.

### § 2.1. Local program development.

Local governments shall develop measures (hereinafter called "local programs") necessary to comply with the Act and regulations. Counties and towns are encouraged to cooperate in the development of their local programs. In conjunction with other state water quality programs, local programs shall encourage and promote: (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in

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pollution; (iv) reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

## § 2.2. Elements of program.

Local programs shall contain the elements listed below. [ Local governments shall adopt ] elements A and B [ shall be adopted ] concurrently [ and no later than ] 12 months after the [ effective adoption ] date of these regulations. Elements C through G [ may shall ] be in place within 24 months after the [ effective adoption ] date.

A. A [ zoning ] map [ designating delineating ] Chesapeake Bay Preservation Areas.

B. Performance criteria applying in Chesapeake Bay Preservation Areas [ at least as stringent as those provided that employ the requirements ] in Part IV.

C. A comprehensive plan or revision that incorporates the protection of Chesapeake Bay Preservation Areas and of the quality of state waters.

D. A zoning ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, [ and ] (ii) requires compliance with all criteria set forth in Part IV [ ; and (iii) requires a plan of development prior to the issuance of a building permit to assure that use and development of land in Chesapeake Bay Preservation Areas are accomplished in a manner that protects the quality of state waters ].

E. A subdivision ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, and (ii) assures that all subdivisions in Chesapeake Bay Preservation Areas comply with the criteria set forth in Part IV.

F. An erosion and sediment control ordinance or revision that requires compliance with the criteria in Part IV.

G. [ A building permit process or revision that requires compliance with the criteria set forth in Part IV. A plan of development process prior to the issuance of a building permit to assure that use and development of land in Chesapeake Bay Preservation Areas is accomplished in a manner that protects the quality of state waters. ]

## PART III. CHESAPEAKE BAY PRESERVATION AREA DESIGNATION CRITERIA.

### § 3.1. Purpose.

The criteria in this part provide direction for local government designation of the ecological and geographic

extent of Chesapeake Bay Preservation Areas. Chesapeake Bay Preservation Areas are divided into Resource Protection Areas and Resource Management Areas that are subject to the criteria in Part IV and the requirements in Part V. [ In addition, the criteria in this part provide guidance for local government identification of areas suitable for redevelopment that are subject to the redevelopment criteria in Part IV. ]

### § 3.2. Resource Protection Areas.

A. Resource Protection Areas shall consist of sensitive lands at or near the shoreline that have an intrinsic water quality value due to the ecological and biological processes they perform [ and or ] are sensitive to impacts which may cause significant degradation to the quality of state waters [ or less of aquatic habitat ] . [ In their natural condition, these lands provide for the removal, reduction, or assimilation of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources. ]

B. [ As a minimum, ] The Resource Protection Area shall include:

1. Tidal wetlands;
2. Nontidal wetlands [ hydrologically ] connected by surface flow and contiguous to tidal wetlands or tributary streams;
3. Tidal [ shorelines shores ] ;
4. Such other lands [ as might qualify ] under the provisions of subsection A of § 3.2 of this part [ that local governments deem ] necessary to protect the quality of state waters;
5. A [ vegetated ] buffer [ zone area not less than 100 feet in width ] located adjacent to and landward of the components listed in subdivisions 1 through 4 above, and along both sides of any tributary stream.

[ a: The purpose of the buffer zone is to (i) provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries; (ii) minimize the adverse effects of human activities on wetlands, shorelines, state waters, aquatic resources, and habitat dependent on water quality; and (iii) maintain the natural environment of streams. The full buffer area shall be designated as the landward component of the Resource Protection Area notwithstanding the presence of permitted uses or equivalent measures in compliance with Part IV of these regulations. Designation of this area shall not be subject to reduction unless based on reliable site-specific information as provided in subsection B of § 4.1, and subsections C and E of § 5.6 of these regulations. ]

[ b. The width of the buffer zone shall be (i) 100 feet landward of all other components of Resource Protection Areas contiguous to tidal waters; or (ii) 50 feet landward of all other components of Resource Protection Areas contiguous to nontidal waters. ]

## § 3.3. Resource Management Areas.

A. Resource Management Areas shall include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for [ causing a loss of diminishing ] the functional value of the Resource Protection Area.

B. A Resource Management Area shall be provided contiguous to the entire inland boundary of the Resource Protection Area. The following land categories shall be considered for inclusion in the Resource Management Area:

1. Floodplains;
2. Highly erodible soils, including steep slopes;
3. Highly permeable [ areas or other areas vulnerable to groundwater degradation soils ];
4. Nontidal wetlands not included in the Resource Protection Area;
5. Such other lands [ as might qualify ] under the provisions of subsection A of § 3.3 of this part [ that local governments deem ] necessary to [ prevent nonpoint source pollution protect the quality ] of state waters.

C. Resource Management Areas shall encompass a land area large enough to provide significant water quality protection through the employment of the criteria in Part IV and the requirements in Parts II and V.

## [ § 3.4. Intensely Developed Areas.

At their option, local governments may designate Intensely Developed Areas as an overlay of Chesapeake Bay Preservation Areas within their jurisdictions. For the purposes of these regulations, Intensely Developed Areas shall serve as redevelopment areas in which development is concentrated as of the local program adoption date. Areas so designated shall comply with the performance criteria for redevelopment in Part IV.

Local governments exercising this option shall examine the pattern of residential, commercial, industrial, and institutional development within Chesapeake Bay Preservation Areas. Areas of existing development and infill sites where little of the natural environment remains may be designated as Intensely Developed Areas provided at least one of the following conditions exist:

A. Development has severely altered the natural state of the area such that it has more than 50% impervious surface;

B. Public sewer and water is constructed and currently serves the area by the effective date. This condition does not include areas planned for public sewer and water;

C. Housing density is equal to or greater than four dwelling units per acre. ]

## PART IV. LAND USE AND DEVELOPMENT PERFORMANCE CRITERIA.

### § 4.1. Purpose.

The purpose of this part is to [ ~~implement~~ achieve ] the goals of the Act and [ Part II § 2.1 of these regulations ] by establishing criteria to [ reduce nonpoint source pollution loads entering the Bay, its tributaries and other state waters; to protect the functional integrity of the Resource Protection Area; and to conserve water resources; implement the following objectives: prevent a net increase in nonpoint source pollution from new development, achieve a 10% reduction in nonpoint source pollution from redevelopment, and achieve a 40% reduction in nonpoint source pollution from agricultural and silvicultural uses.

In order to achieve these goals and objectives, these criteria establish performance standards to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, maximize rainwater infiltration, and ensure the long-term performance of the measures employed. ]

[ A. ] These criteria [ become mandatory upon the local program adoption date. They ] are supplemental to the various planning and zoning concepts employed by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.

[ B. Local governments may exercise judgment in determining site-specific boundaries of Chesapeake Bay Preservation Area components and in making determinations of the application of these regulations, based on more reliable or specific information gathered from actual field evaluations of the parcel, in accordance with plan of development requirements in Part V. ]

### § 4.2. General performance criteria.

It must be demonstrated to the satisfaction of local governments that any use, development, or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the desired use or development;

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2. [ Natural Indigenous ] vegetation shall be preserved to the maximum extent possible [ consistent with the use and development allowed ];

3. [ Nonstructural best management practices shall be employed rather than structural best management practices where either will perform the required function. In any case, ] Where [ the ] best management practices utilized [ shall be self-maintaining or regular require regular or periodic maintenance in order to continue their functions, such ] maintenance [ of their function must shall ] be ensured [ by the local government through a maintenance agreement with the owner or developer or some other mechanism that achieves an equivalent objective ];

4. All development [ of land exceeding 2,500 square feet of land disturbance ] shall be accomplished through a plan of development review process consistent with § 15.1-491 (h) of the Code of Virginia;

5. Land development shall minimize impervious cover [ consistent with the use or development allowed ];

[ 6. All subdivision lots platted after the effective date shall provide sufficient area for the construction of the principal structure, accessory structures, access road or driveway, and necessary on-site sewage treatment facilities outside the Resource Protection Area. ]

[ 7. 6. ] Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks and drainfields, but otherwise as defined in § 10.1-560 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control ordinance;

[ 8. 7. ] On-site sewage treatment systems not requiring a [ State Water Control Board Virginia Pollutant Discharge Elimination System (VPDES) ] permit shall:

a. Have [ inspection and ] pump-out accomplished [ for all such systems ] at least [ once ] every five years;

b. [ For new construction, ] provide a reserve [ drainfield sewage disposal ] site [ with a capacity at least ] equal to [ the area that ] of the primary [ drainfield sewage disposal ] site. [ The This ] reserve [ drainfield sewage disposal ] site [ requirement ] shall [ be shown on the plat map and not apply to any lot or parcel recorded prior to the effective date of these regulations, and which lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. ] Building shall be prohibited on the area of [ the reserve drainfield; all sewage disposal sites until the structure is served by public sewer or an on-site sewage treatment

system which operates under a permit issued by the State Water Control Board. All sewage disposal site records shall be administered to provide adequate notice and enforcement. ]

[ c. Require a minimum vertical separation distance between the septic absorption area and the seasonally high water table of at least 18 inches at all times of the year. ]

[ 9. 8. ] Stormwater management criteria [ at least as stringent as the following which accomplish the goals and objectives of these regulations shall ] apply [ : . ]

[ a. Sheet flows shall be maintained and concentrated flows avoided to the maximum extent possible; ]

[ b. ] For [ new ] development, the post-development nonpoint source pollution runoff load shall not exceed the pre-development load based upon average land cover conditions.

[ c. ] Redevelopment [ of any site not currently served by water quality best management practices ] shall [ result in achieve at least ] a 10% reduction of nonpoint source pollution in runoff compared to the existing runoff load from the site. [ Post-development runoff from any site to be redeveloped that is currently served by water quality best management practices shall not exceed the existing load of nonpoint source pollution in surface runoff. ]

[ a. The following stormwater management options shall be considered to comply with this subsection of these regulations:

(1) Incorporation on the site of best management practices that achieve the required control;

(2) Compliance with a locally adopted regional stormwater management program incorporating pro-rata share payments pursuant to the authority provided in § 15.1-466(j) of the Code of Virginia that results in achievement of equivalent water quality protection;

(3) Compliance with a state or locally implemented program of stormwater discharge permits pursuant to § 402(p) of the federal Clean Water Act, as set forth in 40 C.F.R. Parts 122, 123, 124, and 504, dated December 7, 1988;

(4) For a redevelopment site that is completely impervious as currently developed, restoring a minimum 20% of the site to vegetated open space.

b. Any maintenance, alteration, use, or improvement to an existing structure which does not degrade the quality of surface water discharge, as determined by

the local government, may be exempted from the requirements of this subsection.

c. Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not it is located within an Intensely Developed Area designated by a local government. ]

[ 10. 9. ] [ Agricultural lands Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, ] shall have a soil and water [ quality ] conservation plan [ . Such a plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with the Act and these regulations. Such a plan will be ] approved by the local Soil and Water Conservation District by January 1, 1995.

[ The board will request the Department of Conservation and Recreation to evaluate the existing state and federal agricultural conservation programs for effectiveness in providing water quality protection. In the event that, by July 1, 1991, the Department of Conservation and Recreation finds that the implementation of the existing agricultural conservation programs is inadequate to protect water quality consistent with the Act and these regulations, the board will consider the promulgation of regulations to provide more effective protection of water quality from agricultural activities and may require implementation of best management practices on agricultural lands within the Chesapeake Bay Preservation Areas. ]

[ 11. Where nontidal wetlands exist on the site, the following criteria apply:

a. Disturbance of nontidal wetlands or alteration of their biological function or character shall be avoided. Man-made nontidal bodies of water, including farm and stock ponds, irrigation ditches, drainage ditches and stormwater management best management practices other than created wetlands, are not considered wetlands by these regulations. However, man-made vegetated wetlands created as water quality best management practices or for purposes of compensation shall be considered equivalent to natural wetlands.

b. Except as provided in subsection B of § 4.3 of this part, if disturbance or alteration of nontidal wetlands cannot be completely avoided and exceeds an area of 10,000 square feet, the disturbed or altered area shall be replaced by at least an equal area of compensation wetlands on the site or within the same watershed wherever possible. Compensation wetlands shall be protected by perpetual conservation easements or other method of comparable effect.

e. Silvicultural activities shall implement best management practices for wetlands as established by the Virginia Department of Forestry. Notice that a logging operation is about to commence shall be given to appropriate officials of the Virginia Department of Forestry. ]

[ 10. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from these regulations provided that silvicultural operations adhere to water quality protection procedures prescribed by the Department of Forestry in its "Best Management Practices Handbook for Forestry Operations." The Department of Forestry will oversee and document installation of best management practices and will monitor instream impacts of forestry operations in Chesapeake Bay Preservation Areas. In the event that, by July 1, 1991, the Department of Forestry programs are unable to demonstrate equivalent protection of water quality consistent with the Act and these regulations, the Department of Forestry will revise its programs to assure consistency of results and may require implementation of best management practices. ]

[ d. 11. ] Local governments shall require evidence of all [ nontidal ] wetlands permits required by law prior to authorizing grading or other on-site activities to begin.

## § 4.3. Performance criteria for Resource Protection Areas.

The following criteria shall apply specifically within Resource Protection Areas and supplement the general performance criteria in § 4.2 of this part.

### A. Allowable development.

A water quality impact assessment shall be required for any proposed development in accordance with Part V. Land development may be allowed only if it (i) is water dependent or (ii) constitutes redevelopment.

1. A new or expanded water-dependent facility may be allowed provided that:

- a. It does not conflict with the comprehensive plan;
- b. It complies with the performance criteria set forth in this part;
- c. Any non-water-dependent component is located outside of Resource Protection Areas;

[ d. Marina and community boat mooring locations conform to criteria established by the Virginia Marine Resources Commission; ]

[ e. d. ] Access will be provided with the minimum disturbance necessary. Where possible, a single point of access will be provided.

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2. Redevelopment shall conform to [ ~~sh~~ ] applicable [ stormwater management and erosion and sediment control ] criteria in this part.

## [ B. Nontidal wetlands.

Subject to the additional criteria in subsection K of § 4-2 of this part, any disturbed or altered area of nontidal wetlands shall be replaced by compensation nontidal wetlands of at least twice the area of the wetlands disturbed or altered. ]

## [ C. B. ] Buffer [ zone area ] requirements.

[ In order ] To [ satisfy the buffer zone requirements, appropriate minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100 foot buffer area of ] vegetation [ that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff ] shall be [ retained if present and ] established where it does not exist [ naturally. Otherwise, . The 100 foot buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients. Except as noted in this subsection, a combination of a buffer area not less than 50 feet in width and appropriate best management practices located landward of the buffer area which collectively achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100 foot buffer area may be employed in lieu of the 100 foot buffer. ] The following [ additional ] performance criteria shall apply:

1. [ Natural In order to maintain the functional value of the buffer area, indigenous ] vegetation [ shall be preserved to the maximum extent possible, with the following exceptions may be removed only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, as follows ] :

[ a. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control structures built, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements;

b. In order to maintain the functional value of the buffer zone, vegetation may be removed only to provide for reasonable sight lines, access paths, and general woodlot management. ]

[ a. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

b. Any path shall be constructed and surfaced so as to effectively control erosion.

c. Dead, diseased, or dying trees or shrubbery may be removed at the discretion of the landowner, and silvicultural thinning may be conducted based upon the recommendation of a professional forester or arborist.

d. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements. ]

2. When the application of the buffer [ zone area ] would result in the loss of a buildable area on a lot or parcel recorded prior to the effective date [ of these regulations ] , modifications to the width of the buffer [ zone area ] may be allowed in accordance with the following criteria:

a. Modifications to the buffer [ zone area ] shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

b. Where possible, an area equal to the area encroaching the buffer [ zone area ] shall be established elsewhere on the lot or parcel in a way to maximize water quality protection.

c. In no case shall the reduced portion of the buffer [ zone area ] be less than 50 feet in width.

[ 3. Redevelopment within Intensely Developed Areas may be exempt from the requirements of this subsection. However, while the immediate establishment of the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. ]

[ 3. In 4. On ] agricultural lands [ : ]

[ a. Where a naturally vegetated buffer zone up to the width required in Part III exists, it shall be maintained;

b. Existing agricultural activities in the buffer zone area shall maintain, as a minimum best management practice, a 25-foot wide vegetated filter strip measured landward from the mean high water level of tidal waters or tributary streams, or from the landward edge of any wetlands. The filter strip is not required for agricultural drainage ditches if the adjacent agricultural land has in place best



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management practices in accordance with a conservation plan approved by the local Soil and Water Conservation District; ]

[ e. ] the [ filter strip agricultural buffer area ] shall be [ composed of either trees with a dense ground cover, a thick sod of grass, or an appropriate legume cover and ] managed to prevent concentrated flows of surface water from breaching the [ strip buffer area ] and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the [ strip; buffer area. ]

[ d. The filter strip shall be maintained until The agricultural buffer area may be reduced as follows:

a. To a minimum width of 50 feet when ] the [ landowner has implemented a program of best management practices that improve water quality in accordance with a conservation plan approved by the local Soil and Water Conservation District, provided that the portion of the conservation plan being implemented for the Resource Protection Area achieves water quality protection at least the equivalent of that provided by the filter strip. adjacent land is enrolled in a federal, state, or locally-funded agricultural best management practices program, and the program is being implemented, provided that the combination of the reduced buffer area and the best management practices achieve water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100 foot buffer area;

b. To a minimum width of 25 feet when a soil and water quality conservation plan, as approved by the local Soil and Water Conservation District, has been implemented on the adjacent land, provided that the portion of the plan being implemented for the Chesapeake Bay Preservation Area achieves water quality protection at least the equivalent of that provided by the 100 foot buffer area in the opinion of the local Soil and Water Conservation District Board. Such plan shall be based upon the Field Office Technical Guide of the U.S. Department of Agriculture Soil Conservation Service and accomplish water quality protection consistent with the Act and these regulations;

c. The buffer area is not required for agricultural drainage ditches if the adjacent agricultural land has in place best management practices in accordance with a conservation plan approved by the local Soil and Water Conservation District. ]

[ 4. Silvicultural activities shall maintain, as a minimum best management practice, a streamside management zone extending the full width of the buffer zone landward from all other components of Resource Protection Areas, in accordance with criteria developed by the Virginia Department of Forestry. ]

§ 4.4. [ Incorporation into local programs. Local program development. ]

Local governments shall incorporate the criteria in this part [ ; or provisions at least the equivalent thereof, ] into their comprehensive plans, zoning ordinances, subdivision ordinances, and such other police and zoning powers as may be appropriate, in accordance with §§ 10.1-2111 and 10.1-2108 of the Act and Part V of these regulations. The criteria may be employed in conjunction with other planning and zoning concepts to protect the quality of state waters.

[ § 4.5. Administrative waivers and exemptions.

A. Nonconforming use and development waivers.

1. Local governments may permit the continued use, but not necessarily the expansion, of any structure in existence on the date of local program adoption. Local governments may establish an administrative review procedure to waive or modify the criteria of this part for structures on legal nonconforming lots or parcels provided that:

a. There will be no net increase in nonpoint source pollutant load;

b. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

2. It is not the intent of these regulations to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by local government ordinances.

B. Public utilities, railroads, and facilities exemptions.

1. Construction, installation, operation, and maintenance of electric, gas, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board will be deemed to constitute compliance with these regulations.

2. Construction, installation, and maintenance of water, sewer, and local gas lines shall be exempt from the criteria in this part provided that:

a. To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;

b. No more land shall be disturbed than is necessary to provide for the desired utility



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installation;

c. All such construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality;

d. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

## C. Exemptions in Resource Protection Areas.

The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions 1 and 2 below of this subsection: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities.

1. Local governments shall establish administrative procedures to review such exemptions.

2. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control requirements of this part. ]

## [ § 4.5. § 4.6. ] Exceptions to the criteria.

Exceptions to the requirements of these regulations may be granted [ if: (i) strict application of the criteria will result in undue hardship unique to the particular situation of the applicant and (ii) granting the exception will not result in an increase of nonpoint source pollution over what would have resulted if the criteria had been applied , provided that: (i) exceptions to the criteria shall be the minimum necessary to afford relief, and (ii) reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of the Act is preserved. Local governments shall design an appropriate process or processes for the administration of exceptions, in accordance with Part V ].

[ A. Exceptions to the criteria shall be the minimum necessary to afford relief.

B. Reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of the Act is preserved. ]

## PART V. IMPLEMENTATION, ASSISTANCE, AND DETERMINATION OF CONSISTENCY.

### § 5.1. Purpose.

The purpose of this part is to assist local governments in the timely preparation of local programs to implement the Act, and to establish guidelines for determining local program consistency with the Act.

## [ § 5.2. Schedule of program adoption.

To ensure timely achievement of the requirements of the Act and timely receipt of assistance, local governments should adhere to the following schedule for the completion of program elements and their submission to the board for its information. The following schedule should be initiated and completed after the effective date of these regulations:

### 1. First year schedule.

a. Work plan within two months.

b. Proposed program for the designation of Chesapeake Bay Prevention Areas and adoption of performance criteria within six months.

c. Public hearings to designate Chesapeake Bay Preservation Areas and adopt performance criteria at the earliest possible date.

d. Work plan for second program year within nine months.

e. Local designation of Chesapeake Bay Preservation Areas and adoption of performance criteria must occur within 12 calendar months.

### 2. Second year schedule.

a. Proposed program for full implementation of the Act and regulations within 20 months.

b. Local adoption of complete local program within 24 months. ]

## [ § 5.2. Local assistance manual.

A. The department will prepare a manual to provide guidance to assist local governments in the preparation of local programs in order to implement the Act and these regulations. The manual will be updated periodically to reflect the most current planning and zoning techniques and effective best management practices. The manual will be made available to the public.

B. The manual will recommend a schedule for the completion of local program elements and their submission to the board for its information, to ensure timely achievement of the requirements of the Act and timely receipt of assistance. The board will consider compliance with the schedule in allocating financial and technical assistance. Those elements of the manual necessary to assist local governments in meeting the first year requirements will be completed by the effective date of these regulations.

C. The manual is for the purpose of guidance only and is not mandatory. ]

§ 5.3. [ *First year program elements. Board to establish liaison.* ]

[ *A.* ] The board will establish liaison with each local government to assist that local government in developing and implementing its local program, in obtaining technical and financial assistance, and in complying with the Act and regulations.

[ *B. Program work plan.*

Local governments should provide the board with a tentative work plan for accomplishing their program which should include:

1. Identification and description of elements of the local program;
2. Identification of specific tasks necessary to achieve each program element and the responsible department or agency to perform each task;
3. Maps and resources to be used to designate Chesapeake Bay Preservation Areas;
4. Tentative dates for completion of program elements;
5. Anticipated needs for technical and financial assistance for specified program elements. ]

[ *C. § 5.4.* ] Planning district comments.

Local governments are encouraged to enlist the assistance and comments of regional planning district agencies early in the development of their local programs. [ *Any comments from the regional planning district agency should be taken into consideration prior to completion and submission of a work plan.* ]

[ *D. Preliminary review by the board.*

The board will review a work plan within 30 days. If it appears consistent with the Act, the board will schedule a conference with the local government to determine what technical and financial assistance may be needed and can be supplied to accomplish the work plan. If not, the board will notify the local government and recommend specific changes. ]

[ *E. § 5.5.* ] Designation of Chesapeake Bay Preservation Areas.

[ *Local governments shall designate Chesapeake Bay Preservation Areas within 12 months after the effective date of these regulations. To assure timely adoption, they should prepare a proposed designation program and submit it to the board. The program should:* ]

[ *A. The designation of Chesapeake Bay Preservation Areas as an element of the local program should:* ]

1. [ *Inventory Utilizing existing data and mapping resources, identify* ] and [ *analyze describe* ] tidal wetlands, nontidal wetlands, tidal [ *shorelines shores* ] , tributary streams, flood plains, highly erodible soils including steep slopes, highly permeable areas, and other sensitive environmental resources as necessary to comply with Part III.

2. Determine, based upon the [ *inventory identification* ] and [ *analysis description* ] , the extent of Chesapeake Bay Preservation Areas within [ *its the local* ] jurisdiction.

3. Prepare [ *a an appropriate* ] map [ *or maps* ] delineating Chesapeake Bay Preservation Areas.

4. Prepare amendments to local ordinances which incorporate the performance criteria of Part IV or the model ordinance prepared by the board.

[ *F. B.* ] Review by the board.

The board will review a proposed [ *designation* ] program within 60 days. If it is consistent with the Act, the board will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and [ *can be supplied available* ] to accomplish the proposed program. If not [ *consistent* ] , the board will notify the local government and recommend specific changes.

[ *G. C.* ] Adoption of first year program.

[ *As soon as possible* ] After being advised of program consistency, local governments shall hold a public hearing, [ *designate delineate* ] Chesapeake Bay Preservation Areas [ *as an amendment to the local zoning map, on an appropriate map or maps,* ] and adopt the performance criteria. Copies of the adopted program documents and subsequent changes thereto, shall be provided to the board.

[ *§ 5.4. Second year program elements.*

*A. Work plan.*

Within nine months after the effective date, local governments should provide a second year work plan to the board.

*B. Preliminary review by the board.*

The board will review the work plan within 30 days. If it is consistent with the Act, the board will schedule a conference with the local government to determine what technical and financial assistance may be needed and can be supplied to accomplish the work plan. If not, the board will notify the local government and recommend specific changes. ]

[ *§ 5.6.* ] Preparation and submission of management

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program.

[ ~~Within 20 months after the effective date, local governments should submit to the board completed local program documents~~ Local governments must adopt the full management program ], including any revisions to comprehensive plans, zoning ordinances, subdivision ordinances, and other local authorities necessary to implement the Act [ , within 24 months of the adoption date of these regulations ]. Prior to adoption, local governments may submit any proposed revisions to the board for comments. Guidelines are provided below for local government use in preparing local programs and the board's use in determining local program consistency.

## [ ~~±~~ A. ] Comprehensive plans.

Local governments shall review and revise their comprehensive plans, as necessary, for compliance with § 10.1-2109 of the Act. As a minimum, the comprehensive plan or plan component should consist of the following basic elements: (i) a summary of data collection and analysis; (ii) a policy discussion; (iii) a land use plan map; (iv) implementing measures, including specific objectives and a time frame for accomplishment.

[ ~~a~~. 1. ] Local governments should establish an information base from which to make policy choices about future land use and development that will protect the quality of state waters. This element of the plan should be based upon the following:

[ ~~(1)~~ Inventories and analyses a. Information ] used to designate Chesapeake Bay Preservation Areas;

[ ~~(2)~~ b. ] Other marine resources [ ~~and marine habitat~~ ] ;

[ ~~(3)~~ c. ] Shoreline erosion problems and location of erosion control structures;

[ ~~(4)~~ d. ] Conflicts between existing and proposed land uses and water quality [ protection ] ;

[ ~~(5)~~ e. ] A map or map series, accurately representing the above information.

[ ~~b~~. 2. ] As part of the comprehensive plan, local governments should clearly indicate local policy on land use issues relative to water quality protection. Local governments should ensure consistency among the policies developed.

[ ~~(1)~~ a. ] Local governments should discuss each component of Chesapeake Bay Preservation Areas in relation to the types of land uses considered appropriate and [ ~~the reasons for including each type of land use consistent with the goals and objectives of the Act, these regulations, and their local programs~~ ] .

[ ~~(2)~~ b. ] As a minimum, local governments should prepare policy statements for inclusion in the plan on the following issues:

[ ~~(a)~~ (1) ] Physical constraints to development, including soil limitations, with an explicit discussion of soil suitability for septic tank use;

[ ~~(b)~~ (2) ] Protection of potable water supply, including groundwater resources;

[ ~~(c)~~ (3) ] Relationship of land use to commercial and recreational fisheries [ ; ~~including nursery and habitat areas~~ ] ;

[ ~~(d)~~ (4) ] Appropriate density for docks and piers;

[ ~~(e)~~ (5) ] Public and private access to waterfront areas and effect on water quality;

[ ~~(f)~~ (6) ] Existing pollution sources;

[ ~~(g)~~ (7) ] Potential water quality improvement through the redevelopment of intensely developed areas.

[ ~~(3)~~ c. ] For each of the policy issues listed above, the plan should contain a discussion of the scope and importance of the issue, alternative policies considered, the policy adopted by the local government for that issue, and a description of how the local policy will be implemented.

[ ~~(4)~~ d. ] Within the policy discussion, local governments should address consistency between the plan and all adopted land use, public services, land use value taxation ordinances and policies, and capital improvement plans and budgets.

[ e. Water-dependent facilities.

~~(1) Local governments should include in their comprehensive plans a plan for water-dependent facilities. As a minimum, local governments should consider the following factors in the planning process:~~

~~(a) Impact of water-dependent uses on water quality;~~

~~(b) Existing wetlands, submerged aquatic plant beds, shellfish beds, anadromous fish spawning grounds, and other important habitat dependent on water quality;~~

~~(c) Extent and effects of any dredging required, including placement of dredged material;~~

~~(d) Compatibility of current land uses with water quality protection goals.~~

(2) Local governments should prepare an analysis of the capacity of existing water-dependent facilities and future demands. This analysis should address marinas, boat ramps, public docks, shoreline fishing areas, and other public access to the waterfront or beach. Areas currently zoned for water-dependent facilities should also be evaluated.

(3) Local governments should identify areas suitable for water-dependent facilities with respect to other comprehensive plan policies and in accordance with performance criteria in Part IV. ]

## [ 2. B. ] Zoning ordinances.

Local governments shall review and revise their zoning ordinances, as necessary, to comply with § 10.1-2109 of the Act. The ordinances should:

[ a. 1. ] Make provisions for the protection of [ Chesapeake Bay Preservation Areas the quality of state waters ] ;

[ b. 2. ] Incorporate either explicitly or by direct reference, the performance criteria in Part IV;

[ e. 3. ] Be consistent with the comprehensive plan within Chesapeake Bay Preservation Areas.

## [ 3. C. ] Plan of development review.

Local governments shall make provisions as necessary to ensure that any development of land within Chesapeake Bay Preservation Areas must be accomplished through a plan of development procedure pursuant to § 15.1-491(h) of the Code of Virginia to ensure compliance with the Act and regulations. Any exemptions from those review requirements shall be established and administered in a manner that ensures compliance with these regulations.

## [ 4. D. ] Subdivision ordinances.

Local governments shall review and revise their subdivision ordinances, as necessary, to comply with § 10.1-2109 of the Act. The ordinances should:

[ a. 1. ] Include language to ensure the integrity of Chesapeake Bay Preservation Areas;

[ b. 2. ] Incorporate, either explicitly or by direct reference, the performance criteria of Part IV.

## [ 5. E. ] Water quality impact assessment.

A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with Part IV and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development. [ Local governments should notify the

board of all development requiring a water quality impact assessment. Upon request, the board will provide review and comment on any water quality impact assessment within 90 days, in accordance with advisory state review requirements of § 10.1-2112 of the Act. ]

[ 1. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in Resource Protection Areas consistent with the goals and objectives of the Act, these regulations, and their local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by local governments. Local governments should notify the board of all development requiring such assessment. Upon request, the board will provide review and comment on any water quality impact assessment within 90 days, in accordance with advisory state review requirements of § 10.1-2112 of the Act.

2. The assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program. ]

## [ D. F. ] Review by the board.

The board will review [ a any ] proposed management program within 90 days. If it is consistent with the Act, the board will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and [ can be supplied available ] to accomplish the long-term aspects of the local program. If the program or any part thereof is not consistent, the board will notify the local government in writing stating the reasons for a determination of inconsistency and recommending specific changes. Copies of the adopted program documents and subsequent changes thereto [ ; ] shall be provided to the board.

## [ § 5.5. § 5.7. ] Certification of local program.

Upon request, the board will certify that a local program complies with the Act and regulations.

## PART VI. ENFORCEMENT.

### § 6.1. Applicability.

The Act requires that the board ensure that local governments comply with the Act and regulations and that their comprehensive plans, zoning ordinances, and subdivision ordinances are in accordance with the Act. To satisfy these requirements, the board has adopted these regulations and will monitor each local government's compliance with the Act and regulations.

### [ § 6.2. Informal proceedings.

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*Prior to instituting notice and formal hearing proceedings or making a finding of noncompliance, the board will attempt through informal administrative proceedings to secure local program compliance with the Act.*

## § 6.3. Notice and formal hearing.

*When the board formally reviews a local government's compliance with the Act and regulations, it shall give the local government at least 15 days notice of the time and place of its next meeting and of its intention to then hear evidence on the local government's compliance. Evidence will be received from the staff and from the local government.*

## § 6.4. Finding of noncompliance.

*Upon a finding of noncompliance, the board will refer the matter for legal action. ]*

## [ § 6.2. Administrative proceedings.

*Section 10.1-2103.8 of the Act provides that the board shall ensure that local government comprehensive plans, subdivision ordinances, and zoning ordinances are in accordance with the provisions of the Act, and that it shall determine such compliance in accordance with the provisions of the Administrative Process Act. When the board determines to decide such compliance, it will give the subject local government at least 15 days notice of its right to appear before the board at a time and place specified for the presentation of factual data, argument, and proof as provided by § 9-6.14:11. The board will provide a copy of its decision to the local government. If any deficiencies are found, the board will establish a schedule for the local government to come into compliance.*

## § 6.3. Legal proceedings.

*Section 10.1-2103.10 of the Act provides that the board shall take administrative and legal actions to ensure compliance by local governments with the provisions of the Act. Before taking legal action against a local government to ensure compliance, the board shall, unless it finds extraordinary circumstances, give the local government at least 15 days notice of the time and place at which it will decide whether or not to take legal action. If it finds extraordinary circumstances, the board may proceed directly to request the Attorney General to enforce compliance with the Act and regulations. Administrative actions will be taken pursuant to § 6.2.*

## § 6.4. Adoption date.

*The adoption date of these regulations shall be November 15, 1990.*

## § 6.5. Effective date.

*The effective date of these regulations shall be the date of expiration of Emergency Chesapeake Bay Preservation Area Designation and Management Regulations (VR 173-02-01.1, effective when signed and filed with the Virginia Registrar of Regulations). ]*

## DEPARTMENT OF COMMERCE

**Title of Regulation:** VR 190-05-01. Asbestos Licensing Regulations.

**Statutory Authority:** § 36-99.7 and Chapter 5 (§§ 54.1-500 through 54.1-517) of Title 54.1 of the Code of Virginia.

**Effective Date:** January 2, 1991.

### Summary:

*Pursuant to revisions to the Code of Virginia, §§ 36-99.7, 54.1-500 through 54.1-517 regulations governing licensure of RFS inspectors, project monitors, asbestos analytical laboratories and conflict of interest within the asbestos industry are added as amendments to the Virginia Asbestos Licensing Regulations.*

*The changes to the conflict of interest regulations (§§ 3.3 and 4.3) were a direct reflection of the comments received during the 60-day comment period. The changes to § 11.2 regarding the asbestos analytical laboratory license qualifications were made to incorporate a new federal certification program that was not in effect when the proposed regulations went to press. The new program eliminates the need for much of the documentation required in the proposed regulations. The fee changes were a result of the recent budget constraints as directed by the Office of the Governor.*

VR 190-05-01. Asbestos Licensing Regulations.

### PART I. DEFINITIONS.

#### § 1.1. Definitions.

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

"ACM" means asbestos containing material.

"AHERA" means Asbestos Hazard Emergency Response Act (40 CFR 763) , subpart E .

"Asbestos" means any material containing more than 1.0% asbestos by weight, which is friable or which has a reasonable probability of becoming friable in the course of ordinary or anticipated building use.

"Asbestos abatement" means any activity involving job

set-up, removal, encapsulation, enclosure, renovation, repair, demolition, construction, alteration, or maintenance of asbestos-containing material.

*"Asbestos analytical laboratory license"* means an authorization by the department [ of Commerce ] permitting an individual to work on an asbestos project.

*"Asbestos contractor's license"* means an authorization issued by the department [ of Commerce ] permitting a person to enter into contracts for a project to remove or encapsulate asbestos.

*"Asbestos containing material (ACM)"* means any material or product which contains more than 1.0% asbestos.

*"Asbestos inspector"* means any person performing on-site investigations to identify, classify, record, sample, test and prioritize by exposure potential, all friable and nonfriable asbestos containing materials located within a structure.

*"Asbestos inspector's license"* means an authorization issued by the department [ of Commerce ] permitting a person to perform the duties of an asbestos inspector.

*"Asbestos management planner's license"* means an authorization issued by the department permitting a person to develop and implement an asbestos management plan.

*"Asbestos project"* means an activity involving the inspection for removal or encapsulation of asbestos or involving the installation, removal or encapsulation of asbestos-containing roofing, flooring or siding materials.

*"Asbestos project designer's license"* means an authorization issued by the department permitting a person to design an asbestos abatement project.

*"Asbestos project monitor license"* means an authorization issued by the department permitting a person to monitor an asbestos project, subject to department regulations.

*"Asbestos roofing, flooring, siding (RFS) contractor's license"* means an authorization issued by the department [ of Commerce ] permitting a person to enter into contracts to install, remove or encapsulate asbestos-containing roofing, flooring and siding materials.

*"Asbestos RFS inspector's license"* means an authorization issued by the department permitting a person to perform on site investigations to identify, classify, record, sample, and test asbestos containing roofing, flooring and siding materials.

*"Asbestos supervisor's license"* means an authorization issued by the department [ of Commerce ] permitting an individual to supervise and work on an asbestos project.

*"Asbestos worker"* means any person who engages in an asbestos abatement activity.

*"Asbestos worker's license"* means an authorization issued by the department [ of Commerce ] permitting an individual to work on an asbestos project.

*"Department"* means the Department of Commerce.

*"Director"* means the Director of the Department of Commerce.

[ *"Employee"* means all persons in the service of another under any contract of hire, express or implied, oral or written. ]

*"Encapsulation"* means the treatment of ACM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

*"Enclosure"* means the construction or installation over or around the ACM of any solid or flexible coverings, which will not deteriorate or decompose for an extended period of time, so as to conceal the ACM, contain ACM fibers, and render the ACM inaccessible.

*"EPA"* means Environmental Protection Agency.

[ *"Financial interest"* means financial benefit accruing to an officer or an employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership exceeds 3.0% of the total equity of the business; (ii) annual gross income that exceeds, or may be reasonably anticipated to exceed, \$1,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds or may be reasonably expected to exceed \$1,000 annually; (iv) ownership of real or personal property if the interest exceeds \$1,000 in value and excluding ownership in business, income, salary, other compensation, fringe benefits or benefits from the use of property. ]

*"Friable"* means material which is capable of being crumbled, pulverized or reduced to powder by hand pressure or which under normal use or maintenance emits or can be expected to emit fibers into the air.

[ *"Immediate family"* means (i) a spouse, (ii) sibling or step sibling, (iii) parent or step parent, (iv) children or step children and (v) any other person residing in the same household as the officer or employee. ]

*"NIOSH"* means National Institute of Occupational Safety and Health.

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"NIST" means National Institute of Standards and Technology.

[ "Officer" means any person appointed, elected or hired by any company, whether or not he receives compensation or any other emolument of office. ]

"OSHA" means the U.S. Department of Labor Occupational Safety and Health Administration.

"PCM" means phase contrast microscopy.

"PLM" means polarized light microscopy.

"Removal" means the physical removal of ACM from a building and disposal thereof in accordance with all applicable regulations.

"Renovation" means altering in any way, one or more facility components.

"Repair" means returning damaged ACM to an undamaged condition or to an intact state so as to contain fiber release.

"Residential buildings" means site-built homes, modular homes, condominium units, mobile homes, manufactured housing, and duplexes, or other multi-unit dwelling consisting of four units or less which are currently in use or intended for use only for residential purposes. Demolitions of any of the above structures which are to be replaced by other than a residential building shall not fall within this definition.

"Supervisor" means any asbestos abatement worker who has been licensed by the department [ of Commerce ] under these regulations as a supervisor. A licensed supervisor must be present at each jobsite.

"TEM" means transmission electron microscopy.

"USEPA" means United States Environmental Protection Agency.

Necessity for license: These regulations are promulgated to carry out the provisions of Title 54.1, Chapter 5, under § 54.1-500. Effective July 1, 1988, any person or entity must fulfill the requirements and obtain the necessary license as an asbestos worker, contractor, RFS contractor, RFS inspector, supervisor, inspector, management planner or , project designer , [ project monitor ] or analytical laboratory prior to contracting with another person for compensation to perform an asbestos project or , develop a management plan or project design, or perform asbestos laboratory analysis . Effective July 1, 1988, an asbestos worker's license must be obtained by an individual prior to working on an asbestos project. [ Effective July 1, 1991, an asbestos project monitor's license must be obtained by an individual prior to monitoring an asbestos project. ]

## PART II.

## ASBESTOS WORKERS LICENSING REQUIREMENTS.

### § 2.1. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230

B. Applicants will be required to provide proof of successful completion of an asbestos worker training course and examination approved by the department [ of Commerce ]. Department of Commerce approval includes those courses granted [ EPA USEPA ] approval.

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date his license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction, and that no enforcement actions by any jurisdiction is pending against the applicant.

D. In the event enforcement actions have been taken against the applicant the following information shall be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.
2. A description of any asbestos abatement activities conducted by the applicant that were terminated prior to completion including the circumstances of termination.
3. A copy of any reports compiled by an enforcement agency.

E. All applications shall be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received are not refundable.

### § 2.2. Qualifications for licensure.

Each individual applying to the department [ of Commerce ] for licensing as an asbestos worker shall have the following qualifications:

1. Applicants shall be at least 18 years of age.

2. Applicants shall provide evidence of having met the educational requirements as set forth in these regulations preceding the date of the receipt of the application by the department [ of Commerce ].

## 2.3. Fees.

A. The fee for an asbestos workers license shall be \$35 [ \$25 \$35 ]. The fee amount is based on the administrative costs of the asbestos licensing program.

B. A completed application (as defined in Part II, § 2.1) shall be accompanied by the required fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the required fee.

C. All fees are not refundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

## § 2.4. Expiration.

Asbestos workers licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

## § 2.5. Renewal application.

The department [ of Commerce ] will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and the renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the department [ of Commerce ] the renewal notice and the \$35 [ \$25 \$35 ] renewal fee. Should the licensee fail to receive the renewal notice, a copy of a current license may be submitted with the required fee.

B. Only asbestos refresher training courses approved by the department [ of Commerce ] will meet the retraining requirement for license renewal. Asbestos refresher courses approved by the [ EPA USEPA ] under the AHERA Regulations will not fulfill the renewal requirements unless the course is also a department [ of Commerce ] approved asbestos refresher training course. [ *Renewal of a worker license can be achieved by successfully completing a department approved combined worker/supervisor refresher course.* ] Applicants shall forward proof that the annual retraining requirement of eight hours of instruction and an examination has been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany the renewal application.

C. If the renewal fee is not received by the department

[ of Commerce ] within 30 days after the expiration date noted on the license, a late renewal fee of \$35 [ \$25 \$35 ] shall be required in addition to the renewal fee.

D. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current educational and examination requirements as specified in Part II, § 2.1 of this regulation.

## § 2.6. Change of address.

The licensee shall notify the department [ of Commerce ] immediately of any change of address.

## PART III ASBESTOS CONTRACTOR LICENSING REQUIREMENTS.

## § 3.1. Contractor responsibilities.

Licensed asbestos contractors are required to comply fully with all requirements, procedures, standards and regulations covering any part of an asbestos project established by the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the Virginia Department of Labor and Industry, the Virginia Air Pollution Control Board, and the Virginia Department of Waste Management (§ 54.1-517).

Licensed asbestos contractors may also be required to comply with the requirements found in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia governing the regulation of contractors.

The licensed asbestos contractor may designate a licensed supervisor to serve as his agent for the purpose of meeting the training requirements. In this event the asbestos contractor himself will not have to fulfill the training requirements.

A licensed asbestos contractor shall use only licensed asbestos supervisors and workers to perform work on any asbestos project.

A licensed asbestos supervisor must be present at each job site while an asbestos project is in progress.

A licensed asbestos contractor shall notify the Department of Labor and Industry at least 20 days prior to the commencement of each asbestos project performed.

The 20-day notification form is available from the Department of Labor and Industry.

The Department of Labor and Industry will not accept any incomplete forms and the 20-day notification period will not begin until a complete notification form is received by the Department of Labor and Industry.



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The Department of Labor and Industry will not accept notifications received by methods other than certified mail, hand delivery or facsimile transmission.

Asbestos project cancellations shall be reported to the Department of Labor and Industry. A copy of the notification form marked "cancelled" must be received by the Department of Labor and Industry no later than the set-up date listed on the original notification form.

Asbestos project postponements shall be reported to the Department of Labor and Industry. The amended notification process can be used if the new asbestos project date is known. If the new asbestos project date is not known then the project notification shall be cancelled.

Amended notifications, notification inquiries and requests for waivers are subject to approval by the Department of Labor and Industry and shall be addressed to the Asbestos Control Clerk, Department of Labor and Industry, 205 N. 4th Street, Room 1006, Richmond, Virginia 23219.

Any asbestos project not being performed during the reported time frame and any asbestos project where quantities of asbestos greater than the reported quantities are removed shall be considered a violation of § 54.1-507 of the Code of Virginia. Each violation shall be referred to the department [ of Commerce ] for enforcement action by the Department of Labor and Industry.

§ 3.2. Maintenance of licensing records at the asbestos job site.

It shall be the responsibility of the asbestos contractor to maintain at each job site a list of the licensed asbestos workers and supervisors that includes the current license numbers and the license expiration dates of those workers and supervisors. Records maintained at the job site shall be available for review by the Department of Labor and Industry, the Department of Commerce, and all other agencies having authorization to inspect an asbestos job site.

§ 3.3. Conflict of interest.

Pursuant to § 54.1-501.1 of the Code of Virginia, the following situations and relationships between license categories are deemed to represent a conflict of interest and are prohibited.

[ A. ] It [ shall be is ] a conflict of interest and a violation of these regulations for an asbestos contractor or asbestos RFS contractor to have [ a proprietary an employee/employer relationship with ] or financial [ relationship with interest in ] a laboratory utilized by the contractor for asbestos sample analysis. [ In-house laboratories owned by a building owner performing analysis on suspect asbestos samples taken from said building owners' property are exempt from the conflict of interest regulation. ]

[ B. ] It [ shall be is ] a conflict of interest and a violation of these regulations for an asbestos contractor or asbestos RFS contractor to have an employee/employer relationship with [ or financial interest in ] an asbestos project monitor working on [ a an asbestos ] project performed by that asbestos contractor or asbestos RFS contractor. An asbestos contractor or asbestos RFS contractor shall not have any [ proprietary or ] financial [ relationship with interests in ] the firm of which the project monitor is an employee. [ This section does not relieve a contractor of the OSHA requirements set forth in 29 CFR 1926.58(f) personal monitoring requirements. ]

[ C. ] It [ shall be is a conflict of interest and ] a violation of these regulations for an asbestos contractor or [ an ] asbestos RFS contractor to enter into [ a contract to perform ] an asbestos project if the asbestos inspection or project design [ were was ] performed by individuals [ employed by, compensated, or financially affiliated with the asbestos contractor or RFS contractor with an employer/employee relationship with or financial interest in the asbestos contractor or asbestos RFS contractor unless the asbestos contractor or RFS contractor provides the building owner with the Virginia Asbestos Licensing Consumer Information Sheet and the Virginia Asbestos Licensing Inspector/Project Designer/Contractor Disclosure Form as prescribed by the department disclosing the asbestos contractor or asbestos RFS contractor's relationship with the asbestos inspector, asbestos RFS inspector, or project designer on the project. The disclosure form must be signed and dated by the building owner or his agent and the contracting entity prior to bid or contract submission. The building owner shall provide the disclosure form to all parties involved in the asbestos project. The disclosure form will be kept on the asbestos project site and available upon demand. ]

§ 3.3. 3.4 License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230

B. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

C. The director may refuse to issue a license to any asbestos contractor who is shown to have a substantial identity of interest with an asbestos contractor whose

license has been revoked or not renewed. A substantial identity of interest is defined to include but is not limited to (i) a controlling financial interest by the individual or corporate principals of the asbestos contractor whose license has been revoked or not renewed or (ii) substantially identical principals or officers.

D. The transfer of an asbestos contractor license is prohibited. Whenever there is any change in the controlling interest of the legal entity licensed, whether in a proprietorship or change of partner in partnership or the creation of a corporation, a new license is required.

E. In the event enforcement action has been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant, by any jurisdiction, state or federal court.
2. A description of any asbestos abatement activities conducted by the applicant that were terminated prior to completion including the circumstances of termination.
3. A copy of any reports compiled by an enforcement agency.

F. All applications shall be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received are not refundable.

#### § 3-4. § 3.5. Qualifications for licensure.

Each individual or business applying to the Department of Commerce for licensing as an asbestos contractor/supervisor shall have the following qualifications:

1. Applicants shall be at least 18 years of age.
2. Applicants shall have all occupational or professional licenses necessary and required by state statute or local ordinance to transact the business of an asbestos contractor in addition to those requirements as set forth in these regulations.

#### § 3-5. § 3.6. Fees.

A. The fee for an asbestos contractor license shall be \$500 [ ~~\$250~~ \$500 ]. The fee amount is based on the administrative costs of the asbestos licensing program.

B. A completed application (as required in Part III, § 3.5 of these regulations) shall be accompanied by the

required fee. All checks or money orders shall be payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the required fee.

C. All fees are not refundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

#### § 3-6. § 3.7. Expiration.

Asbestos contractors licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

#### § 3-7. § 3.8. Renewal application.

The department [ of Commerce ] will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the department [ of Commerce ] the renewal notice and the \$500 [ ~~\$250~~ \$500 ] renewal fee. Should the licensee fail to receive a renewal notice, a copy of a current license may be submitted with the required fee.

B. If the renewal fee is not received by the Department of Commerce within 30 days after the expiration date noted on the license, a late renewal fee of \$500 [ ~~\$250~~ \$500 ] shall be required in addition to the renewal fee.

C. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current education and examination requirements as specified in Part III, § 3-4 3.5 of these regulations.

#### § 3-8. § 3.9. License certificate.

A copy of a current asbestos contractors license certificate shall be available at all times for review by the Department of Labor and Industry, and the Department of Commerce, at each asbestos jobsite.

#### § 3-9. § 3.10. Change of address.

The licensee shall notify the department [ of Commerce ] immediately of any change of address.

## PART IV. ASBESTOS RFS CONTRACTOR LICENSING REQUIREMENTS.

Effective July 1, 1989, all individual workers and

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supervisors on RFS projects must have fulfilled the training requirements specified in this section.

## § 4.1. RFS Contractor responsibilities.

Licensed RFS contractors are required to comply fully with all requirements, procedures, standards and regulations covering any part of an asbestos project established by the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, the Virginia Department of Labor and Industry, the Virginia Air Pollution Control Board, and the Virginia Department of Waste Management (§ 54.1-517).

Licensed asbestos RFS contractors may also be required to comply with requirements found in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia governing the regulation of contractors.

A licensed RFS contractor shall notify the Department of Labor and Industry at least 20 days prior to the commencement of each asbestos project performed.

The 20-day notification form is available from the Department of Labor and Industry.

The Department of Labor and Industry will not accept any incomplete forms and the 20-day notification period will not begin until a complete notification form is received by the Department of Labor and Industry.

The Department of Labor and Industry will not accept notifications received by methods other than certified mail, hand delivery or facsimile transmission.

Asbestos RFS project cancellations shall be reported to the Department of Labor and Industry. A copy of the notification form marked "cancelled" must be received by the Department of Labor and Industry no later than the set-up date listed on the original notification form.

Asbestos RFS project postponements shall be reported to the Department of Labor and Industry. The amended notification process can be used if the new asbestos RFS project date is known. If the new asbestos RFS project date is not known then the project notification shall be cancelled.

Amended notifications, notification inquiries and requests for waivers are subject to approval by the Department of Labor and Industry and shall be addressed to the Asbestos Control Clerk, Department of Labor and Industry, 205 N. 4th Street, Room 1006, Richmond, Virginia 23219.

Any asbestos RFS project not being performed during the reported time frame and any asbestos RFS project where quantities of asbestos greater than the reported quantities are removed shall be considered a violation of § 54.1-507 of the Code of Virginia. Each violation shall be referred to the department [ ~~of Commerce~~ ] for enforcement action by the Department of Labor and

Industry.

## § 4.2. Maintenance of licensing records at the asbestos job site.

It shall be the responsibility of the RFS contractor to maintain at each job site a list of the trained RFS asbestos workers and supervisors which includes the date of their RFS training. Records maintained at the job site shall be available for review by the Department of Labor and Industry, the Department of Commerce, and all other agencies having authorization to inspect an asbestos job site.

## § 4.3. Conflict of interest.

Pursuant to § 54.1-501.1 of the Code of Virginia, the following situations and relationships between license categories are deemed to represent a conflict of interest and are prohibited.

[ A. ] It [ ~~shall be is~~ ] a conflict of interest and a violation of these regulations for an asbestos contractor or asbestos RFS contractor to have [ a ~~proprietary~~ an employee/employer relationship with ] or financial [ ~~relationship with~~ interest in ] a laboratory utilized by the contractor for asbestos sample analysis. [ In-house laboratories owned by a building owner performing analysis on suspect asbestos samples taken from said building owners' property are exempt from the conflict of interest regulation. ]

[ B. ] It [ ~~shall be is~~ ] a conflict of interest and a violation of these regulations for an asbestos contractor or asbestos RFS contractor to have an employee/employer relationship with [ or financial interest in ] an asbestos project monitor working on [ a ~~an~~ asbestos ] project performed by that asbestos contractor or asbestos RFS contractor. An asbestos contractor or asbestos RFS contractor shall not have any [ ~~proprietary or~~ ] financial [ ~~relationship with~~ interests in ] the firm of which the project monitor is an employee. [ This section does not relieve a contractor of the OSHA requirements set forth in 29 CFR 1926.58(f) personal monitoring requirements. ]

[ C. ] It [ ~~shall be is~~ a conflict of interest and ] a violation of these regulations for an asbestos contractor or [ ~~an~~ ] asbestos RFS contractor to enter into [ a contract to perform ] an asbestos project if the asbestos inspection or project design [ ~~were was~~ ] performed by individuals [ ~~employed by, compensated, or financially affiliated with~~ the asbestos contractor or RFS contractor with an employer/employee relationship with or financial interest in the asbestos contractor or asbestos RFS contractor unless the asbestos contractor or RFS contractor provides the building owner with the Virginia Asbestos Licensing Inspector/Project Designer/Contractor Disclosure Form as prescribed by the department disclosing the asbestos contractor or asbestos RFS contractor's relationship with the asbestos inspector, asbestos RFS inspector, or project designer on the project. The disclosure form must be

signed and dated by the building owner or his agent and the contracting entity prior to bid or contract submission. The building owner shall provide the disclosure form to all parties involved in the asbestos project. The disclosure form will be kept on the asbestos project site and available upon demand ]

§ 4.3. § 4.4. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230

B. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

C. The director may refuse to issue a license to any asbestos RFS contractor who is shown to have a substantial identity of interest with an asbestos contractor whose license has been revoked or not renewed. A substantial identity of interest is defined to include but is not limited to (i) a controlling financial interest by the individual or corporate principals of the asbestos contractor whose license has been revoked or not renewed or (ii) substantially identical principals or officers.

D. The transfer of an RFS contractor license is prohibited. Whenever there is any change in the controlling interest of the legal entity licensed, whether in a proprietorship or change of partner in partnership or the creation of a corporation, a new license is required.

E. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant, by any jurisdiction, state or federal court.
2. A description of any asbestos abatement activities conducted by the applicant that were terminated prior to completion, including the circumstances of termination.

3. A copy of any reports compiled by an enforcement agency.

F. All applicants shall be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received are not refundable.

§ 4.4. § 4.5. Qualifications for licensure.

Each individual or business applying to the department [ of Commerce ] for licensing as an RFS contractor shall have the following qualifications:

1. Applicants shall be at least 18 years of age.
2. Applicants shall have all occupational or professional licenses necessary and required by state statute or local ordinance to transact the business of an asbestos RFS contractor in addition to those requirements as set forth in these regulations.

§ 4.5. § 4.6. Fees.

A. The fee for an RFS contractor license shall be \$500 [ ~~\$250~~ \$500 ]. The fee amount is based on the administrative costs of the asbestos licensing program.

B. A completed application (as required in Part IV, § 4.1 of these regulations) shall be accompanied by the required fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the appropriate fee.

C. All fees are not refundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

§ 4.6. § 4.7. Expiration.

RFS contractors licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

§ 4.7. § 4.8. Renewal application.

The department [ of Commerce ] will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and the renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the department [ of Commerce ] the renewal notice and the \$500 [ ~~\$250~~ \$500 ] renewal fee. Should the licensee fail to receive a renewal notice, a copy of a current license may be submitted with the required fee.

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B. If the renewal fee is not received by the department [ of Commerce ] within 30 days after the expiration date noted on the license, a late renewal fee of \$500 [ \$250 \$500 ] shall be required in addition to the renewal fee.

C. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current education and examination requirements as specified in Part IV, § 4.4 4.5 of these regulations.

D. Each worker and supervisor employed by a licensed RFS contractor must attend an annual four-hour refresher training course. The RFS contractor shall maintain records verifying the dates of the refresher training completed by each worker and supervisor. This information shall be maintained at the job site.

§ 4.8. § 4.9. License [ certification certificate ].

A copy of a current RFS contractors license certificate shall be available at all times for review at each asbestos RFS job site.

§ 4.9. § 4.10. Change of address.

The licensee shall notify the department [ of Commerce ] immediately of any change of address.

## PART V. RFS INSPECTOR LICENSING REQUIREMENTS.

§ 5.1. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230

B. Applicants shall provide proof of successful completion of an RFS inspector training course and examination approved by the department [ of Commerce. Department of Commerce approval includes those courses approved by USEPA ].

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date his license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction and that no enforcement action by any jurisdiction is pending against the applicant.

D. In the event enforcement actions have been taken

against the applicant the following information shall be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.

2. A description of any asbestos abatement activities conducted by the applicant that were terminated prior to completion including the circumstances of termination.

3. A copy of any reports compiled by an enforcement agency.

E. All applications shall be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received will not be refunded.

§ 5.2. Qualifications for licensure.

Each individual applying to the department [ of Commerce ] for licensing as an RFS inspector shall have the following qualifications:

1. Applicants shall be at least 18 years of age.

2. Applicants shall provide evidence of having met the educational requirements as set forth in these regulations preceding the date of the receipt of the application by the department [ of Commerce ].

§ 5.3. Fees.

A. The fee for an RFS inspector license shall be [ \$25 \$35 ]. The fee amount is based on the administrative costs of the asbestos licensing program.

B. A completed application (as defined in Part V, § 5.1) shall be accompanied by the required fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the required fee.

C. All fees are not refundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

§ 5.4. Expiration.

[ A ] RFS [ inspectors licenses inspector license ] issued under these regulations shall expire one year from the last day of the month in which [ they were it was ] issued as indicated on the license.

## § 5.5. Renewal application.

The department [ of Commerce ] will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and the renewal fee amount.

Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the department [ of Commerce ] the renewal notice and the [ ~~\$25~~ \$35 ] renewal fee. Should the licensee fail to receive the renewal notice, a copy of a current license may be submitted with the required fee.

B. Only asbestos [ RFS inspector ] refresher training courses approved by the department [ of Commerce ] will meet the retraining requirements for license renewal. [ Asbestos refresher courses approved by the USEPA under the AHERA regulations will not fulfill the renewal requirements unless the course is also a department of Commerce approved asbestos refresher training course. ] Applicants shall forward proof that the annual retraining requirement of eight hours of instruction and an examination have been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany the renewal application.

C. If the renewal fee is not received by the department [ of Commerce ] within 30 days after the expiration date noted on the license, a late renewal fee of [ ~~\$25~~ \$35 ] shall be required in addition to the renewal fee.

D. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current educational examination requirements as specified in Part V, § 5.1 of these regulations.

## § 5.6. Change of address.

The licensee shall notify the department [ of Commerce ] immediately of any change of address.

### PART V VI . ASBESTOS SUPERVISOR LICENSING REQUIREMENTS.

## § ~~5.1.~~ § 6.1. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street

5th Floor

Richmond, Virginia 23230

B. Applicants will be required to provide proof of successful completion of an asbestos supervisor training course and examination approved by the department [ of Commerce ]. Department of Commerce approval includes those courses granted [ EPA USEPA ] approval.

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

D. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant, by any jurisdiction or any state or federal court.

2. A description of any asbestos abatement activities conducted by the applicant that were terminated prior to completion, including the circumstances of termination.

3. A copy of any reports compiled by an enforcement agency.

E. All applications shall be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received are not refundable.

## § ~~5.2.~~ § 6.2. Qualifications for licensure.

A. Each individual applying to the department [ of Commerce ] for licensing as an asbestos supervisor shall have the following qualifications:

1. Applicants shall be at least 18 years of age.

2. Applicants shall provide evidence of having met the educational requirements as set forth in these regulations preceding the date of the receipt of the application by the department [ of Commerce ].

## § ~~5.3.~~ § 6.3. Fees.

A. The fee for an asbestos supervisor license shall be ~~\$35~~ [ ~~\$25~~ \$35 ]. The fee amount is based on the administrative costs of the asbestos licensing program.

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B. A completed application (as required in Part V, § 5-1 IV, § 6.1 of these regulations) shall be accompanied by the required fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the required fee.

C. All fees are not refundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

## § 5-4: § 6.4. Expiration.

Asbestos supervisors licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

## § 5-5: § 6.5. Renewal application.

The department [ of Commerce ] will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and the renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the department [ of Commerce ] the renewal notice and the \$35 [ \$25 \$35 ] renewal fee. Should the licensee fail to receive a renewal notice, a copy of a current license may be submitted with the required fee.

B. Only asbestos refresher training courses approved by the department [ of Commerce ] will meet the retraining requirement for license renewal. Asbestos refresher courses approved by the [ EPA USEPA ] under the AHERA Regulations will not fulfill the renewal requirements unless the course is also a department [ of Commerce ] approved asbestos refresher training course. Applicant shall forward proof that the annual retraining requirement of eight hours has been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany the renewal notice.

C. If the renewal fee is not received by the department [ of Commerce ] within 30 days after the expiration date noted on the license, a late renewal fee of \$35 [ \$25 \$35 ] shall be required in addition to the renewal fee.

D. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current education and examination requirements as specified in Part V, § 5-1 IV, § 6.1 of these regulations.

## § 5-6: § 6.6. Change of address.

The licensee shall notify the department [ of Commerce ] immediately of any change of address.

## PART VI VII.

### ASBESTOS INSPECTOR LICENSING REQUIREMENTS.

## § 6-1: § 7.1. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230

B. Applicants will be required to provide proof of successful completion of an asbestos inspector training course and examination approved by the department [ of Commerce ]. Department [ of Commerce ] approval includes those courses granted [ EPA USEPA ] approval.

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction, and that no enforcement actions by any jurisdiction is pending against the applicant.

D. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.

2. A description of any asbestos inspection activities conducted by the applicant that were terminated prior to completion, including the circumstances of termination.

3. A copy of any reports compiled by an enforcement agency.

E. All applications shall be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received are not refundable.

## § 6-2: § 7.2. Qualifications for licensure.

A. Each individual or business applying to the

department [ of ~~Commeree~~ ] for licensing as an asbestos inspector shall have the following qualifications:

1. Applicants shall be at least 18 years of age.
2. The applicant must have successfully completed an asbestos inspector course and examination approved by the department [ of ~~Commeree~~ ] or an [ EPA USEPA ] accredited AHERA Inspector training course and examination. Applicants shall provide evidence of having met the educational requirements as set forth in these regulations preceding the date of the receipt of the application by the department [ of ~~Commeree~~ ].
3. The applicant shall be required to provide proof of experience in performing the field work portion of asbestos inspections in buildings or industrial facilities or both, including collecting bulk samples, categorizing ACM, assessing ACM and preparing inspection reports.

Experience may be gained acting as an inspector, being in responsible charge of inspectors or being under the responsible charge of an inspector as follows:

a. Acting as an inspector accredited (after December 17, 1987) according to AHERA or the Virginia Asbestos Licensing Program;

b. Being in responsible charge of persons accredited as inspectors according to AHERA or the Virginia Asbestos Licensing Program;

c. Being under the responsible charge of an inspector accredited according to AHERA or the Virginia Asbestos Licensing Program.

4. An applicant with a bachelor's degree in engineering, architecture, industrial hygiene, science or a related field must have at least six months experience as described above.

5. An applicant with a two-year associate's degree in engineering, architecture, industrial hygiene, science or a related field must have at least 12 months experience as described above.

6. An applicant with a high school [ degree diploma ] must have at least 24 months experience as described above.

#### ~~§ 6.3.~~ § 7.3. Fees.

A. The fee for an asbestos inspector shall be ~~\$35~~ [ ~~\$25~~ \$35 ]. The amount is based on the administrative costs of the asbestos licensing program.

B. A completed application (as required in Part VI, ~~§ 6.4~~ VII, § 7.1 of these regulations) shall be accompanied by the required fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application

will be processed if it is not accompanied by the required fee.

C. All fees are not refundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

#### ~~§ 6.4.~~ § 7.4. Expiration.

Asbestos inspector licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

#### ~~§ 6.5.~~ § 7.5. Renewal application.

The department [ of ~~Commeree~~ ] will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the department [ of ~~Commeree~~ ] the renewal notice and the ~~\$35~~ [ ~~\$25~~ \$35 ] renewal fee. Should the licensee fail to receive the renewal notice, a copy of a current license may be submitted with the required fee.

B. Only asbestos refresher training courses approved by the department [ of ~~Commeree~~ ] will meet the retraining requirement for license renewal. Asbestos refresher courses approved by the [ EPA USEPA ] under the AHERA Regulations will not fulfill the renewal requirements unless the course is also a department [ of ~~Commeree~~ ] approved asbestos refresher training course. Applicants shall forward proof that the annual retraining requirement of four hours of instruction and an examination has been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany the renewal application.

C. After January 1, 1991, each licensee who was licensed as an asbestos inspector prior to April 1990 will be required to meet the qualifications set forth in these regulations for license renewal.

D. If the renewal fee is not received by the department [ of ~~Commeree~~ ] within 30 days after the expiration date noted on the license, a late renewal fee of ~~\$35~~ [ ~~\$25~~ \$35 ] shall be required in addition to the renewal fee.

E. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current education and examination requirements in Part VI, VII, § 7.2 of these regulations.

#### ~~§ 6.6.~~ § 7.6. Change of address.



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The licensee shall notify the department [ of Commerce ] immediately of any change of address.'

## PART VIII . ASBESTOS MANAGEMENT PLANNER LICENSING REQUIREMENTS.

### § 7-1. § 8.1. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230

B. Applicants will be required to provide proof of successful completion of an asbestos management planner training course and examination approved by the department [ of Commerce ]. Department [ of Commerce ] approval includes those courses granted [ EPA USEPA ] approval.

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to develop and implement an asbestos management plan has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

D. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the asbestos management plan might not be developed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.
2. A description of any asbestos management planner activities conducted by the applicant that were terminated prior to completion, including the circumstances of termination.
3. A copy of any reports compiled by an enforcement agency.

E. All applications shall be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received are not refundable.

### § 7-2. § 8.2. Qualifications for licensure.

A. Each individual applying to the department [ of Commerce ] for licensing as an asbestos management planner shall have the following qualifications:

1. Applicants shall be at least 18 years of age.
2. The applicant must have successfully completed an Asbestos Management Planner training course and examination approved by the department [ of Commerce ] or an [ EPA USEPA ] accredited AHERA Management Planner training course and examination. Applicants shall provide evidence of having met the educational requirements as set forth in these regulations preceding the date of the receipt of the application by the department [ of Commerce ].
3. The applicant must meet all of the qualifications to be licensed as an asbestos inspector, whether or not the asbestos inspector license is held.
4. The applicant shall be required to provide proof of experience evaluating inspection reports, selecting response actions, analyzing the cost of response actions, ranking response actions, preparing operations and maintenance plans and preparing management plans.

Experience may be gained acting as a management planner, being in responsible charge of management planners or being under the responsible charge of a management planner as follows:

- a. Any experience gained after December 17, 1987, must be gained acting as a management planner accredited according to AHERA, being in responsible charge or persons accredited as management planners according to AHERA or being under the responsible charge of a management planner accredited according to AHERA; or
  - b. Experience gained as an inspector as outlined in Part VI, § 6-2 VII, § 7.2 of these regulations can be substituted rather than experience as a management planner to meet the management planner experience requirements.
5. The applicant must have a bachelor's degree in engineering, architecture, industrial hygiene, science or a related field and must have at least six months experience as described above.
  6. An applicant with a two-year associate's degree in engineering, architecture, industrial hygiene, science or a related field must have at least six months experience as described above.
  7. An applicant with a high school [ degree diploma ] must have at least 24 months experience as described above.

### § 7-3. § 8.3. Fees.

A. The fee for an asbestos management planner license shall be \$35 [ \$25 \$35 ]. The fee amount is based on the administrative costs of the asbestos licensing program.

B. A completed application (as required in Part VII, § 7-1 VIII, § 8.1 of these regulations) shall be accompanied by the required fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the required fee.

C. All fees are not refundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

#### § 7.4. § 8.4. Expiration.

Asbestos management planner licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

#### § 7.5. § 8.5. Renewal application.

The department [ of Commerce ] will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the department [ of Commerce ] the renewal notice and the \$35 [ \$25 \$35 ] renewal fee. Should the licensee fail to receive the renewal notice, a copy of a current license may be submitted with the required fee.

B. Only asbestos refresher training courses approved by the department [ of Commerce ] will meet the retraining requirement for license renewal. Asbestos refresher courses approved by the [ EPA USEPA ] under the AHERA Regulations will not fulfill the renewal requirements unless the course is also a [ Virginia department ] approved asbestos refresher training course. Applicants shall forward proof that the annual retraining requirement of four hours of instruction and an examination has been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany the renewal application.

C. After January 1, 1991, each licensee who was licensed as an asbestos inspector prior to April 1990 will be required to meet the qualifications set forth in these regulations for license renewal.

D. If the renewal fee is not received by the department [ of Commerce ] within 30 days after the expiration date noted on the license a late renewal fee of \$35 [ \$25 \$35 ] shall be required in addition to the renewal fee.

E. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current education and examination requirements in Part VII, VIII, § 8.2 of these regulations.

#### § 7.6. § 8.6. Change of address.

The licensee shall notify the department [ of Commerce ] immediately of any change of address.

### PART VIII IX . ASBESTOS PROJECT DESIGNER LICENSING REQUIREMENTS.

#### § 8.1. § 9.1. License application.

A. Each applicant is responsible for obtaining a current application. All requests for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230

B. Applicants will be required to provide proof of successful completion of a Virginia approved asbestos project designer training course and examination.

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to design asbestos abatement projects has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

D. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the asbestos project designer's plans might not be developed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.

2. A description of any asbestos abatement activities conducted by the applicant that were terminated prior to completion including the circumstances of termination.

3. A copy of any reports compiled by an enforcement agency.

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E. All applications shall be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received are not refundable.

## § 8-2. § 9.2. Qualifications for licensure.

A. Each individual applying to the department [ of ~~Commeree~~ ] for licensing as an asbestos project designer shall have the following qualifications:

1. Applicants shall be at least 18 years of age.
2. Applicants shall provide evidence of having met the educational requirements as set forth in these regulations preceding the date of the receipt of the application by the department [ of ~~Commeree~~ ].

## § 8-3. § 9.3. Fees.

A. The fee for an asbestos project designer license shall be ~~\$35~~ [ ~~\$25~~ \$35 ]. The fee amount is based on the administrative costs of the asbestos licensing program.

B. A completed application (as required in Part VIII, § 8-1 IX, § 9.1 of these regulations) shall be accompanied by the required fee. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the required fee.

C. All fees are not refundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

## § 8-4. § 9.4. Expiration.

Asbestos project designer licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

## § 8-5. § 9.5. Renewal application.

The department [ of ~~Commeree~~ ] will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the department [ of ~~Commeree~~ ] the renewal notice and the ~~\$35~~ [ ~~\$25~~ \$35 ] renewal fee. Should the licensee fail to receive the renewal notice, a copy of a current license may be submitted with the required fee.

B. Only asbestos refresher training courses approved by the department [ of ~~Commeree~~ ] will meet the retraining

requirement for license renewal. Asbestos refresher courses approved by the [ EPA USEPA ] under the AHERA Regulations will not fulfill the renewal requirements unless the course is also a department [ of ~~Commeree~~ ] approved asbestos refresher training course. Applicants shall forward proof that the annual retraining requirement of eight hours of instruction and an examination has been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany the renewal application.

C. If the renewal fee is not received by the department [ of ~~Commeree~~ ] within 30 days after the expiration date noted on the license a late renewal fee of ~~\$35~~ [ ~~\$25~~ \$35 ] shall be required in addition to the renewal fee.

D. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses and shall apply as new applicants meeting all current education and examination requirements in Part VIII, IX, § 9.2 of these regulations.

## § 8-6. § 9.6. Change of address.

The licensee shall notify the department [ of ~~Commeree~~ ] immediately of any change of address.

## PART X. ASBESTOS PROJECT MONITOR LICENSING REQUIREMENTS.

### § 10.1. Asbestos project monitor.

*The duties and functions of a project monitor include but are not limited to observing and monitoring the activities of an asbestos abatement contractor or RFS contractor on asbestos projects to determine that proper work practices are used and compliance with all federal, state and local laws and regulations is maintained. The licensed project monitor is authorized to collect environmental air samples during the asbestos project [ , perform visual inspections of the work area ] and to grant final clearance upon completion of the asbestos project.*

*A project monitor is required on:*

*Asbestos projects performed in buildings that are occupied or intended to be occupied upon the completion of the asbestos project when the project exceeds 2,600 linear feet or 1,600 square feet.*

OR

*Whenever the building or property owner deems it necessary to monitor asbestos projects performed on their property.*

*Exemptions:*

*Asbestos projects in residential buildings are exempt*

from the project monitor requirements.

## § 10.2. License application.

A. Each applicant is responsible for obtaining a current application. All requests for application should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street  
5th Floor  
Richmond, Virginia 23230

B. Applicants shall provide proof of successful completion of an asbestos project monitor training course and examination approved by the department [ of ~~Commeree~~ ].

C. Each application shall be signed by the applicant and shall include a certification by the applicant that within the past three years prior to the application date, his license or other authorization to perform asbestos inspections or abatement work has not been suspended or revoked by any jurisdiction, and that no enforcement action by any jurisdiction is pending against the applicant.

D. In the event enforcement actions have been taken against the applicant, the following information will be required as the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.
2. A description of any asbestos inspection or abatement work activities conducted by the applicant that were terminated prior to completion, including the circumstances of the termination.
3. A copy of any reports compiled by an enforcement agency.

E. All applications shall be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, fees received are not refundable.

## § 10.3. Qualifications for licensure.

A. Each individual applying shall be at least 18 years of age.

B. The applicant must have a high school [ ~~degree~~ diploma ] or an equivalent.

C. An applicant currently licensed by the department [ of ~~Commeree~~ ] as a project designer or asbestos supervisor must successfully complete an asbestos project monitor training course of 16 hours and examination. Applicants shall provide evidence of having met the educational requirements as set forth in these regulations preceding the date of the receipt of the application by the department [ of ~~Commeree~~ ].

D. An applicant not currently licensed as a project designer or asbestos supervisor shall successfully complete a comprehensive asbestos project monitor training course of 40 hours and examination approved by the department [ of ~~Commeree~~ ]. [ Applicants shall provide evidence of having met the educational requirements as set forth in these regulations preceding the date of the receipt of the application by the department. ]

E. The applicant shall be required to provide proof of performing 160 hours of asbestos project monitor training through field work on project sites including evaluating and monitoring the asbestos project work practices. The field work shall also include collecting environmental air samples during the abatement work and granting final clearance by performing a visual inspection and collecting aggressive environmental air samples.

1. Experience may be gained to qualify for licensure as follows:

- a. Acting as a project monitor after becoming licensed by the [ Virginia ] department [ of ~~Commeree~~ ] as a project designer or an asbestos supervisor.
- b. Being under the direct charge of a person acting as a project monitor who is licensed by the department [ of ~~Commeree~~ ] as a project designer, or an asbestos supervisor before [ ~~January~~ July ] 1, 1991 [ , or under the supervision of a licensed project monitor after January 1, 1991 ].

F. An applicant with a bachelor's degree in engineering, architecture, industrial hygiene, science or a related field must have at least 120 hours experience as described above.

## § 10.4. Fees.

A. The fee for an asbestos project monitor license shall be [ ~~\$25~~ \$35 ]. The amount is based on the administrative costs of the asbestos licensing program.

B. A completed application (as required in Part X, § 10.2 of these regulations) shall be accompanied by the required fees. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the required fee.

C. All fees are not refundable.

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D. Receipt and deposit of fees submitted with the applications do not in any way indicate approval for licensure.

## § 10.5. Expiration.

Asbestos project monitor licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

## § 10.6. Renewal application.

The department [ of Commerce ] will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and the renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. Prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the department [ of Commerce ] the renewal notice and the [ \$25 \$35 ] renewal fee. Should the licensee fail to receive a renewal notice, a copy of a current license may be submitted with the required fee.

B. The training requirement for license renewal may be met only by successfully completing a refresher training course approved by the department [ of Commerce ] . Applicants shall forward proof that the annual retraining [ required requirement ] of eight hours of instruction and an examination has been successfully completed. A copy of a certificate indicating the date and the location of training shall accompany the renewal application.

C. If the renewal fee is not received by the department [ of Commerce ] within 30 days after the expiration date noted on the license, a late renewal fee of [ \$25 \$35 ] will be required in addition to the renewal fee.

D. Licensees failing to renew their licenses within six months of the expiration date noted on the license shall not be permitted to renew their licenses, shall apply as new applicants and shall meet all current education and examination requirements in § 10.2 of these regulations.

## § 10.7. Change of address.

The licensee shall notify the department [ of Commerce ] immediately of any change of address.

## PART XI ASBESTOS ANALYTICAL LABORATORY LICENSE REQUIREMENTS.

Asbestos analytical laboratories are required to comply fully with all requirements, procedures, standards, and regulations covering all aspects of asbestos analytical services as established by these regulations.

## § 11.1. License application.

A. Each applicant is responsible for obtaining a current application. All requirements for applications should be directed to:

Assistant Director  
Asbestos Licensing Program  
Virginia Department of Commerce  
3600 West Broad Street, 5th Floor  
Richmond, Virginia 23230.

B. Each application shall be signed by an officer or a responsible party of the asbestos analytical laboratory company and shall include a certification by the applicant that within the last three years prior to the application date, his license, program accreditation rating or other authorization to analyze asbestos samples have not been suspended or revoked by any jurisdiction, and that no enforcement action is pending against the applicant.

C. In the event enforcement actions have been taken against the applicant, the director may deny an applicant's request for a license based on prior enforcement actions which indicate that the asbestos analytical laboratory might not perform its services in a manner that would protect the safety of its employees, or that the analytical testing results might lack credibility and reliability.

In order to make this determination, the following information will be required:

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.

2. A copy of any reports of enforcement actions compiled by an enforcement agency against the applicant.

D. All applications shall be completed according to the instructions provided with the application. Incomplete applications will be returned to the applicant; however, the fees received are not refundable.

## § 11.2. Qualifications for licensure.

A. Each individual or business applying to the department [ of Commerce ] for licensing as an asbestos analytical laboratory shall have the following qualifications:

1. Applicants shall have all occupational or professional licenses [ and certification ] necessary and required by state statute or local ordinance to transact the business of an asbestos analytical laboratory in addition to those requirements as set forth in these regulations.

2. A license issued by the department [ of Commerce ] will authorize an asbestos analytical laboratory to perform analysis of bulk samples using PLM or TEM analysis, air samples using PCM or TEM analysis or both bulk and air sampling using PLM or PCM or

TEM analysis.

## B. Analysis of bulk materials.

### 1. For licensure to analyze bulk materials using Polarized Light Microscopy (PLM):

a. The applicant shall provide evidence that the asbestos analytical laboratory is currently rated as "proficient" by the National Institute of Standards and Technology's National Voluntary Laboratory Accreditation Program. The asbestos analytical laboratory shall participate in all rounds of the program.

b. The asbestos analytical laboratory using PLM to analyze bulk samples shall use the method in accordance with USEPA specifications defined in the Interim Method for the Determination of Asbestos in Bulk Insulation Samples, USEPA 40 CFR Part 763, Appendix A, Subpart F or NIOSH 9002.

### 2. For licensure to analyze asbestos bulk materials using Transmission Electron Microscopy:

[ a. The applicant shall adhere to the final rules pertaining to TEM proficiency certification of laboratories for asbestos analysis that are being developed by the National Institute of Standards and Technology (NIST). The department intends to incorporate these final rules pertaining to TEM asbestos analysis into the Virginia Asbestos Licensing Regulations. Once the NIST program is in place all laboratories will be required to provide proof of current NIST accreditation within 60 days to continue TEM analysis. The applicant shall provide evidence that the asbestos analytical laboratory is currently rated as "proficient" by the National Institute of Standards and Technology's National Voluntary Laboratory Accreditation Program. The asbestos analytical laboratory shall participate in all rounds of the program. ]

[ b. For license approval by the Department of Commerce, the applicant must submit the following:

(1) Names, employment dates and verification of training for those persons performing analysis of the site(s).

(2) Name of supervisor(s), employment dates, and verification of education, specific training and experience.

(3) Documentation of:

(a) Laboratory's chain-of-custody procedures.

(b) Analytical quality assurance program.

(c) Equipment calibration and standardization

programs.

(d) Laboratory standard procedures.

(e) Laboratory record keeping procedures.

(f) Asbestos analytical equipment inventory.

(4) Complete disclosure form.

e. The applicant shall provide documentation that the individual who directly supervises the electron microscopy analysis has at least two years experience in materials analysis by electron microscopy.

d. The technique used for TEM analysis of bulk samples shall be in accordance with USEPA 40dCFR PART 763, Appendix A, Subpart E. ]

## C. Analysis of airborne asbestos fibers.

[ 1. ] For licensure to analyze airborne asbestos fiber counts using Phase Contrast Microscopy:

[ a. 1. ] The applicant shall provide evidence that the National Institute for Occupational Safety and Health (NIOSH) has [ accredited the applicant's facility as "proficient" rated the applicant's facility ] in the Proficiency Analytical Testing (PAT) Programs most recent round of asbestos evaluations [ and has been found "proficient" ] or has been accredited by the American Industrial Hygiene Association for Asbestos Analytical Services. Each analyst must provide proof of successfully completing the NIOSH 582 Course or equivalent.

[ b. 2. ] The laboratory using PCM to analyze air samples shall use the method in accordance with OSHA 29 CFR 1910.1001, Appendix A, FR No. 119, 22739, June 20, 1986, or [ NIOSH Method 7400 "A" counting rules most recent edition of the NIOSH 7400 counting method ].

[ 2. For licensure to analyze airborne asbestos fiber counts using Transmission Electron Microscopy:

a. The applicant shall adhere to the final rules pertaining to TEM proficiency certification of laboratories for asbestos analysis that are being developed by the National Institute of Standards and Technology (NIST). The department intends to incorporate these final rules pertaining to TEM asbestos analysis into the Virginia Asbestos Licensing Regulations. Once the NIST program is in place all asbestos analytical laboratories will be required to provide proof of current NIST accreditation within 60 days to continue TEM analysis.

b. For license approval by the Department of Commerce, the applicant must submit the following:

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(1) Names, employment dates and verification of training for those persons performing analysis at the site(s):

(2) Name of supervisor(s), employment, dates, and verification of education, specific training and experience.

(3) Documentation of:

(a) Laboratory's chain-of-custody procedures.

(b) Analytical quality assurance program.

(c) Equipment calibration and standardization programs.

(d) Laboratory standard procedures.

(e) Laboratory record keeping procedures.

(f) Asbestos analytical equipment inventory.

(4) Complete disclosure form. ]

[ e. 3. ] The applicant shall provide documentation that the individual who directly supervises the electron microscopy analysis has at least two years experience in materials analysis by electron microscopy.

[ d. 4. ] The technique used for TEM Analysis of airborne fiber counting shall be in accordance with USEPA 40 CFR PART 763, Appendix A, Subpart E or NIOSH Method 7402.

## § 11.3. Fees.

A. The fee for an asbestos analytical laboratory license shall be \$100. The fee amount is based on the administrative costs of the asbestos licensing program.

B. A completed application [ ~~(s)~~ ] (as required in Part XI, § 11.1 of these regulations) shall be accompanied by the required fee [ ~~(s)~~ ]. All checks or money orders shall be made payable to the Treasurer of Virginia. No application will be processed if it is not accompanied by the required fee [ ~~(s)~~ ].

C. All fees are not refundable.

D. Receipt and deposit of fees submitted with applications do not in any way indicate approval for licensure.

## § 11.4. Expiration.

Asbestos analytical laboratory licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

## § 11.5. Renewal application.

The department [ of ~~Commer~~ ] will mail a renewal notice to the licensee at the last known address. The notice shall outline the procedures for renewal and the renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew.

A. At least 30 days prior to the expiration date shown on the license, each licensee desiring to renew his license shall return to the department [ of ~~Commer~~ ] the renewal notice, documentation of valid accreditations and the \$100 renewal fee. Should the licensee fail to receive the renewal notice, a copy of a current license may be submitted with the proper accreditation documentation and required fee(s).

B. If a licensee's renewal fee is received by the department [ of ~~Commer~~ ] more than 30 days after the expiration date noted on the license, then the licensee must pay a late fee of \$100 in addition to the renewal fee.

C. Licensees failing to renew their licenses within six months of the expiration date noted on the licenses shall apply as new applicants meeting all current application requirements in § 11.1 of these regulations.

## § 11.6. Change of status.

A. The licensee shall notify the department [ of ~~Commer~~ ] on a form provided by the department immediately of any addition or deletion regarding employment of trained and experienced supervisors, and any changes regarding the signing officers or responsible party's relationship with the company.

B. The licensee shall notify the department [ of ~~Commer~~ ] immediately upon the loss of accreditation by NVLAP, NIOSH Pat Proficiency Program or AIHA by any laboratory location.

C. The licensee shall notify the department [ of ~~Commer~~ ] in writing within 10 days of the receipt of their most recent accreditation evaluation results.

## § 11.7. License certificate.

A. The transfer of an asbestos analytical laboratory license is prohibited. Whenever there is any change in the controlling interest of the legal entity licensed, whether in proprietorship or change of partner in partnership or the creation of a corporation, a new license is required.

B. A copy of [ a the ] current asbestos analytical laboratory license [ certificate shall be available at all times for review by the Department of ~~Commer~~ at each laboratory site. will be on site at all times when analysis is performed, including project sites. It will be available for review by the Department of Commerce and the Department of Labor and Industry or any other interested parties upon demand. ]

C. The director shall require asbestos analytical laboratories that wish to become or remain licensed in the Commonwealth to conform to any future additional standards or regulations set forth by the USEPA and the National Institute of Standards and Technology.

D. The department [ of Commerce ] shall conduct periodic on-site inspections and evaluations of any licensed asbestos analytical laboratory facility. The inspection shall include but not be limited to all equipment, procedure and protocol records, training and accreditation documentation and any other program's evaluation results on file.

## PART IX PART XII. TRAINING COURSE REQUIREMENTS.

IN ALL OF THE FOLLOWING TRAINING COURSE REQUIREMENTS ONE DAY SHALL BE EQUAL TO EIGHT HOURS.

IN ALL REFRESHER TRAINING COURSE REQUIREMENTS ONE DAY SHALL BE EQUAL TO EIGHT HOURS

### § 9-1. § 12.1. Worker training.

Asbestos abatement workers shall complete at least a three day (24 hours) training course as outlined below. All training courses shall be approved by the [ Virginia ] department [ of Commerce ]. The training course shall include lectures, demonstrations, at least six hours of hands-on training, individual respirator fit testing, course review, and an examination. The training shall address the following topics:

1. Physical characteristics of asbestos:
  - a. Identification of asbestos.
  - b. Aerodynamic characteristics.
  - c. Typical uses and physical appearance.
  - d. A summary of abatement control options.
2. Potential health effects related to asbestos exposure:
  - a. The nature of asbestos related diseases.
  - b. Routes of exposure, dose response relationships and the lack of a safe exposure level.
  - c. Synergism between cigarette smoking and asbestos exposure.
  - d. Latency period for disease.
3. Employee personal protective equipment:
  - a. Classes and characteristics of respirator types.

- b. Limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures.
- c. Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
- d. Qualitative and quantitative fit testing procedures.
- e. Variability between field and laboratory protection factors.
- f. Factors that alter respirator fit (e.g., facial hair, ).
- g. The components of a proper respiratory protection program.
- h. Selection and use of personal protective clothing; use, storage, and handling of nondisposable clothing.
- i. Regulations covering personal protective equipment.

### 4. State-of-the-art work practices:

- a. Proper asbestos abatement activities including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems.
- b. Positioning of warning signs.
- c. Electrical and ventilation system lock-out.
- d. Proper working techniques for minimizing fiber release, use of wet methods, use of negative pressure ventilation equipment, use of high efficiency particulate air (HEPA) vacuums.
- e. Proper clean-up and disposal procedures.
- f. Work practices for removal, encapsulation, enclosure, and repair.
- g. Emergency procedures for sudden releases.
- h. Potential exposure situations, and transport and disposal procedures.
- i. Recommended and prohibited work practices.

### 5. Personal hygiene:

- a. Entry and exit procedures for the work area, use of showers, avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.
- b. Potential exposures, such as family exposure.

### 6. Additional safety hazards:



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a. Hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards.

b. Scaffold and ladder hazards.

c. Slips, trips and falls.

d. Confined spaces.

7. Medical monitoring:

a. OSHA requirements for a pulmonary function test.

b. Chest x-rays and a medical history for each employee.

8. Air monitoring:

a. Procedures to determine airborne concentrations of asbestos fibers.

b. Focusing on how personal air sampling is performed and the reasons for it.

9. Relevant federal, state and local regulatory requirements, procedures and standards, with particular attention directed at relevant [ EPA USEPA ], OSHA, and state regulations concerning asbestos abatement workers.

10. Establishment of respiratory protection programs.

11. Course review. A review of key aspects of the training course.

§ 9-2. § 12.2. Examinations.

Upon completion of an approved initial training course a closed book examination will be administered. Demonstration testing will also be included as part of the examination. Each examination shall adequately cover the topics included in the training course. Persons who pass the examination and fulfill course requirements will receive a written certificate indicating successful completion of the course. The following are the requirements for examination:

Asbestos abatement workers:

1. 50 multiple choice questions.

2. Passing score: 70% correct.

**IN ALL REFRESHER TRAINING COURSE REQUIREMENTS ONE DAY SHALL BE EQUAL TO EIGHT HOURS.**

§ 9-3. § 12.3. Refresher training course.

Refresher courses shall be one day (8 hours) in length for asbestos abatement workers. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures and a review of key aspects of the initial training course as set forth in Part IX, § 9-1 XII, § 12.1 of these regulations. A written closed book examination of 50 multiple choice questions will be administered covering the topics included in the refresher course. [ *The examination will consist of no fewer than 50 questions.* ] [ *A The* ] passing [ *refresher examination* ] score will be 70% correct. Persons who pass the refresher course examination will receive a written certificate indicating successful completion of the course.

§ 9-4. § 12.4. Supervisor training.

Asbestos abatement supervisors shall complete a four day (32 hours) training course as outlined below. All training courses shall be approved by the [ *Virginia* ] department [ *of Commerce* ]. The training course shall include lecture, demonstrations, individual respirator fit testing, course review, examination, and at least six hours of hands-on training which allows supervisors the experience of performing actual tasks associated with asbestos abatement.

For purposes of approval, asbestos abatement supervisors include those persons who provide supervision and direction to workers engaged in asbestos removal, encapsulation, enclosure, and repair. The contractor must designate a supervisor to serve as his agent for the purposes of meeting the training requirements for approval.

The supervisor's training course shall adequately address the following topics:

1. The physical characteristics of asbestos and asbestos-containing materials:

a. Identification of asbestos.

b. Aerodynamic characteristics.

c. Typical uses, physical appearance.

d. A review of hazard assessment considerations.

e. A summary of abatement control options.

2. Potential health effects related to asbestos exposure:

a. The nature of asbestos-related diseases.

b. Routes of exposure, dose-response relationships and the lack of a safe exposure level.

c. Synergism between cigarette smoking and asbestos exposure.

d. Latency period for disease.

3. Employee personal protective equipment:
  - a. Classes and characteristics of respirator types.
  - b. Limitations of respirators and their proper selection, inspection, donning, use, maintenance and storage procedures.
  - c. Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
  - d. Qualitative and quantitative fit testing procedures.
  - e. Variability between field and laboratory protection factors.
  - f. Factors that alter respirator fit (e.g., facial hair, dental work, weight loss or gain).
  - g. The components of a proper respiratory protection program.
  - h. Selection and use of personal protective clothing; use, storage and handling of nondisposable clothing.
  - i. Regulations covering personal protective equipment.
4. State-of-the-art work practices:
  - a. Proper work practices for asbestos abatement activities including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems.
  - b. Positioning of warning signs.
  - c. Electrical and ventilation system lock-out.
  - d. Proper working techniques for minimizing fiber release, use of wet methods, use of negative pressure ventilation equipment, use of high efficiency particulate air (HEPA) vacuums.
  - e. Proper clean-up and disposal procedures.
  - f. Work practices for removal, encapsulation, enclosure and repair.
  - g. Emergency procedures for sudden releases.
  - h. Potential exposure situations.
  - i. Transport and disposal procedures.
  - j. Recommended and prohibited work practices.
  - k. Discussion of new abatement-related techniques and methodologies.
5. Personal hygiene:
  - a. Entry and exit procedures for the work area; use of showers; and avoidance of eating, drinking, smoking, and chewing, (gum or tobacco) in the work area.
  - b. Potential exposures, such as family exposure, shall also be included.
6. Additional safety hazards:
  - a. Hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants, other than asbestos, fire and explosion hazards.
  - b. Scaffold and ladder hazards.
  - c. Slips, trips and falls.
  - d. Confined spaces.
7. Medical monitoring. OSHA requirements for a pulmonary function test, chest x-rays and a medical history for each employee.
8. Air monitoring:
  - a. Procedures to determine airborne concentration of asbestos fibers, including a description of an aggressive sampling, sampling equipment and methods.
  - b. Reasons for air monitoring.
  - c. Types of samples and interpretation of results, specifically from analysis performed by polarized light, phase-contrast, and electron microscopy analyses.
9. Relevant federal, state, and local regulatory requirements, procedures and standards including:
  - a. Requirements of TSCA Title II.
  - b. 40 CFR Part 61 National Emission Standards for Hazardous Air Pollutants, Subparts A (General Provisions) and M (National Emission Standards for Asbestos).
  - c. OSHA Standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR 1910.134).
  - d. OSHA Asbestos Construction Standard (29 CFR 1926.58).
  - e. [ EPA USEPA ] Worker Protection Rule, 40 CFR Part 763, Subpart G.
  - f. Section 8.1 of the Solid Waste Management Regulations (VR 672-20-10).

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10. Respiratory protection programs and medical surveillance programs.

11. Insurance and liability issues:

- a. Contractor issues, worker's compensation coverage, and exclusions.
- b. Third-party liabilities and defenses.
- c. Insurance coverage and exclusions.

12. Record keeping for asbestos abatement projects:

- a. Records required by federal, state, and local regulations.
- b. Records recommended for legal and insurance purposes.

13. Supervisory techniques for asbestos abatement activities. Supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices.

14. Contract specifications. Discussions of key elements that are included in contract specifications.

15. Course review. A review of key aspects of the training course.

## § 9-5. § 12.5. Examinations.

Upon completion of an approved initial training course, a closed book examination will be administered. Demonstration testing will also be included as part of the examination. Each examination shall adequately cover the topics included in the training course. Persons who pass the examination and fulfill course requirements will receive some form of a written certificate indicating successful completion of the course. The following are the requirements for examination:

Asbestos abatement supervisors:

1. 100 multiple choice questions.
2. Passing score: 70% correct.

## § 9-6. § 12.6. Refresher training course.

Refresher courses shall be one day (8 hours) in length for supervisors. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures and review of key aspects of the initial training course as set forth in Part IX, § 9-4 XII, § 12.4 of these regulations. A written closed book examination will be included in the refresher course. Persons who pass the refresher course examination will receive a written certificate indicating successful completion of the course.

## § 9-7. § 12.7. Inspector training.

Asbestos inspectors shall complete a three day (24 hour) training course as outlined below. The course shall include lectures, demonstrations, four hours of hands-on training, individual respirator fit testing, course review and a written examination.

The inspector training course shall adequately address the following topics:

1. Background information on asbestos:

a. Identification of asbestos, and examples and discussion of the uses and locations of asbestos in buildings.

b. Physical appearance of asbestos.

2. Potential health effects related to asbestos exposure:

a. The nature of asbestos-related diseases.

b. Routes of exposure, dose-response relationships and the lack of a safe exposure level.

c. The synergistic effect between cigarette smoking and asbestos exposure.

d. Latency period for asbestos-related diseases, a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma and cancer of other organs.

3. Functions/qualifications and role of inspectors:

a. Discussions of prior experience and qualifications for inspectors and management planners.

b. Discussions of the functions of an accredited inspector as compared to those of an accredited management planner.

c. Discussion of the inspection process including inventory of ACM and physical assessment.

4. Legal liabilities and defenses:

a. Responsibilities of the inspector, a discussion of comprehensive general liability policies, claims made and occurrence policies, environment and pollution liability policy clauses; state liability insurance requirements.

b. Bonding and relationship of insurance availability to bond availability.

5. Understanding building systems:

a. The interrelationship between building systems, including: an overview of common building physical

- plan layout; heat, ventilation and air conditioning (HVAC) system types; physical organization; and where asbestos is found on HVAC components.
- b. Building mechanical systems, their types and organization and where to look for asbestos on such systems.
  - c. Inspecting electrical systems, including appropriate safety precautions.
  - d. Reading building plans and as-built drawings.
6. Public/employee/building occupant relations:
- a. Notifying employee organizations about the inspection.
  - b. Signs to warn building occupants.
  - c. Tact in dealing with occupants and the press.
  - d. Scheduling of inspections to minimize disruption.
  - e. Education of building occupants about actions being taken.
7. Preinspection planning and review of previous inspection records:
- a. Scheduling the inspection and obtaining access.
  - b. Building record review; identification of probable homogeneous areas from building plans or as-built drawings.
  - c. Consultation with maintenance or building personnel.
  - d. Review of previous inspection, sampling, and abatement records of a building.
  - e. The role of the inspector in exclusions for previously performed inspections.
8. Inspection for friable and nonfriable asbestos-containing material (ACM) and assessment of the condition of friable ACM:
- a. Procedures to follow in conducting visual inspections for friable and nonfriable ACM.
  - b. Types of building materials that may contain asbestos.
  - c. Touching materials to determine friability.
  - d. Open return air plenums and their importance in HVAC systems.
  - e. Assessing damage, significant damage, potential damage, and potential significant damage.
- f. Amount of suspected ACM, both in total quantity and as a percentage of the total area.
  - g. Type of damage.
  - h. Accessibility.
  - i. Material's potential for disturbance.
  - j. Known or suspected causes of damage or significant damage, and deterioration as assessment factors.
9. Bulk sampling/documentation of asbestos in schools:
- a. Detailed discussion of the "Simplified Sampling Scheme for Friable Surfacing Materials" ([ EPA USEPA ] 560/5-85-030a October 1985).
  - b. Techniques to ensure sampling in a randomly distributed manner for other than friable surfacing materials.
  - c. Techniques for bulk sampling.
  - d. Sampling equipment the inspector should use.
  - e. Patching or repair of damage done in sampling; and inspector's repair kit.
  - f. Discussion of polarized light microscopy.
  - g. Choosing an accredited laboratory to analyze bulk samples.
  - h. Quality control and quality assurance procedures.
10. Inspector respiratory protection and equipment:
- a. Classes and characteristics of respirator types.
  - b. Limitations of respirators.
  - c. Proper selection, inspection, donning, use maintenance, and storage procedures for respirators.
  - d. Methods for field testing of the facepiece-to-mouth seal (positive and negative pressure fitting tests); qualitative and quantitative fit testing procedures.
  - e. Variability between field and laboratory protection factors.
  - f. Factors that alter respirator fit (e.g., facial hair [ , dental work, weight loss or gain ]).
  - g. The components of a proper respiratory protection program.

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- h. Selection and use of personal protective clothing.
- i. Use, storage, and handling of nondisposable clothing.

## 11. Recordkeeping and writing the inspection report:

- a. Labeling of samples and keying sample identification to sampling location.
- b. Recommendations on sample labeling.
- c. Detailing of ACM inventory.
- d. Photographs of selected sampling areas and examples of ACM condition.
- e. Information required for inclusion in the management plan by TSCA Title II § 203 (i)(1).

## 12. Regulatory review:

- a. [ EPA USEPA ] Worker Protection Rule found at 40 CFR Part 763, Subpart G.
- b. TSCA Title II.
- c. OSHA Asbestos Construction Standard 29 CFR 1926.58.
- d. OSHA respirator requirements found at 29 CFR 1910.134.
- e. The friable ACM in Schools Rule found at 40 CFR Part 763 Subpart F.

(The above materials are incorporated by reference).

- f. Applicable state and local regulations.
- g. Differences in federal/state requirements where they apply and the effects, if any, on public and nonpublic schools.

## 13. Field trip:

- a. To include a field exercise including a walk-through inspection.
- b. On-site discussion of information gathering and determination of sampling locations.
- c. On-site practice in physical assessment.
- d. Classroom discussion of field exercise.

## 14. Course review. A review of key aspects of the training course.

Upon completion of an approved initial training course, a closed book examination will be administered. Each examination shall adequately cover the topics included in the training course. Persons who pass the examination and fulfill course requirements will receive a written certification indicating successful completion of the course. The following are the requirements for examination:

### Asbestos inspectors:

1. 50 multiple choice questions.
2. Passing score: 70% correct.

### ~~§ 9.9.~~ § 12.9. Refresher training course.

Refresher courses shall be one-half day (4 hours) in length for inspectors. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures, and a review of key aspects of the initial training course as set forth in Part IX, § 9.7 XII, § 12.7 of these regulations. A written closed book examination will be administered covering the topics included in the asbestos inspector refresher training course. [ *The examination will consist of no fewer than 50 questions. The passing score will be 70% correct.* ] Persons who pass the refresher course examination will receive some form of written certification indicating successful completion of the course.

### ~~§ 9.10.~~ § 12.10. Asbestos management planner training.

Asbestos management planners seeking accreditation must complete an inspection training course as outlined above and a two day management planning training course. The two day training program shall include lectures, demonstrations, course review, and a written examination. The management planner training course shall adequately address the following topics:

1. Course overview:
  - a. The role of the management planner.
  - b. Operations and maintenance programs.
  - c. Setting work priorities; protection of building occupants.
2. Evaluation/interpretation of survey results:
  - a. Review of TSCA Title II requirements for inspection and management plans as given in § 203(i)(1) of TSCA Title II.
  - b. Summarized field data and laboratory results; comparison between field inspector's data sheet with laboratory results and site survey.
3. Hazard assessment:

### ~~§ 9.8.~~ § 12.8. Examinations.

- a. Amplification of the difference between physical assessment and hazard assessment.
  - b. The role of the management planner in hazard assessment.
  - c. Explanation of significant damage, potential damage, and potential significant damage and use of a description (or decision tree) code for assessment of ACM; assessment of friable ACM.
  - d. Relationship of accessibility, vibration sources, use of adjoining space, and air plenums and other factors to hazard assessment.
4. Legal implications:
- a. Liability; insurance issues specific to *management* planners.
  - b. Liabilities associated with interim control measures, in-house maintenance, repair, and removal.
  - c. Use of results from previously performed inspections.
5. Evaluation and selection of control options:
- a. Overview of encapsulation, enclosure, interim operations and maintenance, and removal; advantages and disadvantages of each method.
  - b. Response actions described via a decision tree or other appropriate method; work practices for each response action.
  - c. Staging and prioritizing of work in both vacant and occupied buildings.
  - d. The need for containment barriers and decontamination in response actions.
6. Role of other professionals:
- a. Use of industrial hygienists, engineers and architects in developing technical specifications for response actions.
  - b. Any requirements that may exist for architect sign-off of plans.
  - c. Team approach to design of high-quality job specifications.
7. Developing an operations and maintenance (O&M) plan:
- a. Purpose of the plan.
  - b. Discussion of applicable [ EPA USEPA ] guidance documents.
- c. What actions should be taken by custodial staff: proper cleaning procedures; steam cleaning and high efficiency particulate aerosol (HEPA) vacuuming.
- d. Reducing disturbance of ACM.
- e. Scheduling O&M for off-hours; rescheduling or canceling renovation in areas with ACM.
- f. Boiler room maintenance.
- g. Disposal of ACM.
- h. In-house procedures for ACM: bridging and penetrating encapsulants, pipe fittings, metal sleeves, polyvinyl chloride (PVC), canvas, and wet wraps; muslin with straps; fiber mesh cloth; mineral wool, and insulating cement.
- i. Discussion of employee protection programs and staff training.
- j. Case study in developing an O&M plan (development, implementation process, and problems that have been experienced).
8. Regulatory review:
- a. Focusing on the OSHA Asbestos Construction Standard found at 29 CFR 1926.58.
  - b. The National Emission Standard for Hazardous Air Pollutants (NESHAPS) found at 40 CFR Part 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos).
  - c. [ EPA USEPA ] Worker Protection Rule found at 40 CFR Part 763, Subpart G; TSCA Title II.
  - d. Applicable state regulations.
9. Recordkeeping for the management planner:
- a. Use of field inspector's data sheet along with laboratory results.
  - b. On-going recordkeeping as a means to track asbestos disturbance.
  - c. Procedures for recordkeeping.
10. Assembling and submitting the management plan:
- a. Plan requirements in TSCA Title II § 203(i)(1).
  - b. The management plan as a planning tool.
11. Financing abatement actions:

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- a. Economic analysis and cost estimates.
- b. Development of cost estimates.
- c. Present costs of abatement versus future operations and maintenance costs.
- d. Asbestos School Hazard Abatement Act grants and loans.

12. A review of key aspects of the training course.

~~§ 9-11.~~ § 12.11. Examinations.

Upon completion of an approved management planner training course, a closed book examination will be administered. Each examination shall adequately cover the topics included in the management planner training course. Persons who pass the examination and fulfill course requirements will receive a written certification indicating successful completion of the management planner training course. The following are the requirements for examination:

Asbestos Management Planners:

1. 50 multiple choice questions.
2. Passing score: 70% correct.

~~§ 9-12.~~ § 12.12. Refresher training course.

Management planners shall attend the inspector refresher course of one-half day (four hours) in length plus an additional half-day (four hours) on management planning. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures, and a review of key aspects of the inspector and management planner training courses as set forth in Part IX, §§ 9-10 and 9-12 XII, §§ 12.10 and 12.12 of these regulations. A written closed book examination will be administered covering the topics included in the asbestos inspector and management planner refresher courses. [ *The examination will consist of no fewer than 50 questions. The passing score will be 70% correct.* ] Persons who pass the asbestos inspector and management planner refresher course examinations will receive some form of written certification indicating successful completion of the course.

~~§ 9-13.~~ § 12.13. Asbestos project designers.

Asbestos project designers shall complete either a three-day abatement project designer training course as outlined below or the four-day asbestos abatement contractor and supervisor's training course as outlined in Part IX, § 9-4 XII, § 12.4. The three-day abatement project designer training program shall include lectures, demonstrations, a field trip, course review, and a written examination. The three day abatement project designer training course shall adequately address the following

topics:

1. Background information on asbestos:
  - a. Identification of asbestos; examples and discussion of the uses and locations of asbestos in buildings.
  - b. Physical appearance of asbestos.
2. Potential health effects related to asbestos exposure:
  - a. Nature of asbestos-related diseases.
  - b. Routes of exposure, dose-response relationships and the lack of a safe exposure level.
  - c. The synergistic effect between cigarette smoking and asbestos exposure.
  - d. The latency period of asbestos-related diseases; a discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancer of other organs.
3. Overview of abatement construction projects:
  - a. Abatement as a portion of a renovation project.
  - b. OSHA requirements for notification of other contractors on a multi-employer site (29 CFR 1926.58).
4. Safety system design specifications:
  - a. Construction and maintenance of containment barriers and decontamination enclosure systems.
  - b. Positioning of warning signs.
  - c. Electrical and ventilation system lock-out.
  - d. Proper working techniques for minimizing fiber release.
  - e. Entry and exit procedures for the work area, use of wet methods, use of negative pressure exhaust ventilation equipment, use of high efficiency particulate aerosol (HEPA) vacuums, proper clean-up and disposal of asbestos, work practices as they apply to encapsulation, enclosure, and repair, use of glove bags and a demonstration of glove bag use.
5. Field trip:
  - a. Visit an abatement site or other suitable building site, including on-site discussions of abatement design.
  - b. Building walk-through inspection, and discussion following the walk-through.

6. Employee personal protective equipment:
  - a. To include the classes and characteristics of respirator types.
  - b. Limitations of respirators, proper selection, inspection, donning, use, maintenance, and storage procedures.
  - c. Methods for field testing of the facepiece-to-facepiece seal (positive and negative pressure fitting tests).
  - d. Qualitative and quantitative fit testing procedures.
  - e. Variability between field and laboratory protection factors, factors that alter respirator fit (e.g., facial hair [ , dental work and weight loss or gain ]).
  - f. Components of a proper respiratory protection program.
  - g. Selection and use of personal protective clothing, use, storage and handling of nondisposable clothing.
  - h. Regulations covering personal protective equipment.
7. Additional safety hazards:
  - a. Hazards encountered during abatement activities and how to deal with them.
  - b. Electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards.
8. Fiber aerodynamics and control:
  - a. Aerodynamic characteristics of asbestos fibers.
  - b. Importance of proper containment barriers.
  - c. Settling time for asbestos fibers.
  - d. Wet methods in abatement.
  - e. Aggressive air monitoring following abatement.
  - f. Aggressive air movement and negative pressure exhaust ventilation as a clean-up method.
9. Designing abatement solutions.
  - a. Discussions of removal, enclosure, and encapsulation methods.
  - b. Asbestos waste disposal.
10. Budgeting/cost estimation.
  - a. Development of cost estimates.
  - b. Present costs of abatement versus future operations and maintenance costs.
  - c. Setting priorities for abatement jobs to reduce cost.
11. Writing abatement specifications.
  - a. Means and methods specifications versus performance specifications.
  - b. Design of abatement in occupied buildings.
  - c. Modification of guide specifications to a particular building.
  - d. Worker and building occupant health/medical considerations.
  - e. Replacement of ACM with nonasbestos substitutes.
  - f. Clearance of work area after abatement.
  - g. Air monitoring for clearance.
12. Preparing abatement drawings:
  - a. Use of as-built drawings.
  - b. Use of inspection photographs and on-site reports.
  - c. Particular problems in abatement drawings.
13. Contract preparation and administration.
14. Legal/liabilities/defenses.
  - a. Insurance considerations, bonding, hold harmless clauses, use of abatement contractor's liability insurance.
  - b. Claims-made versus occurrence policies.
15. Replacement of asbestos with asbestos-free substitutes.
16. Role of other consultants:
  - a. Development of technical specification sections by industrial hygienists or engineers.
  - b. The multidisciplinary team approach to abatement design.  
[ c. *The use and responsibilities of a project monitor on the abatement site.* ]
17. Occupied buildings.



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- a. Special design procedures required in occupied buildings.
- b. Education of occupants.
- c. Extra monitoring recommendations.
- d. Staging of work to minimize occupant exposure.
- e. Scheduling of renovation to minimize exposure.

18. Relevant federal, state and local regulatory requirements. Procedures and standards including:

- a. Requirements of TSCA Title II.
- b. 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, Subparts A (General Provisions) and M (National Emission Standard for Asbestos).
- c. OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR 1910.134).
- d. [ EPA USEPA ] Worker Protection Rule, found at 40 CFR Part 763, Subpart G.
- e. OSHA Asbestos Construction Standard found at 29 CFR 1926.58.

19. A review of key aspects of the training course.

## ~~§ 9-14.~~ § 12.14. Examinations.

Upon completion of an approved initial training course, a closed book examination will be administered. Demonstration testing will also be included as part of the examination. Each examination shall adequately cover the topics included in the training course. Persons who pass the examination and fulfill course requirements will receive a written certification indicating successful completion of the course. The following are the requirements for examination:

Asbestos Project Designers:

1. 100 multiple choice questions.
2. Passing score: 70% correct.

## ~~§ 9-15.~~ § 12.15. Refresher training course.

Refresher courses shall be one day (8 hours) in length for project designers. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures and review of key aspects of the initial training course as set forth in Part IX, ~~§ 9-10~~ XII, § 12.10 of these regulations. A written closed book examination shall be included in the refresher course. Persons who pass the refresher course examination will

receive a written certificate indicating successful completion of the course.

## § 12.16. Project monitor training.

Asbestos abatement project monitors shall complete a five day (40 hours) training course as outlined below. All training courses shall be approved by the department [ of Commerce ]. The training course shall include lecture, demonstrations, individual respirator fit testing, course review, examination, and at least six hours of hands on training which allows project monitors the experience of performing actual tasks associated with asbestos project monitoring. Those applicants who hold current supervisors or project designers licenses in Virginia need not complete the entire 40-hour training course but may complete the 16-hour portion of the course beginning at topic number 12 and take the examination. The comprehensive 40-hour project monitor training course shall adequately address the following topics:

1. The physical characteristics of asbestos and asbestos-containing materials.

a. Identification of asbestos.

b. Typical uses and locations in buildings, physical appearance.

c. A review of hazard assessment control options.

d. A summary of abatement control options.

2. Potential health effects related to asbestos exposure.

a. The nature of asbestos-related diseases.

b. Route of exposure, dose-response relationships and the lack of safe exposure level.

c. Synergism between cigarette smoking and asbestos exposure.

d. Latency period for disease; a discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancer of the other organs.

3. Employee personal protective equipment.

a. Classes and characteristics of respirator types.

b. Limitations of respirators and their proper selection, inspection, donning, use, maintenance and storage procedures.

c. Methods for field testing of the face piece-to-face seal (positive and negative pressure fitting tests).

d. Qualitative and quantitative fit testing procedures.

- e. Variability between [ field ] and laboratory protection factors.
  - f. Factors that alter respirator fit (e.g., facial hair [ , dental work, weight loss or gain ] ).
  - g. The components of a proper respiratory protection program.
  - h. Selection and uses of personal protective clothing; use, storage, and handling of nondisposable clothing.
  - i. Regulations covering personal protection equipment.
4. State of the art work practices.
- a. Proper work practices for asbestos abatement activities including description of proper construction and maintenance barriers and decontamination enclosure systems.
  - b. Positioning of warning signs.
  - c. Electrical and ventilation system lock-out.
  - d. Proper working techniques for minimizing fiber release, use of wet methods, use of negative pressure ventilation, equipment, use of high efficiency particulate air (HEPA) vacuums. Entry and exit procedures for work area.
  - e. Proper clean-up and disposal procedures.
  - f. Work practices for removal, encapsulation, enclosure and repair. Use of glove bags and a demonstration of glove bag use.
  - g. Emergency procedures for sudden release.
  - h. Potential exposure situations.
  - i. Transport and disposal procedures.
  - j. Recommended and prohibited work practices.
  - k. Discussion of new abatement-related techniques and methodologies.
5. Personal hygiene.
- a. Entry and exit procedures for the work area; use of showers; and avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.
  - b. Potential exposures, such as family exposure, shall also be included.
6. Additional safety hazards as covered in OSHA CFR 1926 and 1910 to include the following.
- a. Hazards encountered during the abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire, and explosion hazards.
  - b. Scaffold and ladder hazards.
  - c. Slips, trips and falls.
  - d. Confined spaces.
7. Medical monitoring. OSHA requirements for a pulmonary function test, chest x-rays and a medical history for each employee.
8. Record keeping for asbestos abatement projects.
- a. Records required by federal, state and local regulations.
  - b. Records recommended for legal and insurance purposes.
9. Respiratory protection programs and medical surveillance programs.
10. Insurance and liability issues.
- a. Contractor issues, worker's compensation coverage, and exclusions.
  - b. Third-party liabilities and defenses.
  - c. Insurance coverage and exclusions.
  - d. Final clearance.
    - (1) Visual inspection and air monitoring.
    - (2) Sampling inside and outside containment area.
11. Relevant federal, state and local regulatory requirements, procedures and standards including the following.
- a. Requirements of TSCA Title II.
  - b. 40 CFR Part 61 National Emission Standards for Hazardous Air Pollutants, Subparts A (General Provisions) and M (National Emission Standards for Asbestos).
  - c. OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR 1910.134).
  - d. OSHA Asbestos Construction Standard (29 CFR 1926.58).
  - e. [ EPA USEPA ] Worker Protection Rule, 40 CFR Part 763, Subpart G.

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f. Section 8.1 of the Solid Waste Management Regulations (VR 672-20-10).

g. DOT 49 CFR 171 and 172.

h. Virginia asbestos regulations.

The material outlined below encompasses the 16-hour project monitor training course. Those applicants who hold current supervisors or project designers licenses in Virginia need only to successfully complete this 16-hour project monitors course and examination. The comprehensive 40-hour project monitor training program includes the preceding topics and continues below.

## 12. Air monitoring.

a. NIOSH asbestos monitoring procedure. Procedures to determine airborne concentration of asbestos fibers, including a description of an aggressive sampling, sampling equipment and methods.

(1) Explanation of analytical methods, measures of precision, control of errors, collecting measurement samples, fiber counts, sampling and calibration equipment, statistics, quality control techniques in sampling.

(2) Review of OSHA Asbestos Regulations 29 CFR 1926, Subpart F, 1-6.

b. Sampling strategy.

(1) Why samples are taken.

(2) Sampling inside and outside of containment area.

(3) Placement of pumps. -

c. Reasons for air monitoring.

d. Types of samples and interpretation of results, specifically from analysis performed by polarized light, phase-contrast, and electron microscopy analyses.

13. Overview of supervisory techniques for asbestos abatement activities to include the information covered in the asbestos supervisor's training course. A review of the required work practices and safety considerations.

## 14. Field trip.

a. Visit an abatement site or other suitable building site, including on-site discussions of abatement design.

b. Building walk-through inspection, and discussion following the walk through.

## 15. Fiber aerodynamics and control.

a. Aerodynamic characteristics of asbestos fibers.

b. Importance of proper containment barriers.

c. Settling time for asbestos fibers.

d. Wet methods in abatement.

e. Aggressive air monitoring following abatement.

f. Aggressive air movement and negative pressure exhaust ventilation as a clean-up method.

## 16. Project specifications. Discussion of key elements that are included in contract specifications.

a. Means and methods specifications versus performance specifications.

b. Considerations for design of abatement in occupied buildings.

c. Worker and building occupant health/medical considerations.

d. Replacement of ACM with nonasbestos substitutes.

e. Clearance of work after abatement

f. Use of as-built drawings.

g. Use of inspection photographs and on-site reports.

h. Particular problems in abatement drawings.

## 17. Role of project monitor in relation to:

a. Building owner.

b. Building occupants.

c. Abatement contractor.

d. Other consultants.

## 18. Occupied buildings.

a. Special procedures recommended in occupied buildings.

b. Extra monitoring recommendations.

## 19. A review of key aspects of the training course.

## 20. Examinations.

### § 12.17. Examination.

Upon the completion of an approved initial training

course, a closed book examination will be administered. Demonstration testing will also be included as a part of examination. Each examination shall cover the topics included in the training course. Persons who pass the examination and fulfill course requirements will receive a written certification indicating successful completion of the course. The following are the requirements for examination:

#### Asbestos Project Monitors:

1. 100 multiple choice questions
2. Passing score: 70% correct

#### § 12.18. Refresher training course.

Refresher courses shall be one day (eight hours) in length for project monitors. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures and review of key aspects of the initial training course as set forth in Part XII, § 12.16 of these regulations. A written closed book examination shall be included in the refresher course. [ The examination will consist of no fewer than 50 questions. The passing score will be 70% correct. ] Persons who pass the refresher course examination will receive a written certificate indicating successful completion of the course.

#### § 9.16. § 12.19. RFS training course modules.

EACH MODULE SHALL CONSIST OF A MINIMUM OF FOUR HOURS OF ACTUAL INSTRUCTION. This training does not replace the training requirements of OSHA in 29 CFR 1926.58.

#### A. Module I.

Basic training information required for all supervisors and workers.

1. Physical characteristics.
  - a. Identification of asbestos.
  - b. Aerodynamic characteristics.
  - c. Typical uses and physical appearance.
  - d. Summary of RFS hazard control options.
2. Health effects related to asbestos exposure.
  - a. Nature of asbestos related disease.
  - b. Routes of exposure, dose-response relationships and the lack of a safe exposure level.
  - c. Cigarette smoking and asbestos exposure.

d. Latency period for disease.

e. Need and importance of following all safety instructions.

#### 3. Laws and regulations.

a. Licensing requirements.

b. Relevant federal, state, and local regulatory requirements, procedures and standards.

#### 4. Personal protection equipment.

a. Classes and characteristics of respirator types, limitations, proper selection, inspection, donning, use, maintenance, and storage procedures.

b. Fit testing procedures.

c. Components of a proper respiratory protection program.

d. Selection and use of personal protection clothing; use, storage, and handling of nondisposable clothing, hard hats, safety glasses, nonslip shoes.

#### 5. Air monitoring.

a. Procedures to determine airborne concentrations of asbestos fibers.

b. Discussion of how personal air sampling is performed and the reasons for it.

#### 6. Personal hygiene.

a. Entry and exit procedures for the work area.

b. Avoidance of eating, drinking, smoking and chewing (gum or tobacco) in the work area.

c. Potential exposures, such as family exposure.

#### B. Floorcovering specialty module.

1. Floorcovering materials and adhesives which may contain asbestos.

a. Floorcovering materials.

b. Adhesives - asbestos containing and nonasbestos containing.

c. Dates of production of asbestos containing resilient floorcoverings.

d. Alternatives to removal of existing floor and proper methods.

#### 2. Recommended work practices.

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- a. Proper work techniques for minimizing fiber releases; wetting, steaming, dry ice, hand tools, HEPA vacuumed tools, use of sealants, no grinding, no crushing, no breakage, use of mastic removers.
  - b. Instruction as to proper techniques for:
    - (1) Removal of tile.
    - (2) Removal of sheet goods.
    - (3) Removal of residual adhesives.
  - c. Proper clean up and disposal techniques, construction of leak tight containers, sealing of friable ACM edges or wetting of edges, HEPA vacuuming, wet wiping.
  - d. Safety practices and hazard prevention during removal of floorcoverings.
    - (1) Discussion of hazards posed by wet working conditions, electrical hazards, slips, trips and falls.
  - e. Ventilation system lock-out, sealing of intake and exhaust vents, windows, doors, chimneys, and all opening.
  - f. Positioning of warning signs, critical barriers and designation of regulated areas.
  - g. Emergency procedures.
3. Course review.
4. Examination.
- C. Roofing specialty module.
- 1. Identification of roofing materials which may contain asbestos.
    - a. Typical uses and physical appearance of asbestos roofing materials.
  - 2. Recommended work practices.
    - a. Proper work techniques for minimizing fiber releases, wet methods, use of HEPA vacuums, procedures for removal of asbestos cement products versus built up roof products. Discussion of prohibited work practices.
    - b. Work practices for removal, wetting, hand tools, HEPA vacuumed tools, use of sealants.
    - c. Ventilation system lock-out, sealing of intake and exhaust vents, windows, doors, chimneys and all openings.
    - d. Positioning of warning signs and designation of regulated areas.
    - e. Proper clean up and disposal techniques, construction of leak tight containers, sealing of friable ACM edges or wetting of edges.
    - f. Safety practices and hazard prevention during removal of siding.
      - (1) Scaffold and ladder hazards.
      - (2) Slips, trips, and falls.
    - g. Emergency procedures.
3. Recommended safe work practices for installation of asbestos containing roofing materials.
4. Course review.
5. Examination.
- D. Siding specialty module.
- 1. Identification and discussion of siding materials which may contain asbestos.
    - a. Typical uses and physical appearance of asbestos roofing materials.
  - 2. Recommended work practices.
    - a. Proper work techniques for minimizing fiber releases; wetting, procedures for removal of asbestos cement products. Discussion of prohibited work practices.
    - b. Work practices for removal, wetting, hand tools, HEPA vacuumed tools, use of sealants.
    - c. Ventilation system lock-out, sealing of intake and exhaust vents, windows, doors, chimneys and all openings.
    - d. Positioning of warning signs and designation of regulated areas.
    - e. Proper clean up and disposal techniques, construction of leak tight containers, sealing of friable ACM edges or wetting of edges.
    - f. Safety practices and hazard prevention during removal of siding.
      - (1) Scaffold and ladder hazards.
      - (2) Slips, trips, and falls.
    - g. Emergency procedures.
3. Recommended safe work practices for installation of asbestos containing siding materials.

4. Course review.

5. Examination.

E. RFS supervisor module.

1. Prework activities and considerations.

(1) Methods of identification.

(2) Inspection report.

b. Air monitoring, specific methods and documentation procedures.

c. Inspection of the nature of the asbestos containing materials.

2. Assessment of the work area.

a. Check for difficulty of isolating the work area.

b. Necessary considerations if areas adjacent to the activity will be occupied.

c. Check for items requiring special protection.

3. Site consideration and preparations.

a. Regulated area, barricade set-up, warning signs, etc.

4. Supervisory techniques, worker training, cleanliness of the job site.

5. Record keeping, disposal of asbestos containing waste, review of laws, regulations, and standards.

6. Course review.

7. Examination.

F. Each RFS worker training course shall consist of at least eight hours (the basic module and one specialty module) of instruction.

G. Each RFS supervisor training course shall consist of at least 12 hours (the basic module, one specialty module and the supervisor module) of instruction.

## PART XIII.

### RFS INSPECTOR TRAINING REQUIREMENTS.

#### § 13.1. RFS inspector training.

Asbestos RFS inspectors shall complete a three day (24 hours) training course as outlined below or an individual who has successfully completed the RFS supervisor training course shall complete the one and one-half day (12 hours) of training found in Part II of the outline which follows. The course shall include lectures,

demonstrations, four hours of hands-on training, course review and a written examination. The RFS inspector training course shall address the following topics:

#### PART I (minimum 12 hours)

1. Background information on asbestos.

a. Identification of asbestos, and examples and discussion of the uses and locations of asbestos in buildings.

b. Physical appearances of asbestos.

2. Potential health effects related to asbestos exposure.

a. The nature of asbestos-related diseases.

b. Routes of exposure, dose-response relationships and the lack of a safe exposure level.

c. The synergism between cigarette smoking and asbestos exposure.

d. Latency period for asbestos-related diseases, a discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma and cancer of other organs.

3. Understanding of building systems.

a. The interrelationship between RFS projects and other building systems, i.e., heating, ventilation and air conditioning systems.

b. Where asbestos is found in RFS components, where to look for ACM.

c. Identification of homogeneous areas.

4. Inspector respiratory protection and equipment.

a. Classes and characteristics of respirator types.

b. Limitations of respirators.

c. Proper selection, inspection, donning, use, maintenance, and storage procedures for respirators.

d. Methods of field testing of a facepiece-to-face seal (positive and negative pressure fitting tests): qualitative and quantitative fit testing procedures.

5. Regulations.

a. Virginia regulations and statutes.

b. Differences in federal/state requirements where applicable and effect on RFS projects.

#### PART II (minimum 12 hours)

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## 6. Functions/qualification and role of RFS inspectors.

- a. Discussions of prior experience and qualifications.
- b. Discussions of the sanctions and purpose of licensure.
- c. Discussion of the inspection process to include inventory of ACM and physical assessment of RFS materials.

## 7. Legal liability and defenses.

- a. Responsibilities of the RFS inspector, a discussion of comprehensive general liability policies, claims made and occurrence policies, environment and pollution liability policy clauses; state liability insurance requirements.
- b. Bonding and relationship of insurance availability to bond availability.

## 8. Pre-inspection planning.

- a. Employee/building occupant/building owner relations.
- b. Building record review, identity of probable homogeneous areas.
- c. Consultation with maintenance of building personnel.
- d. Review of previous inspection, sampling and abatement records of a building.

## 9. Inspection for friable and nonfriable asbestos containing material and assessment of the condition of friable ACM.

- a. Procedures to follow in conducting visual inspections for friable and nonfriable ACM.
- b. Types of building materials that may contain asbestos.
- c. Touching materials to determine friability.
- d. Open return air plenums and their importance in HVAC systems.
- e. Assessing damage, significant damage, potential damage, and potential significant damage.
- f. Amount of suspected ACM, both in total quantity and as a percentage of the total area.
- g. Type of damage
- h. Accessibility

## i. Material's potential for disturbance.

- j. Known or suspected causes of damage or significant damage, and deterioration as assessment factors.

## 10. Bulk sampling/documentation of ACM.

- a. Techniques to ensure sampling in a randomly distributed manner for other than friable surfacing material.
- b. Techniques for bulk sampling.
- c. Sampling equipment the inspector should use.
- d. Patching or repair of damage done in sampling; an inspector's repair kit.
- e. Discussion of polarized light microscopy.
- f. Choosing an accredited laboratory to analyze bulk samples.
- g. Quality control and quality assurance procedures.
- h. Variability between field and laboratory protection factors.
- i. Factors that alter respirator fit (e.g., facial hair).
- j. The components of a proper respiratory protection program.
- k. Selection and use of personal protective clothing.
- l. Use, storage, and handling of nondisposable clothing.

## 11. Record keeping and writing the inspection report.

- a. Labeling of samples and keying sample identification to sampling location.
- b. Recommendations on sample labeling.
- c. Detailing of ACM inventory.
- d. Photographs of selected sampling areas and examples of ACM condition.

## 12. Regulations.

- a. [ EPA USEPA ] Worker Protection Rule.
- b. OSHA Asbestos Construction Standard (29 CFR 1926.58.)
- c. OSHA Respirator Regulation (29 CFR 1910.134.).
- d. Virginia asbestos regulations.

## 13. Field trip.

- a. To include a field exercise including a walk-through inspection.
- b. On-site discussion on information gathering and determination of sampling locations.
- c. On-site practice in physical assessment.
- d. Classroom discussion of field exercise.

## 14. Course review. A review of key aspects of the training course.

## 15. Examination.

Upon completion of an approved RFS inspector training course, a closed book examination will be administered. Each examination shall adequately cover the topics included in the RFS inspector training course. Persons who pass the examination and fulfill course requirements will receive a written certification indicating successful completion of the RFS inspector training course. The following are the requirements for examination.

### Asbestos RFS Inspectors:

- a. 50 multiple choice questions
- b. Passing Score: 70 % correct

## § 13.2. Expiration.

RFS inspector licenses issued under these regulations shall expire one year from the last day of the month in which they were issued as indicated on the license.

## § 13.3. Refresher RFS inspector training course.

Refresher courses shall be one-half day (four hours) in length for RFS inspectors. The course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures, and a review of key aspects of the RFS inspector training course as set forth in Part XIII, § 13.1 of these regulations. A written closed book examination will be administered covering the topics included in the asbestos RFS inspector refresher training course. Persons who pass the examination will receive some form of written certification indicating successful completion of the course.

## PART X XIV . TRAINING COURSE APPROVAL.

## § ~~10.1.~~ § 14.1. Training course approval requirements.

The Virginia accreditation program has been granted full accreditation approval by the United States Environmental Protection Agency under the provisions found in 40 CFR 763 Subpart F. All training courses approved by the

department [ of Commerce ] will concurrently be granted [ EPA USEPA ] approval.

All approved training courses shall meet the minimum requirements as outlined in Part IX XIV of these regulations. Individuals, businesses, agencies, or institutions wishing to sponsor training courses to prepare applicants for licensure requirements shall submit the following information for review to the department [ of Commerce ] at least 45 days prior to the commencement of the training course:

1. Sponsor's name, address and phone number.
2. Fee. (See the evaluation fee schedule attached.)
3. The course curriculum.
4. A narrative explanation that clearly indicates how the course meets the requirements for approval in the following areas:
  - a. Length of training in hours.
  - b. Amount and type of hands-on training.
  - c. Examinations (length, format and passing score).
  - d. Topics covered in the course.
  - e. Assurances as to test security and how exams are administered.
5. A copy of all course materials (student manuals, instructor notebooks, handouts, etc.).
6. A detailed statement about the development of the examination used in the course.
7. Names, qualifications (include education or experience, or both), and subject areas that each instructor will teach.
8. Teacher-student ratio.
9. Description and an example of numbered certificates that will be issued to students who successfully complete the course.
10. A proposed course date for auditing purposes. ]

## § ~~10.2.~~ § 14.2. Examination.

All courses approved by the department [ of Commerce ], are required to have a monitored, final written examination which shall include a practical component to test skill in asbestos abatement techniques. Students must obtain a minimum exam grade of 70% correct. A record of each student's grades shall be retained by each institution for a period of three years.



# Final Regulations

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## § 10.3. § 14.3. Certificate of course approval.

Certificates of course approval shall be displayed in each approved school facility in a conspicuous place readily accessible to the public. An approved school shall maintain lists of students trained and the dates training occurred. These records shall be made available for Department of Commerce and Department of Labor and Industry review, and shall be maintained for three years.

## § 10.4. § 14.4. Refresher course approval.

Refresher courses shall be one day (eight hours) in length for supervisors and workers, and one-half day (four hours) in length for inspectors. The refresher course shall review and discuss changes in federal and state regulations, developments in state-of-the-art procedures and a review of key aspects of the initial training course. Individuals, businesses, agencies, or institutions wishing to sponsor refresher training courses shall submit the following information for review to the department [ of Commerce ] at least 45 days prior to the commencement of the training course:

1. [ Length of training Sponsor's name, address and telephone number ].
2. Fee. (See the evaluation fee schedule attached.)
2. 3. [ Topics covered in the course Course curriculum ].
3. 4. [ A copy of all course materials. A narrative explanation that clearly indicates how the course meets the requirements for approval in the following areas:
  - a. Length of training in hours.
  - b. Amount and type of hands-on training.
  - c. Examinations (length, format and passing score).
  - d. Topics covered in the course.
  - e. Assurances as to test security and how exams are administered. ]
4. 5. [ Names and qualifications of course instructors A copy of all course materials (student manuals, instructor notebooks, handouts, etc) ].
5. 6. [ An example of certificates issued to students who complete the refresher course A detailed statement providing information about the development of the examination used in the course ].
6. 7. [ Location and dates the training course is to be held Names, qualifications (include education and experience), and subject areas that each instructor will teach ].

7. 8. [ A detailed statement about the development of the examination and assurances as to test security and how exams are administered Teacher-student ratio ].

8. 9. Description and an example of numbered certificates issued to students who successfully complete the course.

[ 10. A proposed course date for auditing purposes. ]

## § 10.5. § 14.5. Changes to an approved training course.

Once a training course has been approved, any change in topics covered, course materials, and instructors shall be submitted for approval by the department [ of Commerce ].

## § 10.6. § 14.6. Suspension or revocation of approval of a training course.

The director may withdraw approval of any approved training program for the following reasons:

1. The school, instructors, or courses no longer meet the standards established by the director, and found in Part X, § 10.1 XIV, § 14.1 of these regulations.
2. Field inspectors indicate an approved individual, business, agency, institution or sponsor is not conducting the training that meets the requirements as set forth in these regulations. Training course sponsors shall permit Department of Commerce and Department of Labor and Industry representatives to attend, evaluate, and monitor any training course. Prior notice of attendance by agency representatives may not be given.
3. If the approval of a training course is revoked or suspended, the department [ of Commerce ] will promptly notify the individual business, agency, institution, or sponsor in writing of the reason for the suspension or revocation. In the case of a suspension, the necessary steps that shall be taken to comply with the requirements as set forth in Part X XIV of the regulations will be specified. Decisions regarding revocation or suspension of approval may be appealed under the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

## PART XI XV. EXEMPTIONS.

## § 11.1. § 15.1. Emergency exemption from licensing.

An exemption from the licensing requirements, as set forth in these regulations may be granted by the director, pursuant to § 54.1-512 of the Code of Virginia, in the event an emergency situation occurs that requires immediate removal, repair or encapsulation of asbestos containing materials and licensed supervisors and workers are not available to perform the abatement work. The emergency

# Final Regulations

exemption is limited to a single occurrence and cannot be extended beyond that occurrence. Notification shall be immediate and followed by:

1. A written description of the emergency situation.
2. A description of the planned abatement project to include the abatement techniques, safety precautions, provisions for worker safety and protection, and safety equipment to be used in the abatement project.

The project shall not commence until the exemption is approved by the director.

**§ 11.2. § 15.2. "BUSINESS NECESSITY" WILL NOT QUALIFY FOR EMERGENCY EXEMPTION FROM LICENSING REQUIREMENTS.**

**§ 11.3. § 15.3. Exemption from licensure (not an emergency exemption).**

The director may exempt from licensure any employer and any employees of such employer, but only with respect to an asbestos project on premises owned or leased by such employer and only after the director has determined that the training course implemented by the employer for his employees meets all of the standards as set forth in Part X XII of these regulations. However, the requirement that the premises be owned or leased by the employer shall not apply if the asbestos project is located on a ship or other vessel designed for operation on or underneath, and intended to be operated on or underneath, the water. All exemptions from licensure will expire after 12 months from the date of issuance and reapplication for the exemption to continue is required. To aid the director in making a determination of exemption, the employer shall submit to the director the following information regarding the asbestos safety and training program of the employer:

1. Employer's name, address, phone number, and contact person.
2. A narrative explanation that clearly indicates how the course or training program is structured to meet the training course requirements as set forth in Part X of these regulations.

Upon the approval by the director of the request for exemption from licensing requirements, the employer will be notified in writing by the department [ of Commerce ].

3. A complete list of all prior enforcement actions including any sanctions imposed on the employer by any jurisdiction, state or federal court. A copy of any reports compiled by an enforcement agency.

Employers shall permit the Department of Commerce or Department of Labor and Industry representatives to attend, evaluate, and monitor any training course. Prior

notice of attendance by agency representatives may not be given.

**§ 11.4. § 15.4. Fees.**

The fee for the evaluation of an employer's training program for exemption from licensure shall be \$2,100. The required fee must be submitted with the information listed in § 11.3 15.3 .

**§ 11.5. § 15.5. Annual reevaluation of exemption status.**

The fee for reevaluation of exemption status shall be \$500.

## APPENDIX A FEE SCHEDULE

[ Type of Application CATEGORY ]	FEE AMOUNT
Asbestos Contractor License	\$ 500 [ \$ 250 \$500 ]
Renewal	\$ 500 [ \$ 250 \$500 ]
Asbestos RFS Contractor License	\$ 500 [ \$ 250 \$500 ]
Renewal	\$ 500 [ \$ 250 \$500 ]
[ Asbestos Analytical Laboratory License	\$ 100 ]
[ Renewal	\$ 100 ]
Asbestos Worker License	\$ 35 [ \$ 25 \$35 ]
Renewal	\$ 35 [ \$ 25 \$35 ]
Asbestos Supervisor License	\$ 35 [ \$ 25 \$35 ]
Renewal	\$ 35 [ \$ 25 \$35 ]
Asbestos Inspector License	\$ 35 [ \$ 25 \$35 ]
Renewal	\$ 35 [ \$ 25 \$35 ]
[ Asbestos RFS Inspector License	\$ 25 ]
[ Renewal	\$ 25 ]
Asbestos Management Planner License	\$ 35
Renewal	\$ 35
Asbestos Project Designer License	\$ 35
Renewal	\$ 35
Asbestos Project Monitor License	\$ [ 25 35 ]
Renewal	\$ [ 25 35 ]
[ Asbestos Analytical Laboratory License	\$ 100 ]
[ Renewal	\$ 100 ]
<b>[ EVALUATION OF TRAINING COURSES ]</b>	
Asbestos Worker Training Course	
(24 hours)	\$2100
Refresher Course (8 hours)	\$ 700
Asbestos Supervisor Training Course	
(32 hours)	\$2800

# Final Regulations

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Refresher Course (8 hours) .....	\$ 700
[ RFS Worker Basic Module .....	\$ 350 ]
[ RFS Specialty Module .....	\$ 350 ]
[ RFS Supervisor Module .....	\$ 350 ]
Asbestos Inspector Training Course	
(24 hours) .....	\$2100
Refresher Course ( 4 8 hours) .....	\$ 700
Asbestos Management Planner Training Course	
(16 hours) .....	\$1400
Refresher Course (8 hours) .....	\$ 700
Asbestos Project Designer Training Course	
(32 hours) .....	\$2800
Refresher Course [ (8 hours) ] .....	\$ 700
Asbestos Project Monitor Training Course	
(Comprehensive 40 hour course) .....	\$3500
Asbestos Project Monitor Training Course	
(16 hour course only) .....	\$1400
Refresher Course [ (8 hours) ] .....	\$ 700
RFS Worker Basic Module .....	\$ 350
RFS Specialty Module .....	\$ 350
RFS Supervisor Module .....	\$ 350
[ RFS Inspector Module .....	\$ 700 ]
RFS Inspector Training Course	
(24 hour comprehensive course) .....	\$2100
RFS Inspector Training Course (12 hour) .....	\$1050
[ (Inspector portion only) ] .....	

**DO NOT USE THIS APPLICATION FORM TO RENEW A LICENSE**

**For Office Use Only**

Lic# \_\_\_\_\_  
Date \_\_\_\_\_  
Code \_\_\_\_\_

**COMMONWEALTH OF VIRGINIA  
Department of Commerce  
Application for Asbestos Licensing**



PLEASE PRINT

Date \_\_\_\_\_ 19\_\_\_\_

1. Name \_\_\_\_\_ Phone No. (\_\_\_\_) \_\_\_\_\_  
Home \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

2. Date of Birth \_\_\_\_\_ 3. Social Security Number \_\_\_\_\_-\_\_\_\_-\_\_\_\_

4. **IMPORTANT:** Please Attach A Copy Of The Certificate Obtained After Successful Completion Of An Approved Asbestos Training Course and Examination.

Date of Training \_\_\_\_\_ Location \_\_\_\_\_ State \_\_\_\_\_

**5. TYPE OF LICENSE REQUESTED: (only one type of license per application)**

Worker (Reg. 2.3)	Fee: \$35. ____	Inspector (Reg. 7.3)	Fee: \$35. ____
Supervisor (Reg. 6.3)	Fee: \$35. ____	Management Planner (Reg. 8.3)	Fee: \$35. ____
Project Designer (Reg. 9.3)	Fee: \$35. ____	Project Monitor (Reg. 10.3)	Fee: \$35. ____
RFS Inspector (Reg. 5.3)	Fee: \$35. ____		

**APPLICANTS FOR INSPECTOR AND/OR MANAGEMENT PLANNER/OR PROJECT MONITOR MUST ALSO COMPLETE THE ENCLOSED FORM A**

**ALL CHECKS OR MONEY ORDERS SHALL BE MADE PAYABLE TO THE TREASURER OF VIRGINIA**

6. License or authorization to perform Asbestos Work currently or previously held:  
(Please include licenses held in other states)

Type \_\_\_\_\_ License No. \_\_\_\_\_ Issued by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Applicant's signature below indicates that within the past 36 months license or authorization to perform Asbestos Abatement Work has not been suspended or revoked by any other state, and that no enforcement actions by any jurisdiction are pending against the applicant.

Signature \_\_\_\_\_

The reverse side of this application must be completed before license will be issued.

**DO NOT USE THIS APPLICATION FORM TO RENEW A LICENSE**

8. In the event an enforcement action has been taken against the applicant, the following information will be required as the Director may deny an applicant's request for a license based on prior enforcement actions which indicate that the abatement work might not be performed in a manner that would protect the public health, safety and welfare.

- A. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.
- B. A description of any asbestos abatement activities conducted by the applicant that were terminated prior to completion including the circumstances of termination.
- C. A copy of any reports compiled by an enforcement agency.

**AFFIDAVIT**

9. **THIS PORTION MUST BE COMPLETED BY APPLICANT.**

I hereby certify that the above information is correct to the best of my knowledge and belief and that no information has been suppressed that might affect this application.

Typewritten or Printed Name \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**THIS PORTION MUST BE COMPLETED BY A NOTARY PUBLIC.**

STATE OF \_\_\_\_\_

City/County of \_\_\_\_\_

Subscribed and sworn to before me, the undersigned Notary Public in and for the City or County aforesaid this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

My commission expires the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

(Seal)

NOV 21 1990  
NOTARY PUBLIC

## INDIVIDUAL LICENSE APPLICATION

VIRGINIA ASBESTOS LICENSING  
 Department of Commerce  
 Post Office Box 11066  
 Richmond, Virginia 23230

GENERAL INSTRUCTIONS

1. PLEASE READ THE INSTRUCTIONS, STATUTE, REGULATIONS AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION FORM.
2. Applications may be filed at any time.
3. PRINT IN INK OR TYPE.
4. All application and renewal fees are not refundable.
5. Acceptance by the Department of Commerce of an application fee does not indicate approval of an application nor connote eligibility for licensure.
6. All applicable items must be properly completed and/or attached or the application will be returned and processing will be delayed. Inspector and/or Management Planner/or Project Monitor applicants must complete Form A. (Enclosed)
7. Please keep instructions for future reference, along with a copy of your application and related papers.
8. MAIL THE COMPLETED APPLICATION FORM, FEE AND ALL ATTACHMENTS TO: COMMONWEALTH OF VIRGINIA, DEPARTMENT OF COMMERCE, P. O. Box 11066, RICHMOND, VIRGINIA 23230, IN THE PRE-ADDRESSED ENVELOPE.

INCLUDE THE FOLLOWING TO COMPLETE YOUR APPLICATION

1. A check or money order payable to "Treasurer of Virginia" in the amount of \$35.00.
2. A copy of a certificate indicating successful completion of a Virginia approved asbestos training course. (see sections 2.1, 5.1, 6.1, 7.1, 8.1, 9.1 and 10.1 of the regulations.)

OR

A copy of a certificate indicating successful completion of an EPA approved asbestos training course (see sections 2.7, 5.7, 6.7, 7.7, 8.7, 9.7 and 10.7 of the regulations.)

ALL APPLICANTS FOR INDIVIDUAL LICENSING MUST SUBMIT ONE OF THE CERTIFICATES MENTIONED ABOVE.

## INDIVIDUAL LICENSE APPLICATION

FORM INSTRUCTIONS

1. Complete both sides of the application form.
2. In #1, provide your current home address; a street address must be provided unless you have a rural route and box number. All correspondence and your renewal application will be mailed to the address listed on the address line.
3. Indicate the type of license requested in the space provided in #5.
4. In #2, provide date of birth; applicant must be at least 18 years of age.
5. Complete #4 by providing the name of the school, date of training, and location where approved asbestos training course was completed.
6. Complete #7 if your license or other authorization to perform asbestos abatement work has not been suspended or revoked by any jurisdiction and if no enforcement action by any jurisdiction is pending, sign in the space provided on the bottom of the first page.

OR

- DO NOT complete and sign #7 if enforcement actions by any jurisdiction have been taken or are pending. Provide the information requested in #8 on the back of the application.
7. Complete #9, the affidavit portion of the application, and be sure it is notarized. The affidavit sections that appear at the end of the application must be completed by a Notary Public or the form will be returned.

PLEASE REMEMBER; ALL APPLICATIONS SHOULD BE COMPLETED ACCORDING TO THESE INSTRUCTIONS. INCOMPLETE APPLICATIONS WILL BE RETURNED TO THE APPLICANT; HOWEVER, FEES RECEIVED WILL NOT BE REFUNDED.

COMMONWEALTH OF VIRGINIA  
 ASBESTOS LICENSING PROGRAM  
 APPLICATION FOR LICENSURE AS A  
 VIRGINIA ASBESTOS INSPECTOR AND/OR MANAGER PLANNER  
 OR PROJECT MONITOR

FORM A  
 INSTRUCTIONS

- Forms shall be typewritten or printed legibly in their entirety except for signatures. The applicant shall assume full responsibility for filing all required documentation, references, and verifications.
- EDUCATION:** Your degree(s) must be verified by each school attended on Form A and submitted directly from the school. Applicant should enclose a stamped, addressed envelope for return directly to the Virginia Asbestos Licensing Program, Dept. of Commerce, 1600 W. Broad Street, Richmond, VA 23230-4911.
- TRAINING AND EXPERIENCE RECORD:** Under Item C (Form A) record all training and experience. **USE SEPARATE SHEETS IF NECESSARY.** Make concise and explicit statements giving a description of your tasks, duties and nature of work performed for each period of employment. List your experience in chronological order with the most recent engagement first. Each period of employment must be verified by a signature in Column F. This includes periods of self-employment, which may be verified by an associate or client. This may be done by copying the completed Form and submitting that copy with the required signature. All verifications must accompany the initial application form.
- FEES:** Each application must be accompanied by an application fee. Checks must be made payable to the Treasurer of Virginia and returned in the enclosed envelope. All fees are not refundable.

APPLICATIONS NOT COMPLETED IN ACCORDANCE WITH THESE INSTRUCTIONS  
 WILL BE PROMPTLY RETURNED TO THE APPLICANT

COMMONWEALTH OF VIRGINIA  
 DEPARTMENT OF COMMERCE  
 P. O. Box 1066  
 RICHMOND, VIRGINIA 23230-1066



FORM A

APPLICATION FOR CERTIFICATION AS A  
 LICENSED ASBESTOS INSPECTOR AND/OR MANAGEMENT PLANNER  
 OR PROJECT MONITOR

Date \_\_\_\_\_

Code \_\_\_\_\_

A. GENERAL INFORMATION

NAME IN FULL: \_\_\_\_\_ SEX: \_\_\_\_\_

FIRM NAME: \_\_\_\_\_

BUSINESS STREET: \_\_\_\_\_

ADDRESS: CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

STREET: \_\_\_\_\_

RESIDENCE CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

ADDRESS: PHONE NUMBER: \_\_\_\_\_

ADDRESS FOR CORRESPONDENCE RESIDENCE \_\_\_\_\_ BUSINESS \_\_\_\_\_

BIRTHDATE: \_\_\_\_\_

B. EDUCATION: (List in chronological order the name and location of institution, beyond high school, time attended, year of graduation.)

NAME OF INSTITUTION	YEARS ATTENDED	DEGREE RECEIVED	GRADUATE WORK COMPLETED	MAJOR

NOTE: Applicant must use this form, a resume cannot be substituted.

C. TRAINING AND EXPERIENCE: Record your professional practice in sequence, starting with your most recent position. Attach an additional sheet if needed.

FORM A

VIRGINIA ASBESTOS LICENSING PROGRAM  
 LICENSE APPLICATION FOR ASBESTOS INSPECTOR  
 AND/OR MANAGEMENT PLANNER/OR PROJECT MONITOR

VERIFICATION OF DEGREE GRANTED

(Applicant shall complete the upper portion of this form.)

Name in full \_\_\_\_\_  
 Residence Address \_\_\_\_\_  
 Business Address \_\_\_\_\_  
 Birth Date \_\_\_\_\_ Social Security Number \_\_\_\_\_  
 College or University Attended \_\_\_\_\_  
 Applicant's Signature \_\_\_\_\_

(After completion of above, applicant shall send this form to the college or university from which he/she obtained a degree. Please request that the following certificate be completed and that this form be returned directly to the Virginia Asbestos Licensing Program.

CERTIFICATE

I hereby certify that the above named applicant has been graduated from this institution with a degree of:

\_\_\_\_\_ Major \_\_\_\_\_  
 on \_\_\_\_\_

Signature \_\_\_\_\_  
 Official Position \_\_\_\_\_  
 (College Seal) Institution \_\_\_\_\_  
 Date \_\_\_\_\_

APPLICANT: Enclose a stamped, addressed envelope for return directly to the Virginia Asbestos Licensing Program, Department of Commerce, 3600 West Broad Street, Richmond, VA 23230-4917.

NAME AND ADDRESS OF EMPLOYER, POSITION TITLE & BRIEF JOB DESCRIPTION	DATE MONTH/YEAR		TIME SPENT YEARS AND MONTHS				SIGNATURE OF THE PERSON OR SUPERVISOR. INCLUDE TYPEWRITTEN NAME, ADDRESS, PHONE NUMBER.
	FROM	TO	YEARS	MONTHS			

Page Two

THIS FORM MAY BE REPRODUCED BUT NOT ALTERED IN FORM OR CONTENT

ADDITIONAL FORMS MAY BE OBTAINED BY WRITING TO THE

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF COMMERCE  
VIRGINIA ASBESTOS LICENSING PROGRAM  
3600 WEST BROAD STREET  
RICHMOND, VIRGINIA 23230-4917

**VIRGINIA ASBESTOS LICENSING CONSUMER INFORMATION SHEET**

If you are about to engage the services of an asbestos contractor or other asbestos professional in the state of Virginia, you should be aware of the state's program for the regulation of asbestos workers, supervisors, contractors, inspectors, roofing, flooring and siding inspectors, project monitors, project designers, management planners and analytical laboratories by licensure or training requirement.

Any contractor who undertakes an asbestos project is required to have an asbestos contractor's or asbestos roofing, flooring or siding contractor's license. A roofing, flooring and siding asbestos contractor (RFS contractor) is only allowed to perform asbestos projects involving roofing, flooring and/or siding. All asbestos projects performed by an asbestos contractor must have a licensed supervisor on site at all times to supervise licensed asbestos workers. All asbestos projects performed by a licensed asbestos RFS contractor must have a trained supervisor on site at all times to supervise trained workers.

Under the conflict of interest regulation (VRS 190-05-1 Section 3.3), the building owner must employ the project monitor. Project monitors are required on asbestos projects more than 1600 square feet/2800 linear feet or if the building owner requests one. Residential buildings with four units or less are exempt from the project monitor requirements. It is also considered a conflict of interest to have an employee/employer relationship with an asbestos project monitor working on a project performed by the asbestos contractor or asbestos RFS contractor, or a financial interest in the firm of which the project monitor is an employee. It is considered a violation of the Virginia Asbestos Licensing Regulations for the contractor to have a financial interest with a laboratory utilized by the contractor for asbestos sample analysis. The contractor is still responsible for performing personal monitoring of his employees per OSHA requirements in 29 CFR 1926.55, Subpart F. It is considered a conflict of interest and a violation of the Virginia Asbestos Licensing Regulations for an asbestos contractor or asbestos RFS contractor to enter into a contract to perform an asbestos project if the inspection or project design was performed by individuals employed by, compensated by or financially affiliated with the asbestos contractor or asbestos RFS contractor without providing a disclosure form supplied by the Department disclosing the asbestos contractor's or asbestos RFS contractor's relationship with the inspector, RFS inspector or project designer.

The disclosure form must be signed and dated by the building owner or his agent and the contracting entity prior to bid or contract submission. The building owner must provide the notarized disclosure form to all parties involved in the asbestos project if the contract is awarded to the affiliated contractor. The form must be kept on file at the asbestos project site and be available for review by any interested party.

Before signing any contract, you should ask to see the Virginia Asbestos Contractor's, Asbestos RFS Contractor's, Inspector, RFS Inspector, Project Designer, Management Planner, Project Monitor, Worker or Supervisor's License to verify that it has not expired and that the licensee is working within the limits of his licensure or training requirement. No worker or company may work with an expired license. **THERE IS NO GRACE PERIOD.** The authority of the Director of the Virginia Department of Commerce to discipline these licensed or trained contractors, workers and asbestos professionals is limited to specific violations of the law, licensing regulation including written citations from the Department of Labor and Industry, the Department of Air Pollution Control and the Department of Waste Management or practices which constitute abandonment, gross negligence, continued incompetence, or misconduct in the practice of the profession. In such cases the disciplinary action by the Director is limited to fines and/or revocation or suspension of the asbestos license, and such action can only be taken after a hearing or with the consent of the licensee and his agreement to waive the right to a hearing.

The Director does not have the authority to order a licensee to make restitution to you for losses you may incur due to poor performance by the licensee; efforts to recover such funds must be made in the civil courts. You should be careful in reviewing the contract before signing it to ensure that the terms of agreement are clear and acceptable to you. As the building owner and originator of the asbestos containing material, you can be found liable under federal and state law. It is in your best interest to make sure all federal, state and local laws and regulations are adhered to by the licensee.

Should you have a reason to believe that an asbestos licensee may not have complied with all federal, state and local laws and regulations, you should notify the Department of Commerce by calling (804) 367-8595 or write to the following address:

Assistant Director  
Department of Commerce  
Virginia Asbestos Licensing Program  
3600 West Broad Street  
Richmond, Virginia 23230

The aforementioned information is not intended to be an exhaustive list of the remedies available to you through your local government or other state or federal agencies.



10/90

For Office Use Only  
Lic # \_\_\_\_\_  
Date \_\_\_\_\_  
Code \_\_\_\_\_

INSPECTOR/PROJECT DESIGNER/CONTRACTOR DISCLOSURE FORM

I understand the Virginia Licensed Asbestos Contractor or RFS Contractor has an employee/employer relationship with or financial interest in the Virginia Licensed Asbestos Inspector, RFS Inspector or Virginia Licensed Project Designer working on this asbestos project. I understand that according to Virginia Asbestos Licensing Regulations this form must be signed and dated by the the building owner or his agent and the asbestos contractor or asbestos RFS contractor prior to bid and contract submission. I understand as building owner, I must provide this form to all parties involved on the project should the building owner award the contract to this contractor. The completed form must be available upon demand at the asbestos project site.

Building Owner or Agent:

\_\_\_\_\_ Date \_\_\_\_\_

I understand that any falsification of information made in conjunction with this disclosure form, regardless of time of discovery, may result in enforcement action by the Department under section 3.3 or section 3.4 of the Virginia Asbestos Licensing Regulations.

Contractor:

\_\_\_\_\_ Date \_\_\_\_\_

Commonwealth of Virginia  
Department of Commerce  
Application for Asbestos Analytical Laboratory  
License

Please Print or Type

1. Name: \_\_\_\_\_

Addresses of all laboratory site locations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone number(s) of all laboratory facilities:

\_\_\_\_\_  
\_\_\_\_\_

Mailing address if different from above:

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

2. Contact person

Name \_\_\_\_\_  
Phone number \_\_\_\_\_

3. Type of analysis and accreditations provided with application  
Please check the appropriate box(s)

PLM \_\_\_\_\_ PCH \_\_\_\_\_  
NVLAP(Bulk Asbestos Fiber Analysis) \_\_\_\_\_ NIOSH PAT \_\_\_\_\_  
AIHA \_\_\_\_\_  
TEM \_\_\_\_\_  
NVLAP(Asbestos Fiber Analysis) \_\_\_\_\_  
NVLAP(Airborne Asbestos Fiber Analysis) \_\_\_\_\_

Please enclose proof of current accreditation(s) with this application.  
Please enclose NIOSH 582 or equivalent training for microscopists

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If the company does not hold any of the above accreditation(s), please enclose the following valid documentation:

1. Names, employment dates and verification of training for those persons performing analysis at the laboratory site(s).
2. Name of supervisor(s), employment dates and verification of education, specific training and experience.
3. Documentaion of:
  - a. Laboratory chain of custody procedures
  - b. Analytical quality assurance program
  - c. Equipment calibration and standardization program
  - d. Results of the last two (2) Pat or NVLAP rounds
  - e. Laboratory standard procedures
  - f. Laboratory record keeping procedures
  - g. Asbestos anlitical equipment inventory
4. A complete disclosure form
- 4) License Fee of \$ 100.00. ALL CHECKS OR MONEY ORDERS SHALL BE MADE PAYABLE TO THE TREASURER OF VIRGINIA.
- 5) Applicants signature below indicates that within the past 36 months license or authorization to perform asbestos analytical laboratory services has not been suspended or revoked by any federal, state or private accreditation program, and that no enforcement actions by any jurisdiction are pending against the applicant.

Signature \_\_\_\_\_

In the event enforcement actions have been taken against the applicant, the Director may deny an applicant's request for a license based on prior enforcement actions which indicate that the asbestos analytical laboratory might not perform its services in a manner that would protect the safety of its employees, or that the analytical testing results might lack credibility and/or reliability.

In order to make this determination, the following information will be required:

1. A complete list of all prior enforcement actions, including any sanctions imposed on the applicant by any jurisdiction or any state or federal court.
2. A copy of any reports of enforcement actions compiled by an enforcement agency against the applicant.

6/8/90

BY MY SIGNATURE BELOW, I UNDERSTAND AND AGREE TO MY DUTIES AND OBLIGATIONS AND I AM FAMILIAR WITH THE STATUTES AND REGULATIONS OF THE COMMONWEALTH OF VIRGINIA APPLICABLE TO ASBESTOS ANALYTICAL LABORATORIES.

AFFIDAVIT

- 6) THIS PORTION MUST BE COMPLETED BY AN OFFICER OF THE LABORATORY OR A RESPONSIBLE PARTY.

I hereby certify that the above information is correct to the best of my knowledge and belief and that no information has been suppressed that might affect this application.

Typewritten or printed name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

- 7) THIS PORTION MUST BE COMPLETED BY A NOTARY PUBLIC.

State of \_\_\_\_\_ City/County of \_\_\_\_\_

Subscribe and sworn before me the undersigned notary public in and for the city or county aforesaid this \_\_\_\_\_ day of \_\_\_\_\_

My commission expires the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

(seal)

\_\_\_\_\_  
Notary Public

VIRGINIA ASBESTOS LICENSING  
 Department of Commerce  
 Post Office Box 11066  
 Richmond, Virginia 23230

GENERAL INSTRUCTIONS

1. PLEASE READ THE INSTRUCTIONS, STATUTE, REGULATIONS AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION FORM. DO NOT DUPLICATE THE APPLICATION FORM.
2. Applications may be filed at any time.
3. PRINT IN INK OR TYPE.
4. All application and renewal fees are non-refundable.
5. Acceptance by the Department of Commerce of an application fee does not indicate approval of an application nor connote eligibility for licensure.
6. All applicable items must be properly completed and/or attached or the application will be returned and processing will be delayed.
7. Please keep instructions for future reference, along with a copy of your application and related papers.
8. Include a check or money order payable to "Treasurer of Virginia" in the amount of \$100.00.
9. MAIL THE COMPLETED APPLICATION FORM, FEE AND ALL ATTACHMENTS TO: COMMONWEALTH OF VIRGINIA, DEPARTMENT OF COMMERCE, P. O. Box 11066, RICHMOND, VIRGINIA 23230, IN THE PRE-ADDRESSED ENVELOPE.

FORM INSTRUCTIONS

1. Complete both sides of the application form.
2. Provide your current address; a street address must be provided unless you have a rural route and box number. All correspondence and your renewal application will be mailed to the address listed on the address line.
3. If your license or other authorization to perform asbestos analytical services has not been suspended or revoked by any jurisdiction and if no enforcement action by any jurisdiction is pending, sign in the space provided near the bottom of the first page.

DO NOT sign in the space in the box on the first page if enforcement actions by any jurisdiction have been taken or are pending. Provide the information requested in 1, 2, and 3.

4. Please read the back page of the application carefully and complete the affidavit. The affidavit section that appears at the end of the application must be completed by a Notary Public or the form will be returned.

PLEASE REMEMBER; ALL APPLICATIONS SHOULD BE COMPLETED ACCORDING TO THESE INSTRUCTIONS. INCOMPLETE APPLICATIONS WILL BE RETURNED TO THE APPLICANT; HOWEVER, FEES RECEIVED WILL NOT BE REFUNDED.

## MARINE RESOURCES COMMISSION

**NOTICE:** Effective July 1, 1984, the Marine Resources Commission was exempted from the Administrative Process Act for the purpose of promulgating regulations. However, the Commission is required to publish the full text of final regulations.

**Title of Regulation:** VR 450-01-0067. Pertaining to the Use of Patent Tongs.

**Statutory Authority:** § 28.1-23 of the Code of Virginia.

**Effective Date:** November 1, 1990.

### **Preamble:**

*This regulation prohibits the use of patent tongs in the vicinity of the electrical cables supporting the George P. Coleman Memorial Bridge. It is promulgated in the general interest of public welfare and the safety of individuals in the seafood industry.*

### **§ 1. Authority, effective date.**

A. This regulation is promulgated pursuant to the authority contained in § 28.1-23 of the Code of Virginia.

B. The effective date of this regulation is November 1, 1990.

### **§ 2. Purpose.**

In the last 15 years there have been numerous incidents of patent tongs used by clam fisherman disrupting electrical service to the George P. Coleman Memorial Bridge by severing or damaging submerged electrical cabling adjacent to the bridge. The purpose of this regulation is to prohibit patent tonging adjacent to the bridge cables and thereby to maintain the general public welfare and safety of individuals in the seafood industry.

### **§ 3. Area closed to patent tonging.**

A. It shall be unlawful for any person to operate a patent tong under any portion of the George P. Coleman Memorial Bridge.

B. It shall be unlawful for any person to operate a patent tong within 300 feet of the eastern or downstream side of the George P. Coleman Memorial Bridge.

C. It shall be unlawful for any person to operate a patent tong on the western or upstream side of the George P. Coleman Memorial Bridge within a 400 foot radius of the two center caissons, numbered 1S and 1N.

### **§ 4. Penalty.**

As set forth in § 28.1-23 of the Code of Virginia, any person, firm, or corporation violating any provision of this

regulation shall be guilty of a Class 1 misdemeanor.

/s/ William A. Pruitt  
Commissioner

## DEPARTMENT OF MINES, MINERALS AND ENERGY

**Title of Regulation:** VR 480-05-9.2. Rules and Regulations Governing the Use of Diesel Powered Equipment in Underground Coal Mines.

**Statutory Authority:** §§ 45.1-1.3 and 45.1-90 of the Code of Virginia.

**Effective Date:** January 2, 1991.

**NOTICE:** As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. It was adopted as it was proposed in 6:19 V.A.R. 3068-3072 June 18, 1990.

## BOARD FOR BRANCH PILOTS

**Title of Regulation:** VR 535-01-01. Branch Pilot Regulations.

**Statutory Authority:** § 54.1-902 of the Code of Virginia.

**Effective Date:** January 3, 1991.

### **Summary:**

The regulations establish licensing and renewal fees in accordance with § 54.1-113 of the Code of Virginia, ensure that applicants for initial licensure and renewal of licenses are physically fit to carry out their duties and responsibilities and have traversed the waters embraced by their licenses prior to renewal, require the provision of accurate information to the board in a timely manner regarding possible abuse of alcohol or a controlled substance by a pilot during the performance of his duties, and require timely reporting to the board and staff by pilots regarding maritime mishaps occurring during the performance of their duties. The new requirements will protect the public by ensuring the competence of pilots who direct the movement of vessels through the waters of the Commonwealth. The potential consequences of incompetent performance by these licensees are severe, involving possible injury or loss of life, costly damage to property, and the far-reaching environmental effects of possible oil or chemical spills.

The board added a definition of the type of medical test required for detection of drug or alcohol use, required Limited Branch Pilots to provide evidence that they have traversed the waters for which they are licensed prior to renewal, clarified language regarding reporting of actions of the National Transportation Safety Board and the United States

# Final Regulations

*Coast Guard, added alcohol or drug-related offenses to the criminal convictions which are listed as regulatory violations, added misconduct as a regulatory violation, and expanded the circumstances under which drug or alcohol testing is required.*

VR 535-01-01. Branch Pilot Regulations.

## PART I. INITIAL LICENSE.

### § 1.1. Initial licensing.

A. Any person wishing to obtain a license as a Limited Branch Pilot shall meet the following qualifications:

1. Satisfactorily complete a two year apprenticeship in a program approved by the board;
2. Satisfactorily complete a comprehensive examination which shall be approved by the board and administered by the examining committee of the board. The examination shall be in two parts:

a. Written

b. Practical oral examination; and

3. ~~Satisfactory performance by complying~~ Comply with the board's regulations and Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 of the Code of Virginia ; ;

4. *Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination must include a [ screen for all controlled substances and alcohol scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drugs or alcohol use ] ; and*

5. *Pay a licensing fee of \$175. Each check or money order shall be made payable to the Treasurer of Virginia. All fees are nonrefundable.*

B. Any limited branch pilot wishing to obtain a full branch pilot license shall meet the following qualifications:

1. Satisfactorily complete a five year apprenticeship in a program approved by the board;

2. Hold a limited branch pilot license in good standing;

3. Pass a practical examination approved by the board and administered by the board's Examining Committee;

4. ~~Hold an unrestricted, unlimited Inland Masters License and a First Class Pilot License issued by the United States Coast Guard. Possess a valid unlimited~~

*Federal Inland Masters License with First Class Pilot endorsement issued by the United States Coast Guard for the same waters as his branch. A copy of this license shall be filed with the clerk of the board immediately; and*

5. *Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination must include a [ screen for all controlled substances and alcohol scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drug or alcohol use; ]*

5 6 . *Qualify in accordance with § 54.1-905 of the Code of Virginia ; ; and*

7. *Pay a licensing fee of \$175. Each check or money order is to be made out to the Treasurer of Virginia. All fees are nonrefundable.*

## PART II. LICENSE RENEWAL.

### § 2.1. License renewal.

Each pilot seeking renewal of his license shall complete a renewal application, comply with the following regulations and appear before the board or its License Renewal Committee which shall determine if he possesses the qualifications to be renewed.

A. ~~Any limited branch pilot license renewal seeking to renew his license shall meet the following standards:~~

1. ~~Possess a valid First Class Pilot License issued by the United States Coast Guard for the same waters as his limited branch; and~~ *Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination must include a [ screen for all controlled substances and alcohol scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drug or alcohol use ] .*

2. ~~Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 12 months. [ Furnish to the board evidence that he has transited the waters embraced by his license during the preceding 12 months. ]~~

[ 3. ] *After three years of licensure as a limited branch pilot, possess a valid First Class Pilot License issued by the United States Coast Guard for the same waters as his limited branch.*

[ 3. 4. ] *Pay a license renewal fee of \$155. Each check or money order is to be made payable to the*

*Treasurer of Virginia. All fees are nonrefundable.*

B. Any full branch pilot license renewal seeking to renew his license shall meet the following standards:

1. Possess a valid First Class Pilot License issued by the United States Coast Guard for the same waters as his branch and an unlimited Federal Inland Masters License with First Class Pilot endorsement issued by the United States Coast Guard for the same waters as his branch [ ; ; ]

2. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding ~~12 months;~~ 60 days. This examination must include a [ ~~screen for all controlled substances and alcohol.~~ scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drug or alcohol use; ]

3. Furnish to the board evidence that he has transited the waters embraced by his license during the preceding 12 month months period for which the license is issued ;

4. Upon the showing of good cause, the board may waive the requirements of subdivision 3 above when in its judgment the pilot is otherwise qualified; and

5. Qualify in accordance with § 54.1-906 of the Code of Virginia ; ; and

6. Pay a license renewal fee of \$155. Each check or money order is to be made payable to the Treasurer of Virginia. All fees are nonrefundable.

### PART III. CHANGE OF LICENSE.

#### § 3.1. Change of license.

In order to extend a license, an applicant must satisfactorily complete 12 or more round trips with a currently licensed pilot of the branch for which the applicant seeks licensure, receive a First Class Pilot License issued by the United States Coast Guard for that additional area and pass a practical examination approved by the board and administered by the board's Examination Committee.

### PART IV. STANDARDS OF CONDUCT.

#### § 4.1. Grounds for denial of licensure, denial of renewal, or discipline.

The board shall have the authority to deny initial licensure, deny an extension of license, or deny renewal as well as to discipline existing licensees, whether limited or not, for the following reasons:

1. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude [ or any alcohol or drug-related offense ] there being no appeal pending therefrom or the time for appeal having been elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction [ ; . ]

2. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude[ ; . ]

3. Failing to report to the board in writing [ the results of any disciplinary action taken by the United States Coast Guard or reports of the National Transportation Safety Board within 30 days of that action; any reports of the National Transportation Safety Board involving the licensee, or the results of any disciplinary action taken by the United States Coast Guard against the licensee within 30 days of that report or action. ]

4. Refusing or in any other way failing to carry out an order from the pilot officers for reasons other than the public's health, safety, and welfare[ ; . ]

5. Negligence [ or misconduct ] in the performance of duties[ ; . ]

6. Violating or cooperating with others in violating any provision of Chapter 9 (§ 54.1-900 et seq.) of the Title 54.1 of the Code of Virginia, as amended, or any regulation of the board [ ; . ]

7. Failing to, as soon as possible under the circumstances, report to the pilot officers his finishing time and other required information relating to the particulars of the ship[ ; . ]

8. Failing to file immediately with the board president or vice president of the board with a copy to the board administrator a complete written account of any violation of the statutes of Virginia or of the United States relating to pilotage or failing to report in writing to the board president or vice president of the board with a copy to the board administrator a account of all collisions, groundings, or other maritime mishaps of any description that may occur during the discharge of the pilot's duties ; . This report shall be received no later than seven days after such an incident.

9. Failing to [ submit evidence report ] to the board [ within 30 days after the board's request that the licensee is free of ] any physical, emotional, or

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psychological [ ~~impairments~~ impairment ] which may affect his ability to perform the duties of a pilot [ . Such reports must be provided within 30 days of the onset of the condition. ]

January 3, 1991.

10. Failing to submit to the board within 14 days the written results of an appropriate medical test which shows the licensee to be free of the influence of alcohol or any medication (controlled substance or otherwise) and which was accomplished within 24 hours after any vessel which a Virginia licensed pilot was piloting was involved in a collision, grounding or other incident involving personal injury, death, environmental hazard or damage to a vessel in excess of \$100,000; Refusal to comply with the board's requirement for a [ ~~medical scientifically recognized~~ ] test [ to determine the presence of alcohol or any controlled substance which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drug or alcohol use ] . Such test is required immediately and no later than 12 hours after involvement in a collision, grounding or other incident resulting in personal injury, death, environmental hazard or [ property ] damage [ to a vessel ] in excess of \$100,000. Refusal to comply with this requirement shall result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code.

[ 11. Refusal to comply with the board's requirement for a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids or tissues for evidence of dangerous drug or alcohol use in any instance in which the board has reasonable cause to believe a test is necessary to protect the public health, safety or welfare. Refusal to comply with this requirement shall result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code. ]

[ ~~11~~ 12. ] Failure to send the test required by § 4.1 10 [ or § 4.1 11 ] to the president or vice president of the board with a copy to the board administrator within 48 hours of the administration of the test;

[ ~~12~~ 13. ] An indication of impairment on a test furnished under [ § 4.1 10 or ] § 4.1 11.

~~11~~ [ ~~13~~ 14 ]. Performing or attempting to perform any of the duties of his office while under the influence of alcohol, or any medication (controlled substance or otherwise) to the extent that he is unfit for the performance of the duties of his office ; or .

~~12~~. An indication of impairment on a test furnished under subdivision ~~10~~ above.

All previous regulations of the Board for Branch Pilots are repealed upon the effective date of these regulations.

These regulations shall be effective November 30, 1989

# EMERGENCY REGULATIONS

## MARINE RESOURCES COMMISSION

Title of Regulation: VR 450-01-0059. Pertaining to the Taking of Bluefish.

Statutory Authority: § 28.1-25 of the Code of Virginia.

Effective Dates: October 23, 1990 to November 22, 1990.

Preamble:

*This regulation establishes a daily bag limit of 10 bluefish for hook and line anglers. The purpose of the limit is to protect spawning stocks and prevent recruitment overfishing. This regulation responds to the recommendations of the Interstate Fishery Management Plan for the Bluefish Fishery, as adopted by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (MAFMC).*

§ 1. Authority, prior regulations, effective date.

A. This regulation is promulgated pursuant to the authority contained in § 28.1-23 of the Code of Virginia.

B. No prior regulations pertain to bluefish.

C. The effective date of this regulation is July 1, 1990.

§ 1. Authority, effective date; termination date.

A. This emergency regulation is promulgated pursuant to the authority contained in § 28.1-25 of the Code of Virginia.

B. The effective date of this regulation is October 23, 1990.

C. This regulation shall terminate on November 22, 1990.

§ 2. Purpose.

Stock assessment information indicates that bluefish stocks along the Atlantic Coast are fully exploited and show signs of declining abundance. The purpose of this regulation is to control the hook and line harvest of bluefish (which constitutes approximately 90% of the fishing coastwide) in cooperation with MAFMC and other coastal states to prevent overfishing.

§ 3. Daily bag bluefish limit.

A. It shall be unlawful for any person fishing with hook and line to catch and retain more than 10 bluefish per day. Any bluefish taken after the daily limit has been reached shall be returned to the water immediately. It shall be unlawful for any person to possess more than 10 bluefish per day. The provisions of this subsection shall not apply to persons harvesting bluefish with licensed commercial gear nor to persons possessing bluefish taken

by licensed commercial gear.

B. When fishing from any vessel, the daily limit shall be equal to the number of persons on board the vessel multiplied by 10. Retention of the legal number of bluefish is the responsibility of the vessel captain or operator.

§ 4. Penalty.

As set forth in § 28.1-23 of the Code of Virginia, any person, firm, or corporation violating any provision of the regulation shall be guilty of a Class 1 misdemeanor.

/s/ William A. Pruitt  
Commissioner

\* \* \* \* \*

Title of Regulation: VR 450-01-0066. Pertaining to the Setting of Eel Pots.

Statutory Authority: § 28.1-25 of the Code of Virginia.

Effective Dates: October 23, 1990 to November 22, 1990.

Preamble:

*This emergency regulation prohibits the practice of setting and fishing multiple eel pots attached to a single line and buoy and requires that only one eel pot be attached to any line or buoy.*

§ 1. Authority, effective date, termination date.

A. This emergency regulation is promulgated pursuant to the authority contained in § 28.1-25 of the Code of Virginia.

B. The effective date of this regulation is October 23, 1990.

C. This regulation shall terminate on November 22, 1990.

§ 2. Purpose.

The purpose of this regulation is to prohibit the setting and fishing of multiple eel pots per line and thereby reducing the harvesting efficiency of eel pots and reducing the possibility of overfishing of Virginia's eel populations.

§ 3. Multiple pots per line prohibited.

A. It shall be unlawful for any person to attach or set more than one eel pot to a single line or buoy.

B. It shall be unlawful for any person to fish eel pots in which more than one pot is attached to a single line or buoy.

§ 4. Penalty.



# Emergency Regulations

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As set forth in § 28.1-23 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.

/s/ William A. Pruitt  
Commissioner

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

**Title of Regulation:** State Plan for Medical Assistance Relating to Cost Management Initiatives for PIRS.  
VR 460-03-4.1940:1. Nursing Home Payment System.  
VR 460-03-4.1943. Appendix III - Cost Reimbursement Limitations.

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

**Effective Dates:** October 31, 1990 through October 30, 1991.

### Summary:

1. **REQUEST:** The Governor's approval is hereby requested to adopt the emergency regulation entitled Cost Management Initiatives for the Patient Intensity Rating System (PIRS). This policy will incorporate previously approved cost management policies into the Department's new PIRS reimbursement methodology.

2. **RECOMMENDATION:** Recommend approval of the Department's request to take an emergency adoption action regarding Cost Management Initiatives for PIRS. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski, Director  
Date: October 24, 1990

### 3. CONCURRENCES:

/s Howard M. Cullum  
Secretary of Health and Human Resources  
Date: October 26, 1990

### 4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder  
Governor  
Date: October 29, 1990

### 5. FILED WITH:

/s/ Joan W. Smith  
Registrar of Regulations  
Date: October 30, 1990

## DISCUSSION

6. **BACKGROUND:** The Board of Medical Assistance

Services, in response to the Administration's directive to identify potential cost management initiatives, directed the Department of Medical Assistance Services (DMAS) to eliminate cost reimbursement to nursing facilities' licensed in-house pharmacies and limit the cost for management services. With an earlier emergency regulation, DMAS incorporated these initiatives into the previous nursing facility reimbursement methodology. This emergency regulation incorporates these same initiatives into the new PIRS methodology.

### ELIMINATION OF COST REIMBURSEMENT TO NURSING FACILITIES' (NF) LICENSED IN-HOUSE PHARMACIES

This proposal eliminates cost reimbursement for pharmacy services provided by nursing facilities which operate licensed in-house pharmacies. Effective October 1, 1990, licensed in-house pharmacies in nursing facilities were required to submit bills and receive payment for pharmacy services in the same manner as free-standing pharmacies under the authority of separate provider agreements. This change gives DMAS a consistent basis and policy for reimbursing pharmacy services provided to Medicaid recipients in all nursing facilities by using the effective computerized claims processing system edits. The Program also continues the policy of requiring personal physician fees to be billed directly to DMAS by the physicians.

### LIMITATIONS ON MANAGEMENT SERVICES EXPENSES

This proposal provides for the establishment of a ceiling limitation for management services costs to be claimed by nursing facilities. Currently, only the total operating cost ceiling constrains management services. Effective October 1, 1990, the ceiling limitation is a median per diem cost of all management services costs claimed by the nursing facilities. Management services costs in excess of the median per diem cost limitation will not be recognized by DMAS for reimbursement after that date.

This change will ensure that DMAS will reimburse for only those management services which are necessary and cost effective.

**AUTHORITY TO ACT:** The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of DMAS the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's adoption of emergency regulations subject to the Governor's approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the Code requires this agency to initiate the public notice and comment process as contained in Article 2 of the APA.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements

# Emergency Regulations

of the APA's Article 2 are met. Therefore, an emergency regulation is needed to enable the earliest possible effective date for these policies.

Title 42 of the Code of Federal Regulations Part 447 Subpart C "implements § 1902(a)(13)(A) of the Social Security Act which requires that the State Plan provide for payment for hospital and long-term care facility services through the use of rates that the state finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards."

## FISCAL/BUDGETARY IMPACT:

### ELIMINATION OF COST REIMBURSEMENT TO NF LICENSED IN-HOUSE PHARMACIES

This change in pharmacy reimbursement affects twenty-six hospitals which operate nursing facilities in the Commonwealth. Four freestanding nursing facilities are also affected. The estimated decrease in annual aggregate expenditures in FY 91 and 92 is approximately \$300,000 (\$150,000 NGF; \$150,000 GF) total dollars.

### LIMITATIONS ON MANAGEMENT SERVICES EXPENSES

This change affects approximately thirteen nursing facilities with existing management contracts. The estimated decrease in annual aggregate expenditures is approximately \$600,000 (\$300,000 NGF; \$300,000 GF) in total dollars for FY 91 and FY 92.

9. **RECOMMENDATION:** Recommend approval of this request to take an emergency adoption action to become effective pending the approval of the Health Care Financing Administration. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department may lack the authority to enforce these cost management policies in its new PIRS reimbursement methodology.

### Approval Sought for VR 460-03-4.194.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation.

### **VR 460-03-4.1940:1. Nursing Home Payment System.**

#### Article 3. Allowable Cost Identification.

#### § 2.9. Allowable costs.

Costs which are included in rate determination

procedures and final settlement shall be only those allowable, reasonable costs which are acceptable under the Medicare principles of reimbursement, except as specifically modified in the Plan and as may be subject to individual or ceiling cost limitations and which are classified in accordance with the DMAS uniform chart of accounts (see Appendix I).

#### A. Certification.

The cost of meeting all certification standards for NF requirements as required by the appropriate state agencies, by State laws, or by Federal legislation or regulations.

#### B. Operating costs.

1. Direct Patient Care operating costs shall be defined in Appendix I.

*Excluded from allowable direct care operating costs shall be personal physician fees and prescribed legend and nonlegend drugs. These excluded services shall be billed directly to DMAS by the provider of the services. Allowable direct patient care operating costs shall exclude (i) personal physician fees, and (ii) pharmacy services and prescribed legend and non-legend drugs provided by nursing facilities which operate licensed in-house pharmacies. These services shall be billed directly to DMAS through separate provider agreements and DMAS shall pay directly in accordance with §§ (e) or (f) of Attachment 4.19 B of the State Plan for Medical Assistance.*

3. Indirect patient care operating costs include all other operating costs, not identified as direct patient care operating costs and NATCEPs costs in Appendix I, which are allowable under the Medicare principles of reimbursement, except as specifically modified herein and as may be subject to individual cost or ceiling limitations.

#### C. Allowances/Goodwill.

Bad Debts, goodwill, charity, courtesy, and all other contractual allowances shall not be recognized as an allowable cost.

#### § 2.10. Purchases/related organizations.

A. Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control shall be included in the allowable cost of the provider at the cost to the related organization, provided that such costs do not exceed the price of comparable services, facilities or supplies. Purchases of existing NFs by related parties shall be governed by the provisions of § 2.5 B 2.

*Allowable costs applicable to management services furnished to the provider by organizations related to the*

# Emergency Regulations

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provider by common ownership or control shall be lesser of the cost to the related organization or the per patient day ceiling limitation established for management services cost. (see Appendix III).

B. Related to the provider shall mean that the provider is related by reasons of common ownership or control by the organization furnishing the services, facilities, or supplies.

C. Common ownership exists when an individual or individuals or entity or entities possess significant ownership or equity in the parties to the transaction. Control exists where an individual or individuals or entity or entities have the power, directly or indirectly, significantly to influence or direct the actions or policies of the parties to the transaction. Significant ownership or control shall be deemed to exist where an individual is a "person with an ownership or control interest" within the meaning of 42 CFR 455.101. If the parties to the transaction are members of an immediate family, as defined below, the transaction shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control," as set forth above. Immediate family shall be defined to include, but not be limited to, the following: (i) husband and wife, (ii) natural parent, child and sibling, (iii) adopted child and adoptive parent, (iv) step-parent, step-child, step-sister, and step-brother, (v) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law and daughter-in-law, and (vi) grandparent and grandchild.

D. Exception to the related organization principle.

1. Effective with cost reports having fiscal years beginning on or after July 1, 1986, an exception to the related organization principle shall be allowed. Under this exception, charges by a related organization to a provider for goods or services shall be allowable cost to the provider if all four of the conditions set out below are met.

2. The exception applies if the provider demonstrates by convincing evidence to the satisfaction of DMAS that the following criteria have been met:

a. The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the provider organization.

b. A substantial part of the supplying organization's business activity of the type carried on with the provider is transacted with other organizations not related to the provider and the supplier by common ownership or control and there is an open, competitive market for the type of goods or services furnished by the organization. In determining whether the activities are of similar type, it is

important to also consider the scope of the activity.

For example, a full service management contract would not be considered the same type of business activity as a minor data processing contract. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well informed buyers and sellers.

c. The goods or services shall be those which commonly are obtained by institutions such as the provider from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by such institutions. This requirement means that institutions such as the provider typically obtain the good or services from outside sources rather than producing the item internally.

d. The charge to the provider is in line with the charge for such services, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such goods or services. The phrase "open market" takes the same meaning as "open, competitive market" in b above.

3. Where all of the conditions of this exception are met, the charges by the supplier to the provider for such goods or services shall be allowable as costs.

4. This exception does not apply to the purchase, lease or construction of assets such as property, buildings, fixed equipment or major movable equipment. The terms "goods and services" may not be interpreted or construed to mean capital costs associated with such purchases, leases, or construction.

E. Three competitive bids shall not be required for the building and fixed equipment components of a construction project outlined in § 2.2. Reimbursement shall be in accordance with § 2.10 A with the limitations stated in § 2.2 B.

## VR 460-03-4.1943. Appendix III - Cost Reimbursement Limitations.

### § 1.1. Foreword.

A. The attached information outlines operating, NATCEPs and plant cost limitations that are not referenced in other regulations.

B. All of the operating cost limitations are further subject to the applicable operating ceilings.

### § 1.2. Fees.

A. Directors' fees.

# Emergency Regulations

1. Although Medicaid does not require a board of directors (Medicare requires only an annual stockholders' meeting), the Program will recognize reasonable costs for directors' meetings related to patient care.

2. It is not the intent of DMAS to reimburse a facility for the conduct of business related to owner's investments, nor is it the intent of the Program to recognize such costs in a closely held corporation where one person owns all stock, maintains all control, and approves all decisions.

3. To receive reimbursement for directors' meetings, the written minutes must reflect the name of the facility for which the meeting is called, the content and purpose of the meeting, members in attendance, the time the meeting began and ended, and the date. If multiple facilities are discussed during a meeting, total allowable director fees, as limited herein, shall be pro-rated between such facilities.

4. Bona fide directors may be paid an hourly rate of \$125 up to a maximum of four (4) hours per month. These fees include reimbursement for time, travel, and services performed.

5. Compensation to owner/administrators who also serve as directors, shall include any and all director's fees paid, subject to the above-referenced limit those set forth in these regulations.

## B. Membership fees.

1. These allowable costs will be restricted to membership in health care organizations which promote objectives in the provider's field of health care activities.

2. Membership fees in health care organizations and appropriate professional societies will be allowed for the administrator, owner, and home office personnel.

3. Comparisons will be made with other providers to determine reasonableness of the number of organizations to which the provider will be reimbursed for such membership and the claimed costs, if deemed necessary.

## C. Management fees.

1. External management services shall only be reimbursed if they are necessary, cost effective, and non-duplicative of existing NF internal management services.

2. Costs to the provider, based upon a percentage of net and/or gross revenues or other variations thereof, shall not be an acceptable basis for reimbursement. If allowed, management fees must be reasonable and based upon rates related to services provided.

3. Management fees paid to a related party may be recognized by the Program as the owner's compensation subject to administrator compensation guidelines.

4. A management fees service agreement exists when the contractor provides non-duplicative personnel, equipment, services, and supervision.

5. A consulting service agreement exists when the contractor provides nonduplicative supervisory or management services only.

6. Limits will be based upon comparisons with other similar size facilities and/or other DMAS guidelines and information.

*Effective for all providers' cost reporting periods ending on or after October 1, 1990, a per patient day ceiling for all full service management service costs shall be established. The ceiling limitation for cost reporting periods ending on or after October 1, 1990, through December 31, 1990, shall be the median per patient day cost as determined from information contained in the most recent cost reports for all providers with fiscal years ending through December 31, 1989. These limits will be adjusted annually by a Consumer Price Index effective January 1 of each calendar year to be effective for all providers' cost reporting periods ending on or after that date. The limits will be published and distributed to providers annually.*

## D. Pharmacy consultants fees.

Costs will be allowed to the extent they are reasonable and necessary.

## E. Physical therapy fees (for outside services).

Limits are based upon current PRM-15 guidelines.

## F. Inhalation therapy fees (for outside services).

Limits are based upon current PRM-15 guidelines.

## G. Medical directors' fees.

Costs will be allowed up to the established limit per year to the extent that such fees are determined to be reasonable and proper. This limit will be escalated annually by a the CPI-U effective January 1 of each calendar year to be effective for all providers' cost reporting periods ending on or after that date. The limits will be published and distributed to providers annually. The following limitations apply to the time periods as indicated:

Jan. 1, 1988 - Dec. 31, 1988 - \$6,204

Jan. 1, 1989 - Dec. 31, 1989 - \$6,625

# Emergency Regulations

§ 1.3. Personal automobile.

A. Use of personal automobiles when related to patient care will be reimbursed at the maximum of the allowable IRS mileage rate when travel is documented.

B. Flat rates for use of personal automobiles will not be reimbursed.

101-125	40,788	61,181
126-150	46,107	69,160
151-175	51,623	77,436
176-200	56,946	85,415
201-225	60,936	91,399
226-250	64,924	97,388
251-275	68,915	103,370
276-300	72,906	108,375
301-325	76,894	115,344
326-350	80,885	121,330
351-375	84,929	127,394
376 & over	89,175	133,763

§ 1.4. Seminar expenses.

These expenses will be treated as allowable costs, if the following criteria are met:

A. Seminar must be related to patient care activities, rather than promoting the interest of the owner or organization.

B. Expenses must be supported by:

1. Seminar brochure,
2. Receipts for room, board, travel, registration, and educational material

C. Only the cost of two persons per facility will be accepted as an allowable cost for seminars which involve room, board, and travel.

These limits will be escalated annually by the CPI-U effective January 1 of each calendar year to be effective for all provider's cost reporting periods ending on or after that date. The limits will be published and distributed to providers annually.

§ 1.5. Legal retainer fees.

DMAS will recognize legal retainer fees if such fees do not exceed the following:

BED SIZE	LIMITATIONS
0 - 50	\$100 per month
51 - 100	150 per month
101 - 200	200 per month
201 - 300	300 per month
301 - 400	400 per month

The expense to be allowed by DMAS shall be supported by an invoice and evidence of payment.

§ 1.6. Architect fees.

Architect fees will be limited to the amounts and standards as published by the Virginia Department of General Services.

§ 1.7. Administrator/owner compensation.

**DMAS ADMINISTRATOR/OWNER COMPENSATION  
SCHEDULE  
JANUARY 1, 1989 - DECEMBER 31, 1989**

BED SIZE	NORMAL ALLOWABLE FOR ONE ADMINISTRATOR	MAXIMUM FOR 2 OR MORE ADMINISTRATOR
1-75	32,708	49,063
76-100	35,470	53,201

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# STATE LOTTERY DEPARTMENT

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## STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

**Title of Regulation:** VR 447-01-2. Administration Regulations.

**Statutory Authority:** § 58.1-4007 of the Code of Virginia.

**Public Hearing Date:** February 27, 1991 - 10 a.m.  
(See Calendar of Events section for additional information)

**Summary:**

*The State Lottery Department is amending numerous sections of the Administration Regulations to address substantive revisions to the department's procurement procedures and to address Code requirements, definition changes and housekeeping measures.*

VR 447-01-2. Administration Regulations.

### PART I GENERAL PARAMETERS.

#### § 1.1. Definitions.

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

*"Altered ticket" means a lottery ticket which has been forged, counterfeited or altered.*

*"Award" means a decision to contract with a specific vendor for a specific contract.*

*"Bank" means and includes any commercial bank, savings bank, savings and loan association, credit union, trust company, and any other type or form of banking institution organized under the authority of the Commonwealth of Virginia or of the United States of America whose principal place of business is within the Commonwealth of Virginia and which is designated by the State Treasurer to perform functions, activities or services in connection with the operations of the lottery for the deposit and handling of lottery funds, the accounting of those funds and the safekeeping of records.*

*"Bearer instrument" means a lottery ticket which has not been signed by or on behalf of a person or a legal entity. Any prize won on an unsigned ticket is payable to the holder, or bearer, of that ticket.*

*"Bid" means a competitively priced offer made by an intended seller, usually in reply to an invitation for bids.*

*"Bid bond" means an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a specific bidder fails to accept the contract as bid.*

*"Board" means the State Lottery Board established by the state lottery law.*

*"Book," "ticket book," or "pack" generally means a set quantity of individually wrapped unbroken, consecutively numbered, fanfolded instant game tickets which all bear an identical book or pack number which is unique to that book or pack among all the tickets printed for a particular game.*

*"Competitive bidding" means the offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.*

*"Competitive negotiation" means a method for purchasing goods and services, usually of a highly complex and technical nature where qualified individuals or firms are solicited by using a Request For Proposal. Discussions are held with selected vendors and the best offer, as judged against criteria contained in the Request For Proposal, is accepted.*

*"Consideration" means something of value given for a promise to make the promise binding. It is one of the essentials of a legal contract.*

*"Contract" means an agreement, enforceable by law, between two or more competent parties. It includes any type of agreement or order for the procurement of goods or services.*

*"Contract administration" means the management of all facets of a contract to assure that the contractor's total performance is in accordance with the contractual commitments and that the obligations of the purchase are fulfilled.*

*"Contracting officer" means the person(s) authorized to sign contractual documents which obligate the State Lottery Department and to make a commitment against State Lottery Department funds.*

*"Contractor" means an individual or firm which has entered into an agreement to provide goods or services to the State Lottery Department.*

*"Department" means the State Lottery Department created by the state lottery law.*

*"Depository" means any person, including a bonded courier service, armored car service, bank, central or regional offices of the department, or state agency, which performs any or all of the following activities or services for the lottery:*

1. The safekeeping and distribution of tickets to retailers,
2. The handling of lottery funds,
3. The deposit of lottery funds, or

# State Lottery Department

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## 4. The accounting for lottery funds.

**"Director"** means the Director of the State Lottery Department or his designee.

**"Electronic funds transfer (EFT)"** means a computerized transaction that withdraws or deposits money against a bank account on a set day based on the balance owed by the bank account holder to the lottery department or due to the bank account holder from the lottery department.

**"Erroneous ticket"** means an instant lottery ticket which has been forged, counterfeited or altered a lottery ticket which contains an unintentional manufacturing or printing defect. A player holding such a lottery ticket is entitled to a replacement ticket of equal value.

**"Game"** means any individual or particular type of lottery authorized by the board.

**"Goods"** means any material, equipment, supplies, printing, and automated data processing hardware and software.

**"Household"** means members of a group who live together as a family unit. It includes, but is not limited to, members who may be claimed as dependents for income tax purposes.

**"Informalities"** means defects or variations of a bid from the exact requirements of the Invitation for Bid which do not affect the price, quality, quantity, or delivery schedule for the goods or services being purchased.

**"Inspection"** means the close and critical examination of goods and services delivered to determine compliance with applicable contract requirements or specifications. It is the basis for acceptance or rejection.

**"Instant game"** means a game that uses preprinted tickets with a latex covering over a portion of the ticket. The covering is scratched off by the player to reveal immediately whether the player has won a prize or entry into a prize drawing. An instant game may include other types of non-on-line lottery games.

**"Instant ticket"** means a ticket for an instant game ticket with a latex covering the game symbols located in the play area. Each ticket has a unique validation number and ticket number.

**"Invitation for Bids (IFB)"** means a document used to solicit bids for buying goods or services. It contains or references the specifications or scope of work and all contractual terms and conditions.

**"Kickbacks"** means gifts, favors or payments to improperly influence procurement decisions.

**"Legal entity"** means an entity, other than a natural person, which has sufficient existence in legal

contemplation that it can function legally, sue or be sued and make decisions through agents, as in the case of a corporation.

**"Letter contract"** means a written preliminary contractual instrument that authorizes a contractor to begin immediately to produce goods or perform services.

**"License approval notice"** means the form sent to the retailer by the lottery department notifying him that his application for a license has been approved and giving him instructions for obtaining the required surety bond and setting up his lottery bank account.

**"Lottery"** or **"state lottery"** means the lottery or lotteries established and operated in response to the provisions of the state lottery law.

**"Lottery license"** or **"retailer license"** means the official document issued by the department to a person authorizing him to sell or dispense lottery tickets, materials or lottery games at a specified location in accordance with all regulations, terms and conditions, and instructions and directives issued by the board and the director.

**"Lottery retailer"** or **"lottery sales retailer"** or **"retailer"** means a person licensed by the director to sell and dispense lottery tickets, materials or lottery games for instant lottery games or for both instant and on-line lottery games, or both.

**"Lottery license"** or **"retailer license"** means the official document issued by the department to a person authorizing him to sell or dispense lottery tickets, materials or lottery games at a specified location in accordance with all regulations, terms and conditions, and instructions and directives issued by the board and the director.

**"Low-tier winner"** or **"low-tier winning ticket"** means an instant game ticket which carries a cash prize of \$25 or less or a prize of additional unplayed instant tickets.

**"Negotiation"** means a bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

**"Noncompetitive negotiations"** means the process of arriving at an agreement through discussion and compromise when only one procurement source is practicably available or competitive procurement procedures are otherwise not applicable.

**"Nonprofessional services"** means personal services not defined as "professional services."

**"Notice of Award"** means a written notification to a vendor stating that the vendor has received a contract

# State Lottery Department

with the department.

*"Notice of Intent to Award"* means a written notice which is publicly displayed, prior to signing of a contract, that shows the selection of a vendor for a contract.

*"Pack"* means the same thing as "book."

*"Performance bond"* means a contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the department from loss due to his inability to complete the contract in accordance with its terms and conditions.

*"Person"* means a natural person and may extend and be applied to bodies politic and corporate unless the context indicates otherwise.

*"Personal services contract"* means a contract in which the department has the right to direct and supervise the employee(s) of outside business concerns as if the person(s) performing the work were employees of the department or a contract for personal services from an independent contractor.

*"Prize"* means any cash or noncash award to holders of winning tickets.

*"Procurement"* means the procedures for obtaining goods or services. It includes all activities from the planning steps and preparation and processing of a request through the processing of a final invoice for payment.

*"Professional services"* means services within the practice of accounting, architecture, behavioral science, dentistry, insurance consulting, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional engineering, veterinary medicine and lottery on-line and instant ticket services.

*"Protest"* means a complaint about an administrative action or decision brought by a vendor to the department with the intention of receiving a remedial result.

*"Purchase order"* (signed by the procuring activity only) means the form which is used to procure goods or services when a bilateral contract document, signed by both parties, is unnecessary, particularly for small purchases. The form may be used for the following:

1. To award a contract resulting from an Invitation For Bids (IFB).
2. To establish a blanket purchase agreement.
3. As a delivery order to place orders under state contracts or other requirements-type contracts which were established for such purpose.

*"Request for Information (RFI)"* means a document used to get information from the general public or

potential vendors on a good or service. The department may act upon the information received to enter into a contract without issuing an IFB or an RFP.

*"Request for Proposals (RFP)"* means a document used to solicit offers from vendors for buying goods or services. It permits negotiation with vendors (to include prices) as compared to competitive bidding used in the invitation for bids.

*"Responsible vendor"* means a person or firm who has the capability in all respects to fully satisfy the requirements of a contract as well as the business integrity and reliability to assure good faith performance. In determining a responsible vendor, a number of factors including but not limited to the following are considered. The vendor should:

1. Be a regular dealer or supplier of the goods or services offered;
2. Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
3. Have a satisfactory record of performance; and
4. Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the contract.

*"Responsive vendor"* means a person or firm who has submitted a bid, proposal, offer or information which conforms in all material respects to the solicitation.

*"Sales," "gross sales," "annual sales"* and similar terms mean total ticket sales including any discount allowed to a retailer for his commission compensation and, in the case of instant game sales, any discount or adjustment allowed for the retailer's payment of prizes of less than \$600.

*"Services"* means any work performed by a vendor where the work is primarily labor or duties and is other than providing equipment, materials, supplies or printing.

*"Sole source"* means that only one source is practicably available to furnish a product or service which is practicable.

*"Solicitation"* means an Invitation for Bids (IFB), a Request for Proposals (RFP), a Request for Information (RFI) or any other document issued by the department or telephone calls by the department to obtain bids or proposals or information for the purpose of entering into a contract.

*"Surety bond"* means an insurance agreement in which a third party agrees to be liable to pay a specified amount of money to the department in the event the retailer fails to meet his obligations to the department.



# State Lottery Department

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*"Ticket number"* means the preprinted unique number or combination of letters and numbers which identifies that particular ticket as one of a series of tickets within a particular game or drawing.

*"Validation code"* means the ~~multi-letter multiletter~~ or ~~multi-number multinumber~~ code which appears among the play symbols under the latex covering on the play area of an instant ticket. The validation code, also known as retailer validation code, is used to verify prize winning tickets.

*"Validation number"* means the unique number or number-and-letter code printed on the front of an instant ticket sometimes under a latex covering bearing the words "Do not remove," "Void if removed" or similarly worded label, or the unique number assigned by the on-line central computer and printed on the front of each on-line ticket.

*"Vendor"* means one who can sell, supply or install goods or services for the department.

## § 1.2. Generally.

The purpose of the state lottery is to produce revenue consistent with the integrity of the Commonwealth and the general welfare of its people. The operations of the State Lottery Board and the State Lottery Department will be conducted efficiently, honestly and economically.

## § 1.3. State Lottery Board.

### A. Monthly meetings.

The board will hold monthly public meetings to receive information and recommendations from the director on the operation and administration of the lottery and to take official action. It may also request information from the public. The board may have additional meetings as needed. (See Part III, Board Procedures.)

### B. Inspection of department records.

At the board's request, the department shall produce for review and inspection the department's books, records, files and other information and documents.

## § 1.4. Director.

The director shall administer the operations of the State Lottery Department following the authority of the Code of Virginia and these regulations.

## § 1.5. Ineligible players of the lottery.

Board members, officers or employees of the lottery, or any board member, officer or employee of any vendor to the lottery of lottery on-line or instant ticket goods or services working directly with the department on a contract for such goods or services, or any person residing

in the same household as any such board member, officer or employee may not purchase tickets or receive prizes of the lottery.

## § 1.6. Advertising.

### A. Generally.

Advertising may include but is not limited to print advertisements, radio and television advertisements, billboards, point of purchase and point of sale display materials. The department will not use funds for advertising which is for the primary purpose of inducing people to play the lottery.

### B. Lottery retailer advertising.

Any lottery retailer may use his own advertising materials if the department has approved its use in writing before it is shown to the public. The department shall develop written guidelines for giving such approval.

### C. Information provided by department.

The department may provide information displays or other material to the retailer. The retailer shall position the material so it can be seen easily by the general public.

### D. Special advertising.

The department may produce special posters, brochures or flyers describing various aspects of the lottery and provide these to lottery retailers to post or distribute.

### E. Winner advertising.

The department may use interviews, pictures or statements from people who have won lottery prizes to show that prizes are won and awarded; however, in no case shall the use of interviews, pictures or statements be for the primary purpose of inducing persons to participate in the lottery.

### F. Other advertising.

The department may use other informational and advertising items which may include any materials deemed appropriate advertising, informational, and educational media which are not for the primary purpose of inducing people to play the lottery.

## § 1.7. Operations of the department.

### A. Generally.

The department shall be operated in a manner which considers the needs of the Commonwealth, lottery retailers, the public at-large, the convenience of the ticket purchasers, and winners of lottery prizes.

# State Lottery Department

## B. Employment.

The department shall hire people without regard to race, sex, color, national origin, religion, age, handicap, or political affiliation.

1. All employees shall be recruited and selected in a manner consistent with the policies which apply to classified positions.
2. Sales and marketing employees are exempt from the Virginia Personnel Act.

## C. Internal operations.

The department will operate under the internal administrative, accounting and financial controls specifically developed for the State Lottery Department under the applicable policies required by the Departments of Accounts, Planning and Budget, Treasury, State Internal Auditor and by the Auditor of Public Accounts.

1. Internal operations include, but are not limited to, ticket controls, money receipts and payouts, payroll and leave, budgeting, accounting, revenue forecasting, purchasing and leasing, petty cash, bank account reconciliation and fiscal report preparation.
2. Internal operations apply to automated and manual systems.

## D. External operations.

The department will conduct business with the public, lottery retailers, vendors and others with integrity and honesty.

## E. Apportionment of lottery revenue.

Moneys received from lottery sales will be divided approximately as follows:

50%	Prizes
45%	State Lottery Fund Account (On and after July 1, 1989, administrative costs of the lottery shall not exceed 10% of total annual estimated gross revenues to be generated from lottery sales.)
5.0%	Lottery retailer discounts

## F. State Lottery Fund Account.

The State Lottery Fund will be established as an account in the Commonwealth's accounting system. The account will be established following usual procedures and will be under regulations and controls as other state accounts. Prior to the start of the first lottery game, the account will be funded from the proceeds of a Department of

Treasury loan or loans (treasury loan). Thereafter, funding Funding will be from gross sales.

1. Within the State Lottery Fund, there shall be established a "Special Reserve Fund" which shall contain the following subaccounts:

a. An "Operations Special Reserve Fund" subaccount for administrative and operations costs will be created in the State Lottery Fund account. On June 30, 1989, \$1 million dollars shall be transferred into the Operations Special Reserve Fund. Thereafter, 1.7% of gross monthly revenues from sales shall be transferred to the Operations Special Reserve Fund until the Operations Special Reserve equals not less than 1.7% of estimated annual gross lottery revenues from sales. Commencing with lottery operations, but prior to initial sales, all funds derived from the start-up treasury loan(s) shall be deposited to the Operations Special Reserve Fund. Except as otherwise provided in these regulations, start-up treasury loan fund balances shall remain in the Operations Special Reserve Fund until exhausted, until transferred to the Lottery Start-up Payback Special Reserve Fund or until 12 months after initial lottery sales at which time any fund balance from the start-up treasury loan(s) shall revert to the General Fund.

b. A "Lottery Prize Special Reserve Fund" subaccount will be created in the State Lottery Fund account and will be used when lottery prize pay-outs exceed department cash on hand. Immediately prior to initial lottery sales, \$500,000 shall be transferred to the Lottery Prize Special Reserve Fund from start-up treasury loan funds in the State Lottery Fund. Thereafter, 5.0% of monthly gross sales shall be transferred to the Lottery Prize Special Reserve Fund until the amount of the Lottery Prize Special Reserve Fund reaches 5.0% of the gross lottery revenue from the previous year's annual sales or \$5 million dollars, whichever is less.

(1) The calculation of the 5.0% will be made for each instant or on-line game.

(2) The funding of this subaccount may be adjusted at any time by the board.

2. Until July 1, 1989, or when start-up funds are totally repaid, a special subaccount titled "Lottery Start-up Payback Special Reserve Fund" will be established to retire the start-up treasury loan(s):

a. Five percent of the state lottery fund balance, excluding funds derived from start-up treasury loan(s), at the beginning of each month will be placed in this subaccount. The director may increase this percentage when, in his judgment, sufficient funds remain in the State Lottery Fund to meet other needs and shall increase the percentage

# State Lottery Department

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when necessary to retire the treasury loan(s) within the first 12 months from initial lottery sales.

b. The director may, at any time, direct the transfer from the State Lottery Fund balance to the "Lottery Start-up Payback Special Reserve Fund" of all or any portion of any funds derived from the start-up treasury loan(s) which, in his judgment are no longer required to fund lottery operations.

e. The director may, from time to time, direct the transfer of all or a portion of the Lottery Start-up Payback Special Reserve Fund to the General Fund of the Treasury to retire all or a portion of the start-up treasury loan(s). The director shall ensure that the entire amount of the start-up treasury loan(s) is repaid within the first 12 months of lottery sales. *Reserved.*

3. Other subaccounts may be established in the State Lottery Fund account as needed at the direction of the board upon the request of the director or the internal auditor with concurrence of the State Comptroller, State Treasurer and the Auditor of Public Accounts.

## G. Administrative and operations costs.

Lottery expenses include, but are not limited to, ticket costs, vendor fees, consultant fees, advertising costs, salaries, rents, utilities, and telecommunications costs.

## H. Audit of lottery revenues.

The cost of any audit shall be paid from the State Lottery Fund.

1. The Auditor of Public Accounts or his designee shall conduct a monthly post-audit of all accounts and transactions of the department. When, in the opinion of the Auditor of Public Accounts, monthly post-audits are no longer necessary to ensure the integrity of the lottery, the Auditor of Public Accounts shall notify the board in writing of his opinion and fix a schedule of less frequent post-audits. The schedule of post-audits may, in turn, be further adjusted by the same procedure to require either more or less frequent audits in the future.

2. Annually, the Auditor of Public Accounts shall conduct a fiscal and compliance audit of the department's accounts and transactions.

## I. Other matters.

The board and director may address other matters not mentioned in these regulations which are needed or desired for the efficient and economical operation and administration of the lottery.

## PART II.

## BANKS AND DEPOSITORIES.

### § 2.1. Approval of banks.

The State Treasurer, with the concurrence of the director, and in accordance with applicable Treasury directives, shall approve a bank or banks to provide services to the department.

A. A bank or banks shall serve as agents for electronic funds transfers between the department and lottery retailers as required by these regulations and by contracts between the department, the State Treasury, retailers, and the banks.

B. In selecting the bank or banks to provide these services, the State Treasurer and the director shall consider quality of services offered, the ability of the banks to guarantee the safekeeping of department accounts and related materials, the cost of services provided and the sophistication of bank systems and products.

C. There shall be no limit on the number of banks approved under this section.

### § 2.2. Approval of depositories.

The director may contract with depositories to distribute lottery tickets and materials from the department's central warehouse to the department's regional offices and from the department to retailers, and to collect funds, lottery tickets and lottery materials from retailers.

### § 2.3. Compensation.

A. The contract between each bank or depository and the department shall fix the compensation for services rendered to the department.

B. Compensation of banks will be in the form of compensating balances, direct fees, or some combination of these methods, at the discretion of the department.

C. Depositories will be compensated based on vouchers for services rendered.

### § 2.4. Depository for transfer of tickets.

A. The department may designate one or more depositories to transfer lottery tickets, lottery materials, and related documents between the department and lottery retailers.

B. In instances where a retailer wishes delivery of tickets or other materials sooner than scheduled by a lottery depository, the retailer may use his own depository or transfer agent. However, use of a retailer's depository or transfer agency shall have the department's advance approval. *Reserved.*

C. In determining whether to use depositories for

transferring tickets, materials and documents between the department and lottery retailers, the department may consider any relevant factor including, but not limited to, cost, security, timeliness of delivery, marketing concerns, sales objectives and privatization of governmental services.

## PART III. LOTTERY BOARD PROCEDURES.

### Article 1.

#### Board Procedures for the Conduct of Business.

#### § 3.1. Officers of the board.

##### A. Chairman and vice-chairman.

The board shall have a chairman and a vice-chairman who shall be elected by the board members.

##### B. Term of officers.

The board will elect its officers annually at its January meeting to serve for the calendar year.

#### § 3.2. Board meetings.

##### A. Monthly meetings.

The board will hold monthly public meetings to receive information and recommendations from the director on the operation and administration of the lottery and to take official action. The board may also request information from the public.

##### B. Special meetings.

The board may hold additional meetings as may be necessary to carry out its work. The chairman may call a special meeting at any time and shall call a special meeting when requested to do so by at least two board members or at the request of the director. Notice of special meetings shall be given to all board members at least two calendar days before the meeting. Written notice is preferred but telephonic notice may be accepted by any board member in lieu of written notice.

##### C. Quorum.

Three or more board members shall constitute a quorum for the conduct of business at both regular and special meetings of the board. A simple majority vote at a regular meeting is sufficient to take official action but official action at a special meeting requires three affirmative votes. The chairman is eligible to vote at all meetings.

##### D. Conflict of Interest.

If any board member determines that he has a conflict of interest or potential conflict relating to a matter to be considered, that board member shall not take part in such

deliberations.

#### § 3.3. Committees of the board.

##### A. Ad hoc committees.

The board chairman may at his discretion appoint such ad hoc committees as he deems necessary to assist the board in its work.

##### B. Purpose of committees.

An ad hoc committee may be established to advise the board on a matter referred to it or to act on a matter on behalf of the board if so designated.

1. A committee established to act on a matter on behalf of the board shall be composed entirely of board members and shall have at least three members.

a. Three members shall constitute a quorum.

b. Official action of such a committee shall require not fewer than three affirmative votes with each member including the chairman having one vote.

c. If a committee's vote results in an affirmative vote of only two members, the committee shall present a recommendation to the board and the board shall then take action on the matter.

2. A committee established to act in an advisory capacity to the board may include members of the general public. At least two members shall be board members and the chairman shall be a board member appointed by the board chairman.

a. A majority of the members appointed to an advisory committee constitutes a quorum.

b. Recommendations of an advisory committee may be adopted by a majority vote of those present and voting. The chairman of an advisory committee shall be eligible to vote on all recommendations.

c. All actions of advisory committees shall be presented to the board in the form of recommendations.

### Article 2.

#### Procedures for Appeals on Licensing Actions.

#### § 3.4. Hearings on denial, suspension or revocation of a retailer's license.

##### A. Generally.

An instant lottery retailer applicant or an instant lottery retailer surveyed for an on-line license who is denied a license or a retailer whose license is denied for renewal

# State Lottery Department

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or is suspended or revoked may appeal the licensing decision and request a hearing on the licensing action.

B. Hearings to conform to Administrative Process Act provisions.

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 of the Code of Virginia relating to Case Decisions.

1. An initial hearing consisting of an informal fact finding process will be conducted by the director 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 board in public. The board will then issue its decision on the case.

3. Upon receipt of the board'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.

## § 3.5. Procedure for appealing a licensing decision.

### A. Form for appeal.

Upon receiving a notice that (i) an application for or the renewal of a license has been denied by the director, or (ii) the director intends to or has already taken action to suspend or revoke a current license, the applicant or licensed retailer 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 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 licensed retailer. 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 licensed retailer.

2. The appeal will be timely if it bears a United States Postal Service postmark showing mailing on or before the 30th day prescribed in § 3.5.A.

### B. Where to file appeal.

An appeal to be mailed shall be addressed to:

State Lottery Director  
State Lottery Department  
Post Office Box 4689  
Richmond, Virginia 23220

An appeal to be hand delivered shall be delivered to:

State Lottery Director  
State Lottery Department  
Bookbindery Building  
2201 West Broad Street  
Richmond, Virginia 23220

1. An appeal delivered by hand will be timely only if received at the headquarters of the State Lottery Department within the time allowed by § 3.5.A.

2. Delivery to State Lottery Department regional offices or to lottery sales personnel by hand or by mail is not effective.

3. The appellant assumes full responsibility for the method chosen to file the notice of appeal.

### C. Content of appeal.

The appeal shall state:

1. The decision of the director which is being appealed;

2. The basis for the appeal;

3. The retailer's license number or the Retailer License Application Control Number; and

4. Any additional information the appellant may wish to include concerning the appeal.

## § 3.6. Procedures for conducting informal fact finding licensing hearings.

### A. Director to conduct informal hearing.

The director will conduct an informal fact finding hearing with the appellant for the purpose of resolving the licensing action at issue.

### B. Hearing date and notice.

The director 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.

### C. Place of hearings.

All informal hearings shall be held in Richmond, Virginia, unless the director decides otherwise.

### D. Conduct of hearings.

The hearings shall be informal. They shall not be open to the public.

# State Lottery Department

1. The hearings will be electronically recorded. The recordings will be kept until any time limits for any subsequent appeals have expired.

2. 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 department. The transcript shall become part of the department's records.

3. 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.

4. The department will present its facts in the case and may request other parties to appear to present testimony.

5. Questions may be asked by any of the parties at any time during the presentation of information subject to the director's prerogative to regulate the order of presentation in a manner which serves the interest of fairly developing the factual background of the appeal.

6. The director may exclude information at any time which he believes is not germane or which repeats information already received.

7. The director shall declare the hearing completed when both parties have finished presenting their information.

## E. Director to issue written decision.

Normally, the director shall issue his decision within 15 days after the conclusion of an informal hearing. However, for a hearing with a court reporter, the director 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.

## F. Appeal to board for hearing.

After receiving the director's decision on the informal hearing, the appellant may elect to appeal to the board for a formal hearing on the licensing action. The appeal shall be:

1. Submitted in writing within 15 days of receipt of the director's decision on the informal hearing;
2. Mailed to:

Chairman, State Lottery Board  
State Lottery Department  
Post Office Box 4689

Richmond, Virginia 23220

OR

Hand delivered to:

Chairman, State Lottery Board  
State Lottery Department  
Bookbindery Building  
2201 West Broad Street  
Richmond, Virginia 23220

3. The same procedures in § 3.5 B for filing the original notice of appeal govern the filing of the notice of appeal of the director's decision to the board.

4. The appeal shall state:

- a. The decision of the director which is being appealed;
- b. The basis for the appeal;
- c. The retailer's license number or the Retailer License Application Control Number; and
- d. Any additional information the appellant may wish to include concerning the appeal.

## § 3.7. Procedures for conducting formal licensing hearings.

### A. Board to conduct formal hearing.

The board will conduct a formal hearing within 45 days of receipt of an appeal on a licensing action.

### B. Number of board members hearing appeal.

Three or more members of the board are sufficient to hear an appeal. If the chairman of the board is not present, the members present shall choose one from among them to preside over the hearing.

### C. Board chairman may designate an ad hoc committee to hear appeals.

The board chairman at his discretion may designate an ad hoc committee of the board 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 board. If the chairman of the board is not present, the members of the ad hoc committee shall choose one from among them to preside over the hearing.

### D. Conflict of interest.

If any board member determines that he has a conflict of interest or potential conflict, that board member shall not take part in the hearing. In the event of such a disqualification on a subcommittee, the board chairman

# State Lottery Department

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shall appoint an ad hoc substitute for the hearing.

## E. Notice, time and place of hearing.

A notice setting the hearing date, time and location will be sent to the appellant at least 10 days before the day set for the hearing. All hearings will be held in Richmond, Virginia, unless the board decides otherwise.

## F. Conduct of hearings.

The hearings shall be conducted in accordance with the provisions of the Virginia Administrative Process Act (APA). The hearings shall be open to the public.

1. The hearings will be electronically recorded and the recordings will be kept until any time limits for any subsequent court appeals have expired.
2. 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 department. The transcript shall become part of the department's records.
3. The provisions of §§ 9-6.14:12 through 9-1.14:14 of the APA shall apply with respect to the rights and responsibilities of the appellant and of the department.

## G. Board's decision.

Normally, the board will issue its written decision within 21 days of the conclusion of the hearing. However, for a hearing with a court reporter, the board will issue its written decision within 21 days of receipt of the transcript of the hearing.

1. A copy of the board's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained in the department and become a part of the case file.
2. The written decision will contain:
  - a. A statement of the facts to be called "Findings of Facts";
  - b. A statement of conclusions to be called "Conclusions" and to include as much detail as the board feels is necessary to set out the reasons and basis for its decision; and
  - c. A statement, to be called "Decision and Order," which sets out the board's decision and order in the case.

## H. Court review.

After receiving the board's decision on the case, the appellant may elect to pursue court review as provided for

in the Administrative Process Act.

## Article 3.

### Procedures for Promulgating Regulations.

#### § 3.8. Board procedures for promulgating regulations.

##### A. Generally.

Except for temporary regulations issued under the exemption provided by the Virginia Lottery Law, the board shall promulgate regulations, in consultation with the director, in accordance with the provisions of the Administrative Process Act (Chapter 1.1:1 of Title 9 of the Code of Virginia).

1. The board will provide for a public participation process to be set out in "Guidelines for Public Participation in Regulation Development and Promulgation."
2. Public hearings may be held if the subject matter of a proposed regulation and the level of interest generated through the public participation process warrant them.

##### B. Temporary regulations.

~~Temporary regulations to be issued under the exemption provided by law will be adopted by the board at public meetings. The public may provide written comments on newly adopted temporary regulations. The board will consider these comments for later revisions to the regulations.~~

## PART IV. PROCUREMENT.

#### § 4.1. Procurement in general.

A. To promote the free enterprise system in Virginia, the State Lottery Department will purchase goods or services by ~~obtaining~~ *using* competitive bids ~~methods~~ whenever possible. In its operations and to ensure efficiency, effectiveness and economy, the department will consider using goods and services offered by private enterprise.

~~B. The director may request other state agencies to review contracts before the department signs them.~~  
*Reserved.*

C. The department may purchase goods or services which are under state term contracts established by the Department of General Services, Division of Purchases and Supply, when in the best interest of the State Lottery Department.

D. When time permits, the department may publish notice of procurement actions in "Virginia Business Opportunities ;," *published by the Department of General*

*Services, Division of Purchases and Supplies.*

## § 4.2. Exemption and restrictions.

A. Purchase of goods and services of \$1,000 or less shall be exempted from competitive procurement procedures. Specific purchases of goods and services of more than \$1,000 may be exempted from the competitive bidding procedure procurement procedures when the director determines in writing that the best interests of the Commonwealth department will be served. An exemption may also be declared by the director when an immediate or emergency need exists for goods or services.

B. All purchases shall be made in compliance with the standards of ethics in § 5.19 4.23 of these regulations.

C. The department shall not take any procurement action which discriminates on the basis of the race, religion, color, sex, or national origin of any vendor.

D. It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in state procurement activities. Towards that end, the State Lottery Department encourages these firms to compete and encourages nonminority firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities.

E. Whenever a purchase is exempt from competitive procurement procedures under these regulations, the contracting officer is obliged to make a determination that the cost of the goods or services is reasonable under the circumstances. In making this reasonableness determination, the contracting officer may use historical pricing data, and personal knowledge of product and marketplace conditions.

## § 4.3. Requests for information.

A. A Request for Information (RFI) may be used by the department to determine available sources for goods or services.

B. The RFI shall set out a description of the good or service needed, its purpose and the date by which the department needs the information.

C. The RFI may be mailed to interested parties or published by summary notice in general circulation newspapers or other publications.

1. Additional RFIs may be published for a good or a service, as determined on a case-by-case basis.

2. To help ensure competition, the department will ask for information from as many private sector vendors as it determines are necessary.

D. All costs of developing and presenting the information furnished will be paid for by the vendor.

E. The department shall have unlimited use of the information furnished in the reply to an RFI. The department accepts no responsibility for protection of the information furnished unless the vendor requests that proprietary information be protected in the manner prescribed by § 11-52 D of the Code of Virginia. The department shall have no further obligation to any vendor who furnishes information.

F. The department may, at its option, use the responses to the RFI as a basis for entering directly into negotiation with one or more vendors for the purpose of entering into a contract.

## § 4.4. Request for Proposals.

A. A written Request for Proposal (RFP) may be used by the department to describe in general terms the goods or services to be purchased. An RFP may result in a negotiated contract.

B. The RFP will set forth the due date and list the requirements to be used by the vendors in writing the proposal. It may contain other terms and conditions and essential vendor characteristics.

C. The department shall publish or post a public notice of the RFP.

1. All solicitations shall be posted on a bulletin board at the State Lottery Department. The notice may also be: mailed to vendors who responded to a Request for Information; published in general circulation newspapers in areas where the contract will be performed; if time permits and at the option of the department, reported to the "Virginia Business Opportunities" at the Department of General Services, Division of Purchases and Supply; and given to any other interested vendor.

2. The department shall decide the method of giving public notice on a case-by-case basis. The decision will consider the means which will best serve the department's procurement needs and competition in the private sector.

D. Public openings of the RFP's are not required. If the RFP's are opened in public, only the names of the vendors who submitted proposals will be available to the public.

E. The department will evaluate each vendor proposal.

1. The evaluation will consider the vendor's response to the factors in the RFP.

2. The evaluation will consider whether the vendor is qualified, responsive and responsible for the contract.



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F. The department may conduct contract negotiations with one or more qualified vendors. The department may also determine, in its sole discretion, that only one vendor is fully qualified or that one vendor is clearly more highly qualified than the others and negotiate and award a contract to that vendor.

## G. Award of RFP Contract.

1. The vendor selected shall be qualified and best suited on the basis of the proposal and contract negotiations.

2. Price will be considered but need is not be necessarily the only determining factor.

3. The award document shall be a contract. It shall include requirements, terms and conditions of the RFP and the final contract terms agreed upon.

## § 4.5. Invitations for Bids.

A. A written Invitation for Bid (IFB) may be used by the department to describe in detail the specifications, contractual terms and conditions which apply to a purchase of goods or services.

B. The IFB will list special qualifications needed by a vendor. It will describe the contract requirements and set the due date for bid responses.

1. The IFB may contain inspection, testing, quality, and other terms essential to the contract.

2. It may contain other optional data.

## C. Public notice of the IFB shall be given.

1. The IFB may be mailed to potential bidders and to the Department of Minority Business Enterprise. In addition, it may be published in summary form stating where a full copy may be obtained in general circulation newspapers in areas where the contract will be performed. The IFB shall be posted at the department's central office in a public area used to post purchase notices, and shall be given to any other interested vendor.

2. The publication of the IFB notice will consider the means which will best serve the department's procurement needs and competition in the private sector.

## D. Receiving IFB's.

1. Bids shall be received until the date and time set forth in the IFB.

2. Late bids shall not be considered.

## E. Opening IFB's.

~~Bids~~ The IFB may provide that bids shall be publicly opened ~~and~~. If bids are publicly opened, the following items shall be read aloud:

1. Name of bidder;

2. Unit or lot price, as applicable; and

3. Terms: discount terms offered, if applicable, and brand name and model number, if requested by attendees.

## F. Evaluating IFB's.

The department shall evaluate each vendor bid.

1. The evaluation shall consider whether the bid responds to the factors in the IFB.

2. All bids which respond completely to the IFB shall be evaluated to determine which bid presents the lowest dollar price.

3. The vendor presenting the lowest price bid shall be evaluated to determine whether he is a responsible bidder.

## G. Award of IFB contract.

The department shall award the contract to the lowest responsive and responsible bidder.

## § 4.6. Sole source ~~contracts~~ procurements.

A. A sole source ~~contract~~ procurement shall be made when there is only one source *practicably* available for goods or services. *Because there is only one source practicably available, a sole source contract may be made without the use of an RFI, RFP, IFB or other competitive procurement process.*

B. For a sole source procurement of more than \$1,000 but not more than \$15,000, the ~~director~~ department will state in writing for the file that only one source was determined to be *practicably* available, the vendor selected, the goods or services ~~contracted for and~~ *procured*, the date of the ~~contract~~ procurement and factors leading to the determination of sole source.

C. If the contract is over \$10,000 For a sole source procurement greater than \$15,000, on the day the director awards the ~~contract~~ procurement, he will post the a written statement in a public area used to post purchase notices at the department's central office. *The director will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods and services procured for and the date of the procurement.*

## § 4.7. Emergency purchase ~~contract~~ procurement.

A. An emergency purchase ~~contract procurement~~ shall be made when an unexpected, sudden, serious, or urgent situation demands immediate action. An emergency purchase may be used only to purchase goods or services necessary to meet the emergency; subsequent purchases must be obtained through normal purchasing procedures. Competitive procedures are not required to make an emergency purchase procurement.

B. For an emergency purchase of more than \$1,000 but not more than \$15,000, the department will state in writing the nature of the emergency, the vendor selected, the goods or services ~~contracted for and procured~~, the date of the ~~contract procurement~~ and factors leading to a determination of the emergency purchase .

C. If the ~~contract~~ is over \$10,000 For an emergency purchase greater than \$15,000 , on the day the director awards the ~~contract procurement~~ , he will post the a written statement shall be posted in a public area used to post purchase notices at the department's central office. The director will state in writing for the file the nature of the emergency, the vendor selected, the goods and services procured, the date of the procurement and factors leading to a determination of the emergency purchase.

#### § 4.8. Procedures for small purchases.

##### A. Generally.

Small purchases are those where the estimated one-time or annual contract for cost of goods or services does not exceed \$15,000.

##### B. Price quotations.

Price quotations may be obtained through oral quotations in person or by telephone *without the use of an RFI, RFP or IFB* .

##### C. Written confirmation.

If the contract is \$2,000 or less, no written confirmation is needed. Written price confirmation from the vendor is needed for small purchases over \$2,000.

D. Except in the case of an emergency under § 4.7 or for purchases of \$1,000 or less , the department will attempt to obtain at least three quotations.

E. In letting small purchase contracts, the department may consider factors in addition to price.

#### § 4.9. Procurement of nonprofessional services.

A. Generally, the procurement of nonprofessional services shall be in accordance with competitive procurement principles, unless otherwise exempted.

B. Nonprofessional services may be procured through

noncompetitive negotiations under the following conditions:

1. Where the estimated one-time cost is less than \$5,000. When there is more than one qualified source for a specific type of nonprofessional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.

2. When a written determination is made and approved by the director that there is only one adequately qualified expert or source practicably available for the services to be procured.

#### § 4.10. Procurement of professional services.

A. Generally, the procurement of professional services shall be in accordance with competitive principles but is always exempt from competitive bidding requirements. Selection of professional services should be made on the basis of qualifications, resources, experience and the cost involved.

B. Professional services may be procured through noncompetitive negotiations under the following conditions:

1. Where the estimated one-time cost is less than \$5,000. When there is more than one qualified source for a specific type of professional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.

2. When a written determination is made and approved by the director that there is only one adequately qualified professional, expert or source practicably available for the services to be procured. Such services may include those of uniquely qualified lottery industry professionals, experts or sources.

C. Professional services procurement by competitive negotiation shall be in accordance with § 4.11.

#### § 4.11. Guidelines for competitive procurement of professional services.

A. In competitive negotiations for professional services, the department shall engage in one or more individual discussions with each of two or more offerors deemed fully qualified, responsible and suitable, with emphasis on professional competence to provide the required services. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative estimates of total project costs and methods to be utilized in arriving at a price for the services.

B. At the request of an offeror, properly marked,

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*proprietary information shall not be disclosed to the public or to competitors.*

*C. At the conclusion of the discussions, on the basis of predetermined evaluation factors and information developed in the selection process, the department shall select, in order of preference, two or more offerors whose professional qualifications and proposed services are deemed to meet best the department's procurement needs.*

*D. Negotiations are then conducted with the first ranked offeror. If a satisfactory and advantageous contract can be negotiated at a fair and reasonable price, the award is made to that offeror. Otherwise, the negotiations with the first ranked offeror are terminated formally and are conducted with the offeror ranked second and so on until such a contract can be negotiated at a fair and reasonable price.*

*E. If the department determines in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the other offerors under consideration, a purchase may be negotiated and awarded to that offeror.*

*F. The department must ensure that all points negotiated are properly documented and become a part of the procurement file.*

*G. The department shall establish a limit for each procurement on the number of times a contract or open purchase term may be extended.*

*H. A contract for professional services may be made subject to the notification and public posting requirement of the formal bid procedures.*

## § 4.12. Time to submit and accept RFI's, RFP's or IFB's.

A. All vendors shall submit requests for information, proposals or bids in time to reach the department before the set time and due date.

1. All vendors shall take responsibility for their chosen method of delivery to the department.
2. The department will date stamp the vendors' answers to RFI's, RFP's and IFB's when received. The department's stamped date shall be considered the official date received.
3. Any information which the department did not request or is received after the due date may be disregarded or returned to the vendor.
4. All vendors who received solicitations will be notified of any changes in the process times and dates or if a solicitation is cancelled.

B. Any proposal or bid quotation submitted by a vendor to the department shall remain valid for at least 45 days

after the submission due date and will remain in effect thereafter unless the bidder retracts his bid in writing at the end of that period. The vendor must agree to accept a contract if offered within the 45-day time period. The department may require a longer or shorter period for specific goods or services.

## § 4.10- 4.13. Questions on bids.

Questions on contents of other bidders' bids or offerors' proposals will not be answered until after decisions are made.

## § 4.11- 4.14. How to modify or withdraw proposals or bids.

A. A vendor may modify or withdraw a proposal or bid before the due time and date set out in the request without any formalities except that the modification or withdrawal shall be in writing.

B. A request to modify or withdraw a bid or proposal after the due date may be given special review by the director.

1. A vendor shall put in writing and deliver to the department a statement which details how the proposal would be modified or why it should be permitted to be withdrawn.

2. A proposal or bid may be withdrawn after opening if the ~~director~~ department receives prompt notice and sufficient information to show that an honest error will cause undue financial loss.

C. A vendor may not modify a proposal or bid after the purchase award is made.

## § 4.12- 4.15. Rejection of bids.

The department reserves the right to reject any or all bids. The decision may be made that a vendor is ineligible, disqualified, not responsive or responsible, or involved in fraud, or that the best interest of the Commonwealth will not be served. Vendors so identified shall be notified in writing by the department. New bids may be requested at a time which meets the needs of the department.

## § 4.12- 4.16. Testing of product.

Various items or services may require testing either before or after the final award of a contract. The vendor shall guarantee price and quality before and after testing.

## § 4.14- 4.17. Proposal bid or performance security.

A. The department may require performance security on proposals or bids. The security is to protect the interests of the Commonwealth.

1. When required, security must be in the form of a

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certified check, certificate of deposit or letter of credit made payable to the State Lottery Department, or on a form issued by a surety company authorized to do business in Virginia.

2. When required, security will not be waived, *except upon action by the director.*

B. Security provided by vendors to whom a contract is awarded will be kept by the department until all provisions of the contract have been completed.

## § 4-15. 4.18. Assignment of contracts.

A vendor may not assign any contract to another party without permission of the director.

## § 4-16. 4.19. Strikes, lockouts or acts of God.

Whenever a vendor's place of business, mode of delivery or source of supply has been disrupted by a strike, lockout or act of God, the vendor will promptly advise the department by telephone and in writing. The department may cancel all orders on file with the vendor and place an order with another vendor.

## § 4-17. 4.20. Remedies for the department on goods and services which do not meet the contract.

A. In any case where the vendor fails to deliver, or has delivered goods or services which do not meet the contract standards, the department will send a written "Notice to Cure" to the vendor for correction of the problem.

B. If the vendor does not respond adequately to the "Notice to Cure," the department may cancel the contract and buy goods or services from another vendor. Any increase between the contract price and market price will be paid by the vendor who failed to follow the contract. This remedy shall be in addition to any other remedy provided by law.

## § 4-18. 4.21. Administration of contracts.

A. Generally.

The department will follow procedures in administering its contracts that will ensure that the vendor is complying with all terms and conditions of the contract.

B. Records.

The department shall keep all records relating to a contract for three years after the end of a contract.

1. The records shall include the requirements, a list of the vendors bidding, methods of evaluation, a signed copy of the contract, comments on vendor performance, and any other information necessary.

2. Records shall be open to the public except for proprietary information for which protection has been properly requested.

C. Change orders.

1. Contracts may need to be adjusted for minor changes. The department may change the contract to correct errors, to add or delete small quantities of goods, or to make other minor changes.

2. The department shall send the changes in writing to the vendor. Vendors who deviate from the contract without receiving the written changes from the department do so at their own risk.

3. *Modifications which increase the original contract price by an amount less than \$5,000 may be made by letters issued by the State Lottery Department and accepted by signature of the contractor. Such letter shall become part of the official contract. In no event shall the cumulative amount of the contract increased by all such letters exceed \$10,000.*

4. *All contract changes of \$5,000 or more require a formal written amendment to the contract.*

D. Cancellation orders.

The department shall cancel orders in writing. Contracts may be cancelled if the vendor fails to fulfill his obligations as provided in § 4-17 4.20 A and B.

E. Overshipments and overruns.

The department may refuse to accept goods which exceed the number ordered. The goods may be returned to the vendor at the vendor's expense.

F. Inspection, acceptance and rejection of goods or services.

1. The department shall be responsible for inspecting, accepting or rejecting goods or services under contract.

2. In rejecting goods or services, the department will notify the vendor as soon as possible.

3. The department will state the reasons for rejecting the goods or services and request prompt replacement.

4. Replacement goods or services shall be made available at a date acceptable to the department.

G. Complaints.

The department will report complaints in writing to the vendor as they occur. The reports will be part of the department's purchase records.

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## H. Invoice processing.

To maintain good vendor relations and a competitive environment, the department will process invoices promptly. The department shall follow the requirements for prompt payment found in Title 11, Chapter 7, Article 2.1 of the Code of Virginia. The department will use rules and regulations issued by the Department of Accounts to process invoices.

## I. Default actions.

Before the department finds a vendor in default of a contract, it will consider the specific reasons the vendor failed and the time needed to get goods or services from other vendors.

## J. Termination for convenience of the department.

1. A purchase order or contract may be terminated for the convenience of the department by delivering to the vendor a notice of termination specifying the extent to which performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified.

2. If the purchase order or contract is for commercial items sold in substantial quantities to the general public and no specific identifiable inventories were maintained exclusively for the department's use, no claims will be accepted by the department. Payment will be made for items shipped prior to receipt of the termination notice.

3. If the purchase order or contract is for items being produced exclusively for the use of the department, and raw materials or services must be secured by the vendor from other sources, the vendor shall order no additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. The department may direct the delivery of the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the vendor to sell the same, subject to the department's approval as to price. The vendor may, with the approval of the department retain the same, and apply a credit to the claim. The vendor must complete performance on any part of the purchase order or contract which was not terminated.

4. Within 120 days after receipt of the notice of termination, or such longer period as the department for good cause may allow, the vendor must submit any termination claims. This claim will be in a form and with certifications prescribed by the purchasing office that issued the purchase order. The claim will

be reviewed and forwarded with appropriate recommendations to the requisitioning agency or the appropriate assistant attorney general, or both, for disposition in accordance with § 2.1-127 of the Code of Virginia.

## ~~§ 4-19.~~ 4.22. Vendor background. ~~not:~~

A. A vendor shall allow the department to check his background. The background check may extend to any on-line or instant ticket vendor employee working directly on a contract with the department, any parent or subsidiary corporation of the vendor and shareholders of 5.0% or more of the vendor, parent or subsidiary corporation. The check may include officers and directors of the vendor or parent or subsidiary corporation.

B. Before contracting with the department, the *department may require a vendor shall* to sign an agreement with the department to allow a criminal investigation of the entities and persons named in ~~§ 4-19~~ 4.22 A .

C. The vendor shall allow the department to audit, inspect, examine or photocopy the vendor's records related to the State Lottery Department business during normal business hours.

## ~~§ 4-20.~~ 4.23. Ethics in contracting.

### A. Generally.

Except for more stringent requirements set forth in this section, the department will follow the ethics in public contracting requirements of the Virginia Public Procurement Act, Title 11, Chapter 7, Article 4 of the Code of Virginia.

### B. Employee role with vendors prohibited.

A department employee who has responsibility to buy from vendors may not:

1. Be employed by a vendor at the same time;
2. Have a business associate or a member of his household be an officer, director, trustee, partner or hold a similar position with a vendor and play a role in soliciting contracts for vendors;
3. Himself or his business associate or a member of his household own or control an interest in a vendor of at least 5.0%;
4. Himself or his business associate or a member of his household have a financial interest in a contract procured for the department;
5. Himself or his business associate or a member of his household negotiate or have an arrangement about prospective employment with a vendor.

## C. Offers, requests, or acceptance of gifts.

No vendor or employee of the department involved in purchasing will offer, request or accept, at the present or in the future, any payment, loan, advance, deposit of money, services or anything of more than nominal value for which nothing of comparable value is exchanged.

## D. Kickbacks.

No vendor will demand or receive from any of his suppliers or subcontractors, as an incentive for a contract, any kickback.

E. Vendors to give certified statement on ethics in contracting.

Each vendor shall give the department a certified statement that the proposal, bid, or contract or any claim is not the result of, or affected by, collusion with another vendor. The statement will also state that no act of fraud has been involved in negotiating, signing and meeting the contract.

F. Department employees to give notice of subsequent employment with vendors.

Any department employee or former employee who dealt in an official capacity with vendors on procurement actions who intends to accept employment from any such vendor within one year of terminating his employment with the department shall give notice to the director of his intention prior to his first day of employment with the vendor.

G. Any contract which violates the contracting ethics in the Code of Virginia and these regulations may be voided and rescinded immediately by the department.

## PART V. PROCUREMENT APPEALS AND DISPUTES.

### § 5.1. Generally.

The State Lottery Department is not subject to the Virginia Public Procurement Act or its procedures. In lieu thereof, this regulation applies to all vendors. In the event of a protest on a procurement action, the vendor shall follow the remedies available in this regulation. The vendor assumes whatever risks are involved in the selected method of delivery to the director. The director will conduct a hearing on each appeal or he shall designate a hearing officer to preside over the hearing.

§ 5.2. Appeals, protests, time frames and remedies related to solicitation and award of contracts.

#### A. If a vendor is considered ineligible or disqualified.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after

the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief will be to consider the vendor eligible for the particular contract.

B. If a vendor is not allowed to withdraw a bid in certain circumstances.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If no bond has been posted by the vendor, then before appealing the department's decision the vendor shall provide to the department a certified check or cash bond for the amount of the difference between the bid sought to be withdrawn and the next lowest bid.

- a. The certified check shall be payable to the State Lottery Department.

- b. The cash bond shall name the State Lottery Department as obligor.

- c. The security shall be released if the vendor is allowed to withdraw the bid or if the vendor withdraws the appeal and agrees to accept the bid or if the department's decision is reversed.

- d. The security shall go to the State Lottery Department if the vendor loses all appeals and fails to accept the contract.

3. If appealed and the department's decision is reversed, the sole relief shall be to allow the vendor to withdraw the bid.

C. If a vendor is considered not responsible for certain contracts.

1. Any vendor, despite being the low bidder, may be determined not to be responsible for a particular contract. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief shall be that the vendor is a responsible vendor for the particular contract under appeal.

3. A vendor protesting the department's decision that he is not responsible, shall appeal under this section and shall not protest the award or proposed award under subsection D.

4. Nothing contained in this subsection shall be construed to require the department to furnish a

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statement of the reasons why a particular proposal was not deemed acceptable.

## D. If a vendor protests an award or decision.

1. Any vendor or potential vendor may protest the award or the department's decision to award a contract. The written protest shall be filed within 10 days after the award on the announcement of the decision to award is posted or published, whichever occurs first.

2. If the protest depends upon information contained in public records pertaining to the purchase, then a 10 day time limit for a protest begins to run after the records are made available to the vendor for inspection, so long as the vendor's request to inspect the records is made within 10 days after the award or the announcement of the decision to award is posted or published, whichever occurs first.

3. No protest can be made that the selected vendor is not a responsible vendor. The only grounds for filing a protest are (i) that a procurement action was not based upon competitive principles, or (ii) that a procurement action violated the standards of ethics promulgated by the board.

4. If, prior to an award, it is determined by the director that the department's decision to award the contract is erroneous, the only relief will be that the director will cancel the proposed award or revise it.

5. No protest shall delay the award of a contract.

6. Where the award has been made, but the work has not begun, the director may stop the contract. Where the award has been made and the work begun, the director may decide that the contract is void if voiding the contract is in the best interest of the public. Where a contract is declared void, the performing vendor will be paid for the cost of work up to the time when the contract was voided. In no event shall the performing vendor be paid for lost profits.

## § 5.3. Appeals, time frames and remedies related to contract disputes and claims.

### A. Generally.

In the event a vendor has a dispute with the department over a contract awarded to him, he may file a written claim with the director.

### B. Contract claims.

Claims for money or other relief, shall be submitted in writing to the director, and shall state the reasons for the action.

1. All vendor's claims shall be filed no later than 30 days after final payment is made by the department.

2. If a claim arises while a contract is still being fulfilled, a vendor shall give a written notice of the vendor's intention to file a claim. The notice shall be given to the director at the time the vendor begins the disputed work or within 10 days after the dispute occurs.

3. Nothing in this regulation shall keep a vendor from submitting an invoice to the department for final payment after the work is completed and accepted.

4. Pending claims shall not delay payment from the department to the vendor for undisputed amounts.

5. The director's decision will state the reasons for the action.

### C. Claims relief.

Relief from administrative procedures, liquidated damages, or informalities may be given by the director. The circumstances allowing relief usually result from acts of God, sabotage, and accidents, fire or explosion not caused by negligence.

## § 5.4. Form and content of appeal to the director.

### A. Form for appeal.

The vendor shall make the appeal to the director in writing. The appeal shall be mailed to the State Lottery Director, State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220 or hand delivered to the department's central office at the Bookbindery Building, 2201 West Broad Street, Richmond, Virginia 23220.

### B. Content of appeal.

The appeal shall state the:

1. Decision of the department which is being appealed;
2. Basis for the appeal;
3. Contract number;
4. Other information which identifies the contract; and
5. Reasons for the action.

### C. Vendor notification.

The director's decision on an appeal will be sent to the vendor by registered mail, return receipt requested.

1. The director shall follow the time limits in the regulations and shall not make exceptions to the filing

periods for the vendor's appeal and rendering the director's decision.

2. The director's decision will state the reasons for the action.

## § 5.5. State Lottery Department appeal hearing procedures.

### A. Generally.

The director or the appointed hearing officer will conduct a hearing on every appeal within 45 days after the appeal is filed with the director. The hearings before the State Lottery Department are not trials and shall not be conducted like a trial.

1. The Administrative Process Act does not apply to the hearings.

2. The hearings shall be informal. The vendor and the department will be given a reasonable time to present their position.

3. Legal counsel may represent the vendor or the department. Counsel is not required.

4. The director may exclude evidence which he determines is repetitive or not relevant to the dispute under consideration.

5. The director may limit the number of witnesses, testimony and oral presentation in order to hear the appeal in a reasonable amount of time.

6. Witnesses may be asked to testify. The director does not have subpoena power. No oath will be given.

7. The director may ask questions at any time. The director may not question the vendor in closed session.

### B. Public hearings for appeals.

1. Hearings shall be open to the public. The director may adjourn the public hearing to discuss and reach his decision in private.

2. The hearings shall be electronically recorded. The department will keep the recordings for 60 days.

3. A court reporter may be used. The court reporter shall be paid by the person who requested him.

a. The court reporter's transcript shall be given to the director at no expense, unless the director requests the use of a court reporter.

b. The transcript shall become part of the department's records.

### C. Order during the hearing.

Unless the director determines otherwise, hearings will be in the following order:

1. The vendor will explain his reasons for appealing and the desired relief.

2. The vendor will present his witnesses and evidence. The director and the department will be able to ask questions of each witness.

3. The department will present its witnesses and evidence. The appellant may ask questions of each party and witness.

4. After all evidence has been presented, the director shall reach his decision in private.

## § 5.6. Notice, time and place of hearings.

### A. Notice and setting the time.

All people involved in the hearing will be given at least 10 days notice of the time and place of the appeal hearing.

1. Appeals may be heard sooner if everyone agrees.

2. In scheduling hearings, the director may consider the desires of the people involved in the hearing.

### B. Place of hearings.

All hearings shall be held in Richmond, Virginia, unless the director decides otherwise.

## § 5.7. Who may take part in the appeal hearing.

### A. Generally.

The director may request specific people to take part in the hearing.

B. Hearings on ineligibility, disqualification, responsibility or denial of a request to withdraw a bid.

The protesting vendor and the department shall participate.

### C. Hearings on claims or disputes.

The protesting vendor and the department shall participate.

## § 5.8. Director's decision.

### A. Generally.

The director will issue a written decision within 30 days after the hearing date except for hearings with a court reporter.



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## B. Hearings with court reporter.

For hearings with a court reporter, the director's decision will be issued within 30 days after a transcript of the hearing is received by the director if a transcript is prepared. There is no requirement that a transcript be made, even if services of a court reporter are used for the hearing.

## C. Format of decision.

1. The director's decision will include a brief statement of the facts. This will be called "Findings of Fact."
2. The director will give his decision. The decision will include as much detail as the director feels is necessary to set out reasons for his decision.
3. The decision will be signed by the director.

## D. Copies of the decision.

Copies will be mailed to the appealing vendor, all other vendors who participated in the appeal and the department. The director will give copies of the decision to other people who request it.

## § 5.9. Appeal to courts.

A. The department is not subject to the Virginia Public Procurement Act. Thus, a vendor has no automatic right of appeal of a decision to award, an award, a contract dispute, or a claim with the department.

B. Nothing in these regulations shall prevent the director from taking legal action against a vendor.

\* \* \* \* \*

**NOTICE:** The forms used in administering the Administration Regulations are not being published, however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Informal Administrative Hearing Request  
Formal Administrative Hearing Request  
State Lottery Department - Agency Purchase Order

\* \* \* \* \*

**Title of Regulation:** VR 447-02-1. Instant Game Regulations.

**Statutory Authority:** § 58.1-4007 of the Code of Virginia.

**Public Hearing Date:** February 27, 1991 - 10 a.m.

(See Calendar of Events section for additional information)

## Summary:

*The State Lottery Department is amending numerous sections of the Instant Game Regulations to conform to amendments to the State Lottery Law and to refine and further clarify sections which deal with the lottery retailer application procedures and licensing process, including standards for licensing, issuance of perpetual licenses and procedures for annual license review. The revisions clarify retailer compensation, settlement of accounts and prize payment procedures.*

VR 447-02-1. Instant Game Regulations.

## PART I. LICENSING OF RETAILERS FOR INSTANT GAMES.

### § 1.1. Licensing.

Generally.

The director may license as lottery retailers for instant games persons who will best serve the public convenience and promote the sale of tickets and who meet the eligibility criteria and standards for licensing.

For purposes of this part on licensing, "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.

### § 1.2. Eligibility.

A. Eighteen years of age and bondable.

Any person who is 18 years of age or older and who is bondable may submit an application for licensure, except no person may submit an application for licensure:

1. Who will be engaged solely *primarily* in the business of selling lottery tickets; or
2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as a board member, officer or employee of the department; or
3. Who is a vendor of lottery tickets or material or data processing services, or whose business is owned by, controlled by, or affiliated with a vendor of lottery tickets or materials or data processing services.

B. Application not an entitlement to license.

The submission of an application for licensure does not in any way entitle any person to receive a license to act as a lottery retailer.

## § 1.3. Application procedure.

### Filing of forms with the department.

Any eligible person shall first file an application with the department on forms supplied for that purpose, along with the required fees as specified elsewhere in these regulations. The applicant shall complete all information on the application forms in order to be considered for licensing. The forms to be submitted include:

1. Retailer License Application;
2. Personal Data Form(s); and
3. ~~Preliminary Marketing Evaluation~~ *Retailer Location Form.*

State Lottery Law makes falsification, concealment or misrepresentation of a material fact, or making a false, fictitious or fraudulent statement or representation in an application for a license a misdemeanor.

## § 1.4. General standards for licensing.

### A. Selection factors for licensing.

The director may license those persons who, in his opinion, will best serve the public interest and public trust in the lottery and promote the sale of lottery tickets. The director will consider the following factors before issuing or renewing a license:

1. The financial responsibility and security of the applicant, to include:
  - a. A credit and criminal background investigation;
  - b. Outstanding state tax liability;
  - c. Required business licenses, tax and business permits;
  - d. Physical security at the place of business, including insurance coverage.
2. The accessibility of his place of business to the public, to include:
  - a. The hours of operation;
  - b. The availability of parking and transit routes, where applicable;
  - c. The location in relation to major employers, schools, or retail centers;

d. The population level and rate of growth in the market area;

e. The traffic density, including levels of congestion in the market area.

3. The sufficiency of existing lottery retailers to serve the public convenience, to include:

a. The number of and proximity to other lottery retailers in the market area;

b. The expected sales volume and profitability of potentially competing lottery retailers;

c. The adequacy of coverage of all regions of the Commonwealth with lottery retailers.

4. The volume of expected lottery ticket sales, to include:

a. Type and volume of the products and services sold by the retailer;

b. Dollar sales volume of business;

c. Sales history of business and market area;

d. Volume of customer traffic in place of business.

5. *The ability to offer high levels of customer service to instant lottery players, to include:*

*a. Ability to display point of sale material;*

*b. A favorable image consistent with lottery standards;*

*c. Ability to pay prizes during maximum selling hours; and*

*d. Commitment to authorize employee participation in all required instant lottery training.*

### B. Additional factors for selection.

The director may develop and, by administrative order, publish additional criteria which, in his judgment, are necessary to serve the public interest and public trust in the lottery.

## § 1.5. Bonding of lottery retailers.

### A. Approved retailer to secure bond.

A lottery retailer approved for licensing shall obtain a surety bond from a surety company entitled to do business in Virginia. The purpose of the surety bond is to protect the Commonwealth from a potential loss in the event the retailer fails to perform his responsibilities.

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1. Unless otherwise provided under subsection C of this section, the surety bond shall be in the amount and penalty of \$5,000 and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.

2. Within 15 calendar days of receipt of the "License Approval Notice," the lottery retailer shall return the properly executed "Bonding Requirement" portion of the "License Approval Notice" to the State Lottery Department to be filed with his record.

B. Continuation of surety bond on ~~renewal~~ of *annual license review* .

A lottery retailer ~~applying for renewal~~ of a license whose license is being reviewed shall:

1. Obtain a letter or certificate from the surety company to verify that the surety bond is being continued for the *annual license renewal review* period; and

2. Submit the surety company's letter or certificate with the required *annual license renewal* fee to the State Lottery Department.

C. Sliding scale for surety bond amounts.

The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded.

D. Effective date for sliding scale.

The sliding scale for surety bonding requirements will become effective when the director determines that sufficient data on lottery retailer ticket sales volume activity are available. Any changes in a retailer's surety bonding requirements that result from instituting the sliding scale will become effective only at the time of the retailer's next ~~renewal~~ *annual license review* action.

§ 1.6. Lottery bank accounts and EFT authorization.

A. Approved retailer to establish lottery bank account.

A lottery retailer approved for licensing shall establish a separate bank account to be used exclusively for lottery business in a bank participating in the Automatic Clearing House (ACH) system.

B. Retailer's use of lottery account.

The lottery account will be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the electronic funds transfer (EFT) process to settle a retailer's account for funds owed or due from the purchase of tickets and the

payment of prizes. All retailers shall make payments to the department through the electronic funds transfer (EFT) process unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

C. Retailer responsible for bank charges.

The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

D. Retailer to authorize electronic funds transfer.

Within 15 calendar days of receipt of the "License Approval Notice," the lottery retailer shall return the properly executed "Electronic Funds Transfer Authorization" portion of the "License Approval Notice" to the department to record establishment of his account.

E. Change in retailer's bank account.

If a retailer finds it necessary to change his bank account from one bank to another, he must submit a newly executed "Electronic Funds Transfer Authorization" form for the new bank account. The retailer may not discontinue use of his previously approved bank account until he receives notice from the department that the new account is approved for use.

F. Director to establish EFT account settlement schedule.

The director will establish a schedule for processing the EFT transactions against retailers' lottery bank accounts and issue instructions to retailers on how settlement of accounts will be made.

§ 1.7. License term and ~~renewal~~ *annual review* .

A. License term.

A general license for an approved lottery retailer shall be issued ~~for a one-year period on a perpetual basis subject to an annual determination of continued retailer eligibility and the payment of an annual fee fixed by the board~~ .

B. ~~License renewal.~~ *Annual license review.*

A general license shall be renewed annually at least 30 days before its expiration date and shall be accompanied by the appropriate fee(s) as specified elsewhere in these regulations. ~~The annual fee shall be collected within the 30 days preceding a retailer's anniversary date. Upon receipt of the annual fee, the general license shall be continued so long as all eligibility requirements are met.~~ The director may implement a staggered, monthly basis for annual license ~~renewals reviews~~ and allow for the proration of annual license fees to credit licensees for the time remaining on their current license when the

staggered renewal requirement is imposed. This section shall not be deemed to allow for a refund of license fees when a license is terminated, revoked or suspended for any other reason.

## C. Temporary license. (Reserved.)

No temporary licenses shall be issued after November 30, 1988.

1. All temporary licenses expire not later than December 1, 1988.

2. Upon expiration of a temporary license, the applicant shall stop the sale of tickets and surrender to a department representative his temporary license and department property and make settlement of his lottery account.

## D. Amended license term.

An amended license issued under the requirements of § 1.9 C shall be valid for the remainder of the period of the license it replaces. The annual fee for an amended license issued under the requirements of § 1.9 C will be due on the same date as the fee for the license it replaced.

## E. Special license.

The director may issue special licenses to persons for specific events and activities. Special licenses shall be for a limited duration and under terms and conditions that he determines appropriate to serve the public interest.

## § 1.8. License fees.

### A. License application fee.

The fee for a license application for a lottery retailer general license to sell instant game tickets shall be \$25. The general license fee to sell instant game tickets shall be paid for each location to be licensed. This fee is nonrefundable.

### B. Annual license renewal fee.

The annual fee for renewal of a lottery retailer general license to sell instant game tickets shall be an amount fixed by the board at its November meeting for all renewals annual license reviews occurring in the next calendar year. The renewal fee shall be designed to recover all or a portion of the annual costs of the department in providing services to the retailer. The renewal fee shall be paid for each location for which a license is renewed reviewed. This fee is nonrefundable. The renewal fee shall be submitted at least within the 30 days before preceding a retailer's general license expires anniversary date.

### C. Amended license application fee.

The fee for processing an amended license application for a lottery retailer general license shall be an amount as approved by the board at its November meeting for all amendments occurring in the next calendar year. The amended license fee shall be paid for each location affected. This fee is nonrefundable. An amended license application shall be submitted in cases where a business change occurs as specified in § 1.9 B.

## § 1.9. Transfer of license prohibited; invalidation of license.

### A. License not transferrable.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable to any other person or location.

### B. License invalidated.

A license shall become invalid for any of the following reasons:

1. Change in business location;
2. Change in business structure (e.g., from a partnership to a sole proprietorship);
3. Change in the business owners listed in the original application form for which submission of a Personal Data Form is required under the license application procedure.

### C. Amended application required.

A licensed lottery retailer who anticipates a change as listed in subsection B shall notify the department of the anticipated change at least 15 calendar days before it takes place and submit an amended application. The director shall review the changed factors in the same manner that would be required for a review of an original application.

## § 1.10. Display of license.

### License displayed in general view.

Every licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

## § 1.11. Denial, suspension, revocation or nonrenewal noncontinuation of license.

### A. Grounds for refusal to license.

The director may refuse to issue a license to a person if the person has been does not meet the eligibility criteria and standards for licensing as set out in these regulations or if:

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1. *The person has been convicted of a felony;*
2. *The person has been convicted of a crime involving moral turpitude;*
3. *The person has been convicted of any fraud or misrepresentation in any connection;*
4. *The person has been convicted of bookmaking or other forms of illegal gambling ; ;*
5. *The person's place of business caters to or is frequented predominantly by persons under the age of 18 years of age;*
6. *The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;*
7. *The nature of the person's business is not consonant with the probity of the Commonwealth; or*
8. *The person has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery.*

## B. Grounds for refusal to license partnership or corporation.

The director may refuse to issue a license to any partnership or corporation if he finds that any general or limited partner or officer or director of the partnership or corporation *does not meet the eligibility criteria and standards for licensing as set out in these regulations or if any general or limited partner or officer or director of the partnership or corporation has been convicted of any of the offenses cited in subsection A.*

## C. Grounds for suspension, revocation or refusal to ~~renew~~ *continue* license.

~~After notice and a hearing,~~ The director may suspend, revoke, or refuse to ~~renew~~ *continue* a license for any of the following reasons:

1. Failure to properly account for lottery tickets received, for prizes claimed and paid or for the proceeds of the sale of lottery tickets;
2. Failure to file or maintain the required bond or the required lottery bank account;
3. Failure to comply with applicable laws, instructions, terms and conditions of the license, or rules and regulations of the department concerning the licensed activity, especially with regard to the prompt payment of claims;
4. Conviction, following the approval of the license, of any of the offenses cited in subsection A;

5. Failure to file any return or report or to keep records or to pay any fees or other charges as required by the state lottery law or the rules and regulations of the department;

6. Commission of any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

7. Failure to maintain lottery ticket sales at a level sufficient to meet the department's administrative costs for servicing the retailer, provided that the public convenience is adequately served by other retailers;

8. Failure to notify the department of a material change, after the license is issued, of any matter required to be considered by the director in the licensing application process;

9. Failure to comply with lottery game rules;

10. Failure to meet minimum point of sale standards ;

11. *The person's place of business caters to or is frequented predominantly by persons under 18 years of age;*

12. *The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons; or*

13. *The nature of the person's business is not consonant with the probity of the Commonwealth.*

## D. Notice of intent to suspend, revoke or deny ~~renewal~~ *continuation* of license.

Before taking action under subsection C, the director will notify the retailer in writing of his intent to suspend, revoke or deny ~~renewal~~ *continuation* of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a hearing before the board. Such notice shall be given to the retailer at least 14 calendar days prior to the effective date of suspension, revocation or denial.

## E. Temporary suspension without notice.

If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into possible violations is concluded.

## F. Surrender of license and lottery property upon revocation or suspension.

A retailer shall surrender his license to the director by

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the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final lottery accounting of his lottery activities by the date specified by the director.

## § 1.12. Responsibility of lottery retailers.

Each retailer shall comply with all applicable state and federal laws, rules and regulations of the department, license terms and conditions, specific rules for all applicable lottery games, and directives and instructions which may be issued by the director.

## § 1.13. Display of material.

### A. Material in general view.

Lottery retailers shall display lottery point-of-sale material provided by the director in a manner which is readily seen by and available to the public.

### B. Prior approval for retailer-sponsored material.

A lottery retailer may use or display his own promotional and point-of-sale material, provided it has been submitted to and approved for use by the department in accordance with instructions issued by the director.

### C. Removal of unapproved material.

The director may require removal of any retailer's lottery material that has not been approved for use by the department.

## § 1.14. Inspection of premises.

### Access to premises by department.

Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect the lottery materials or tickets and the licensed premises.

## § 1.15. Examination of records; seizure of records.

### A. Inspection, auditing or copying of records.

Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing or copying as required by the director between the hours of 8 a.m. and 5 p.m., Mondays through Fridays and during the normal business hours of the licensed retailer.

### B. Records subject to seizure.

All books and records pertaining to the licensed retailer's lottery activities may be seized with good cause by the director without prior notice.

## § 1.16. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

## § 1.17. Reporting requirements and settlement procedures.

Instructions for purchasing tickets, reporting transactions and settling accounts.

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering tickets; (ii) paying for tickets purchased; (iii) reporting receipts, transactions and disbursements pertaining to lottery ticket sales; and (iv) settling the retailer's account with the department.

## § 1.18. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transfers or checks.

### A. Forms of payment for tickets; deposit of lottery receipts.

Each lottery retailer shall purchase the tickets distributed to him. The moneys for payment of these tickets shall be deposited to the credit of the State Lottery Fund by the department. The retailer shall make payments to the department by Electronic Funds Transfers (EFT); however, the director reserves the right to specify one or more of the following alternative forms of payment under such conditions as he deems appropriate:

1. Cash;
2. Cashier's check;
3. Certified check;
4. Money order; or
5. Business check.

### B. Payment due date.

Payments shall be due as specified by the director in the instructions to retailers regarding the purchasing and payment of tickets and the settlement of accounts.

### C. Penalty and interest charge for late payment.

Any retailer who fails to make payment when payment is due will be assessed an interest charge on the moneys due plus a \$25 penalty. The interest charge will be equal

# State Lottery Department

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to the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

D. Service charge for dishonored EFT transfer or bad check.

The director will assess a service charge of \$25 against any retailer whose payment through electronic funds transfer (EFT) or by check is dishonored.

E. Service charge for debts referred for collection.

If the department refers a debt of any retailer to the Attorney General, the Department of Taxation or any other central collection unit of the Commonwealth, the retailer owing the debt shall be liable for an additional service charge which shall be in the amount of the administrative costs associated with the collection of the debt that are incurred by the department and the agencies to which the debt is referred.

F. Service charge, interest and penalty waived.

*The service charge, interest and penalty charges may be waived when the event which would otherwise cause a service charge, interest or penalty to be assessed is not in any way the fault of the lottery retailer. For example, a waiver may be granted in the event of a bank error or lottery error.*

## § 1.19. Training of retailers and their employees.

Retailer training.

Each retailer or his designated representative or representatives is required to participate in training given by the department in the operation of each game. The director may consider nonparticipation as grounds for suspending or revoking the retailer's license.

## § 1.20. License termination by retailer.

Voluntary termination of license.

The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 15 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property belonging to the department has been surrendered.

## PART II. INSTANT GAMES.

### § 2.1. Development of instant games.

The director shall select, operate, and contract for the operation of instant games which meet the general criteria set forth in these regulations. The board shall determine the specific details of each instant game after consultation with the director. These details include, but are not limited to:

1. Prize amounts and prize structure,
2. Types of noncash prizes, if any, and
3. The amount and type of any jackpot or grand prize which may be awarded.

### § 2.2. Prize structure.

The prize structure for any instant game shall be designed to return to winners approximately 50% of gross sales.

A. The specific prize structure for each instant game shall be approved in advance by the board.

B. Prizes may be cash or noncash awards, including instant game tickets.

### § 2.3. Ticket price.

A. The sale price of a lottery ticket for each game will be determined by the board and will be between \$.25 and \$15. Lottery retailers may not discount the sale price of instant game tickets or offer free tickets as a promotion with the sale of instant tickets. This section shall not prevent a retailer from providing free instant tickets with the purchase of other goods or services customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not be for the primary purpose of inducing persons to participate in the lottery.

B. This section shall not apply to the redemption of a winning instant ticket the prize for which is another free ticket.

### § 2.4. Sales, gift of tickets to minors prohibited.

An instant game ticket shall not be sold to, purchased by, redeemed from or given as a gift to any individual under 18 years old.

### § 2.5. Odds of winning.

The director shall publicize the overall odds of winning a prize in each instant game. The odds may be printed on the ticket or contained in informational materials, or both.

### § 2.6. End of game.

Each instant game will end when all tickets have been

# State Lottery Department

sold or on a date announced in advance by the director. The director may suspend or terminate an instant game without advance notice if he finds that this action will serve and protect the public interest.

## § 2.7. Sale of tickets from expired games prohibited.

No instant game tickets shall be sold after that game ends.

## § 2.8. Licensed retailers' compensation.

A. Licensed retailers shall receive 5.0% compensation on all instant game tickets purchased from the department for resale by the retailer.

B. The director may award cash bonuses or other incentives to retailers. The board shall approve any bonus or incentive system. The director will publicize any such system in rules of the game(s) to which it applies.

## § 2.9. Price for ticket packs.

For each pack, retailers shall pay the retail value, less the 5.0% retailer ~~discount~~ *compensation* and less the value of the low-tier winning tickets in the pack. For example, for a pack of tickets with a retail value of \$500, and guaranteed low end prize structure of \$165, the retailer would pay \$310: \$500 (the pack value) minus \$165 for low-tier winners, less the retailer's \$25 ~~discount~~ *compensation*.

## § 2.10. Purchase of instant tickets.

A. Retailers shall purchase books of tickets directly from the department or through designated depositories.

B. Retailers shall pay for tickets via an electronic funds transfer (EFT) initiated by the department.

1. The department will initiate the EFT after tickets are delivered to the retailer. The schedule will be determined by the director.

2. If, ~~for any reason,~~ an electronic funds transfer is refused, the retailer shall be assessed service charge, interest and penalty charges as provided for in these regulations. *The service charge, interest and penalty charges may be waived under § 1.18 F of these regulations.*

3. The director may approve another form of payment for designated retailers under conditions to be determined by the director.

4. If the director permits payment by check and if payment on any check is denied, the retailer shall be assessed service charge, interest and penalty charges as provided for in these regulations.

C. Once tickets are accepted by a retailer, the

department will not replace mutilated or damaged tickets, unless specifically authorized by the director.

D. Ticket sales to retailers are final.

1. The department will not accept returned tickets except as provided for elsewhere in these regulations or with the director's advance approval.

2. The retailer is responsible for lost, stolen or destroyed tickets unless otherwise approved by the director.

## § 2.11. Retailers' conduct.

A. Retailers shall sell instant tickets at the price fixed by regulation, unless the board allows reduced prices or ticket give-aways.

B. All ticket sales shall be for cash, check, cashier's check, traveler's check or money order at the discretion of and in accordance with the licensed retailer's policy for accepting payment by such means. A ticket shall not be purchased with credit cards, food stamps or food coupons.

C. All ticket sales shall be final. Retailers shall not accept ticket returns except as allowed by department regulations or policies or with the department's specific approval.

D. Tickets shall be sold during all normal business hours unless the director approves otherwise.

E. Tickets shall be sold only at the location listed on each retailer's license from the department.

F. Retailers shall not sell instant tickets after the announced end of an instant game.

G. Retailers shall not break apart ticket packs to sell instant tickets except to sell tickets from the same pack at separate selling stations within the same business establishment.

H. Retailers shall not exchange ticket books or tickets with one another or sell ticket books or tickets to one another.

I. On the back of each instant ticket sold by a retailer, the retailer shall print or stamp the retailer's name, address and retailer number. This shall be done in a manner that does not conceal any of the preprinted material.

J. No retailer or his employee or agent shall try to determine the numbers or symbols appearing under the removable latex coverings or otherwise attempt to identify unsold winning tickets. However, this shall not prevent the removal of the covering over the validation code or validation number after the ticket is sold and a prize is claimed.



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K. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. Employees not yet 18 but at least 16 years of age may sell or vend lottery tickets so long as they are supervised by a person 18 years of age or older.

## § 2.12. Returns of unsold tickets.

A. Each retailer may return for credit full, unbroken ticket packs to the department at any time before the announced end of the game and before the return of any partial packs.

B. After the twelfth week of any instant game, each retailer may return broken partial packs of tickets to the department for credit. Partial pack returns are limited to one pack return per register where tickets have been sold for that game. At the same time partial packs are returned, the retailer must return all eligible partial packs and all full packs for that game remaining in his inventory. No additional partial packs or full packs will be accepted from the retailer by the department for credit after partial packs have been returned.

C. All tickets in the possession of a retailer remaining unsold at the announced end of the game, the return of which are not prohibited by § 2.12 B, whether partial pack or full pack, must be returned to the department not later than 21 calendar days after the announced end of each instant game or any final prize drawing or no credit will be allowed to the retailer for tickets remaining unsold by that retailer.

§ 2.13. Reserved.

§ 2.14. Reserved.

§ 2.15. Reserved.

## PART III. PAYMENT OF PRIZES FOR INSTANT GAMES.

### § 3.1. Prize winning tickets.

Prize-winning instant tickets are those that have been validated and determined in accordance with the rules of the department to be official prize winners. Consistent with these regulations, criteria and specific rules for winning prizes shall be published and posted by the director for each instant game and made available for all players. Final validation and determination of prize winning tickets remains with the department.

### § 3.2. Unclaimed prizes.

All instant game winning tickets shall be received for payment as prescribed in these regulations within 180 days after the announced end of the game or of the event which caused the ticket to be a winning entry, whichever is later. In the event that the 180th day falls on a Saturday, Sunday or legal holiday, a claimant may redeem

his prize-winning ticket on the next business day. Tickets which have been mailed in an envelope bearing a postmark on or before the 180th day will be deemed to have been received on time.

A. Any non-low-tier instant game prize which has been won as a result of a drawing but which is not claimed within 180 days after the instant game drawing shall revert to the State Literary Fund.

B. Any non-low-tier instant game *cash* prize which has been won other than by drawing, but which is not claimed within 180 days after the announced end of the instant game shall revert to the State Literary Fund.

C. Any instant game low-tier prize-winning ticket which has been purchased but which is not claimed within 180 days after the announced end of the instant game shall revert as a bonus compensation to the account of the retailer which sold the instant game low-tier prize-winning ticket.

### § 3.3. Using winners' names.

The department shall have the right to use the names of prize winners. Photographs of prize winners may be used with the written permission of the winners. No additional consideration shall be paid by the department for this purpose.

### § 3.4. No prize paid to people under 18.

No prize shall be claimed by , *redeemed from* or paid to any individual under 18 years of age.

### § 3.5. Where prizes claimed.

Winners may claim instant game prizes from the retailer from whom the ticket was purchased or the department in the manner specified in these regulations.

### § 3.6. Validating winning tickets.

Winning tickets shall be validated by the retailer or the department as set out in these regulations or in any other manner which the director may determine.

### § 3.7. How prize claim entered.

A prize claim shall be entered in the name of an individual person or legal entity. If the prize claimed is \$600 or greater, the person or entity also shall furnish a tax identification number.

A. An individual shall provide his social security number if a claim form is required by these regulations.

B. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) issued by the Internal Revenue Service.

1. If the department, a retailer or these regulations require that a claim form be filed, the FEIN shall be shown on the claim form.

2. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person(s) to whom winnings are taxable.

3. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN and which does not file IRS Form 5754 with the department shall designate one individual in whose name the claim shall be entered and that person's social security number shall be furnished.

#### § 3.8. Right to prize not assignable.

No right of any person to a prize shall be assignable, except that:

1. The director may pay any prize to the estate of a deceased prize winner, and

2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate judicial order.

#### § 3.9. No accelerated payments.

The director shall not accelerate payment of a prize for any reason.

#### § 3.10. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the director and employees of the department, terminates upon payment of a lottery prize.

#### § 3.11. Delay of payment allowed.

The director or the board may refrain from making payment of the prize pending a final determination by the director under any of the following circumstances:

1. If a dispute occurs or it appears that a dispute may occur relative to any prize;
2. If there is any question regarding the identity of the claimant;
3. If there is any question regarding the validity of any ticket presented for payment; or
4. If the claim is subject to any set off for delinquent debts owed to any agency eligible to participate in the Set-Off Debt Collection Act.

No liability for interest for such delay shall accrue to the benefit of the claimant pending payment of the claim.

#### § 3.12. When periodic prize payment may be delayed.

The director may, at any time, delay any payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed payments shall be brought up to date immediately upon the director's confirmation. Delayed payments shall continue to be paid according to the original payment schedule after the director's decision is given.

#### § 3.13. Ticket is bearer instrument.

A ticket that has been legally issued by a lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the bearer of the ticket.

#### § 3.14. Payment made to bearer.

Payment of any prize will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification and the submission of a prize claim form if one is required, unless otherwise delayed in accordance with these regulations.

#### § 3.15. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to claim a prize or by the department or a retailer to identify or to void the ticket.

#### § 3.16. Penalty for counterfeit or altered ticket.

Forging, altering or fraudulently making any lottery ticket or knowingly presenting a forged, counterfeit or altered ticket for prize payment or transferring such a ticket to another person to be presented for prize payment is a Class 6 felony in accordance with the state lottery law.

#### § 3.17. Lost, stolen, destroyed tickets.

The department is not liable for lost, stolen or destroyed tickets.

*The director may honor a prize claim of an apparent winner who does not possess the original ticket if the claimant is in possession of information which demonstrates that the original ticket meets the following criteria and can be validated through other means. The exception does not apply to an instant game ticket the prize for which is a free ticket or is \$25 or less.*

1. *The claim form and a photocopy of the ticket, or photocopy of the original claim form and ticket, are timely filed with the department;*

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2. The prize for which the claim is filed is an unclaimed winning prize as verified in the department's records;

3. The prize has not been claimed within the required redemption period; and

4. The claim is filed within 180 days of the drawing or within the redemption period, as established by game rules.

## § 3.18. Erroneous or mutilated ticket.

The department is not liable for erroneous or mutilated tickets. The director, at his option, may replace an erroneous or mutilated ticket with an unplayed ticket for the same or a later instant game.

## § 3.19. Retailer to pay low-tier prizes.

Low-tier prizes (those of \$25 or less in cash or free instant game tickets) shall be paid by the retailer who sold the winning ticket, or by the department at the option of the ticket holder, or by the department when the ticket cannot be validated by the retailer.

## § 3.20. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, or money order, or by any combination of these methods.

2. If payment of a prize by a check presented to a claimant by a retailer is denied for any reason, the retailer is subject to the same service charge interest and penalty payments that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.

3. Retailers shall pay claims for low-tier prizes during all normal business hours.

4. Prize claims shall be paid only at the location specified on the license.

5. The department will reimburse a retailer for prizes of between \$26 and \$599 paid up to 180 days after an instant game ends.

## § 3.21. Retailer to validate winning ticket.

Before paying a prize claim, the retailer ~~shall~~ *should* validate the winning ticket. The retailer ~~shall~~ *should* follow validation procedures listed in these regulations or obtained from the department. *Retailers who pay claims without validating the ticket do so at their own financial risk.*

## § 3.22. When retailer cannot validate ticket.

If, for any reason, a retailer is unable to validate a prize-winning ticket, the retailer shall provide the ticket holder with a department claim form and instruct the ticket holder on how to file a claim with the department.

## § 3.23. No reimbursement for retailer errors.

The department shall not reimburse retailers for prize claims paid in error.

## § 3.24. Retailer to void winning ticket.

After a winning ticket is validated and signed by the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be prescribed by the director.

## § 3.25. Prizes of less than \$600.

A retailer may elect to pay instant prizes between \$26 and \$599 won on tickets validated and determined by the department to be official prize winners, regardless of where the tickets were sold. If the retailer elects to pay prizes of up to \$599, the following terms and conditions apply:

1. The retailer shall execute an agreement with the department to pay higher prize limits.

2. The retailer shall pay all prizes agreed to up to \$599 or less on validated tickets presented to that retailer.

3. The retailer shall display special informational material provided by or approved by the department informing the public of the exceptional prize payments available from that retailer.

4. Nothing in this section shall be construed to prevent the department from accepting an agreement from a retailer to pay prize amounts \$26 or more but less than \$599.

## § 3.26. Additional validation requirements.

Before paying any prize between \$26 and \$599, the retailer ~~shall~~ *should* :

1. Reserved

2. Inspect the ticket to assure that it conforms to each validation criterion listed in these regulations and to any additional criteria the director may specify;

3. Report to the department the ticket number, validation code and validation number of the ticket; and

# State Lottery Department

4. Obtain an authorization number for prize payment from the department.

§ 3.27. When prize shall be claimed from the department.

The department will pay prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall send or present to the department a completed claim form and the signed ticket at any department regional office or mail both the completed claim form and the signed ticket to the department central office.

2. If a ticket holder is unable to return to the retailer from which the ticket was purchased to claim a prize which the retailer otherwise would pay, a completed claim form and the ticket holder may present the signed ticket may be presented at any department regional office or mailed mail both a completed claim form and the signed ticket to the department central office.

3. If the prize amount is over the limit paid by the retailer from which the ticket was purchased, the ticket holder may present a completed claim form, if required, and the signed ticket shall be presented to any department regional office or mailed mail both a completed claim form and the signed ticket to the department central office.

§ 3.28. Prizes of \$25,000 or less.

Prizes of \$25,000 or less may be claimed from any of the department's regional offices. Regional offices will pay prizes by check after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.29. Prizes of more than \$25,000.

Prizes of more than \$25,000 and noncash prizes other than free lottery tickets may be claimed from the department's central office in Richmond. The central office will pay prizes by check, after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.30. When claims form required.

A claims form for a winning ticket may be obtained from any department office or any lottery sales retailer.

A. Claims forms shall be required to claim any prize from the department's central office.

B. Claims forms shall be required to claim any prize of \$600 or more from the department's regional offices.

C. Reserved.

D. The director may, at his discretion, require claims forms to be filed to claim prizes.

§ 3.31. Department action on claims for prizes submitted to department.

The department shall validate the winning ticket claim according to procedures contained in these regulations.

A. If the claim is not valid, the department will notify the ticket holder promptly.

B. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be mailed to the winner.

C. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the bearer.

§ 3.32. Withholding, notification of prize payments.

A. When paying any prize of \$600 or more, the department shall: Department of Taxation and the federal Internal Revenue Service; and

2. Withhold any moneys due for delinquent debts listed with the Department of Taxation's set-off debt collection program.

B. When paying any prize of more than \$5,000, the department shall provide for the withholding of the applicable amount of state and federal income tax of persons claiming a prize for the winning ticket.

§ 3.33. Grand prize event.

If an instant game includes a grand prize or jackpot event, the following general criteria shall be used:

1. Entrants in the event shall be selected from tickets which meet the criteria stated in specific game rules set by the director.

2. Participation in the drawing(s) shall be limited to those tickets which are actually received and validated by the department on or before the date announced by the director.

3. If, after the event is held, the director determines that a ticket should have been entered into the event, the director may place that ticket into a grand prize drawing for the next equivalent instant game. That action is the extent of the department's liability.

4. The director shall determine the date(s), time(s) and procedures for selecting grand prize winner(s) for each instant game. The proceedings for selection of the winners shall be open to members of the news media and to either the general public or entrants or both.

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## § 3.34. Director may postpone drawing.

The director may postpone any drawing to a certain time and publicize the postponement if he finds that the postponement will serve and protect the public interest.

## § 3.35. Valid ticket described.

To be valid, a Virginia lottery game ticket shall meet all of the validation requirements listed here:

1. The ticket shall have been issued by the department in an authorized manner.
2. The ticket shall not be altered, unreadable, reconstructed, or tampered with in any way.
3. The ticket shall not be counterfeit in whole or in part.
4. The ticket shall not have been stolen or appear on any list of void or omitted tickets on file with the department.
5. The ticket shall be complete and not blank or partly blank, miscut, misregistered, defective, or printed or produced in error.
6. The ticket shall have exactly one play symbol and exactly one caption under each of the rub-off spots, exactly one ticket number, exactly one validation code, and exactly one validation number. These items shall be present in their entirety, legible, right side up, and not reversed in any manner.
7. The validation number of an apparent winning ticket shall appear on the department's official list of validation numbers of winning tickets provided by the vendor of the instant tickets. A ticket with that validation number shall not have previously been paid.
8. The ticket shall pass all additional confidential validation requirements set by the department.

## § 3.36. Invalid ticket.

An instant ticket which does not pass all the validation requirements listed in these regulations and any validation requirements contained in the rules for its instant game is invalid. An invalid ticket is not eligible for any prize.

## § 3.37. Replacement of ticket.

The director may replace an invalid ticket with an unplayed ticket from the same or another instant game. If a defective ticket is purchased, the department's only liability or responsibility shall be to replace the defective ticket with an unplayed ticket from the same or another instant game or to refund the purchase price, at the department's option.

## § 3.38. When ticket is partially mutilated or not intact.

If an instant ticket is partially mutilated or if the ticket is not intact but can still be validated by other validation tests, the director may pay the prize for that ticket.

## § 3.39. Director's decision final.

All decisions of the director regarding ticket validation shall be final.

## § 3.40. When prize payable over time.

Unless the rules for any specific instant game provide otherwise, any cash prize of ~~\$500,000~~ \$100,001 or more will be paid in multiple payments over time. The schedule of payments shall be designed to pay the winner equal dollar amounts ~~each year in each year~~, with the exception of the first, until the total payments equal the prize amount.

## § 3.41. Rounding total prize payment.

When a prize or share is to be paid over time, except for the first payment, the director may round the actual amount of the prize or share to the nearest \$1,000 to facilitate purchase of an appropriate funding mechanism.

## § 3.42. When prize payable for "life."

If a prize is advertised as payable for the life of the winner, only an individual may claim the prize. If a claim is filed on behalf of a group, company, corporation or any other type of organization, the life of the claim shall be 20 years.

\* \* \* \* \*

NOTICE: The forms used in administering the On-Line Game Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Retailer License Application  
Personal Data Form  
Retailer Location Form  
Retailer Data Collection  
Authorization Agreement for Preauthorized Payments (A-1)  
Virginia Lottery Licensed Retailer Certificate (4/90)  
Bond Continuation Certificate (letter)  
Commonwealth of Virginia Lottery Bond Application  
Special Notice on Bonding for Lottery Retailers  
Winner Claim Form (SLD-0007, 3/89)  
Winner-Gram (SLD0016)  
We're Sorry But . . . (SLD0015)  
Returned Ticket Receipt - Full Pack Returns

Returned Ticket Receipt - Partial Pack Returns  
Ticket Dispenser Agreement (SLD-0129, 3/89)  
Agreement to Pay Mid-Tier Prizes  
Invoice  
Statement  
Retailer Guidelines for Using Advertising Approval  
Form  
Retailer Advertising Approval Form  
Stolen Ticket Report (766.000, 1/89)

\* \* \* \* \*

**Title of Regulation:** VR 447-02-2. On-Line Game Regulations.

**Statutory Authority:** § 58.1-4007 of the Code of Virginia.

**Effective Date:** February 27, 1991 - 10 a.m.  
(See Calendar of Events section  
for additional information)

**Summary:**

*The State Lottery Department is amending numerous sections of the On-Line Game Regulations to conform to amendments to the state lottery law and to refine and further clarify sections which deal with the lottery retailer application procedures and licensing process, including standards for licensing, issuance of perpetual licenses and procedures for annual license review. The revisions promulgate a revision, previously approved as an emergency, which reduces the prize redemption period for free on-line game tickets from 180 days to 60 days. The revisions provide for additional game features and clarify prize payment procedures.*

VR 447-02-2. On-Line Game Regulations.

**PART I.  
ON-LINE GAMES.**

**§ 1.1. Development of on-line games.**

The director shall select, operate, and contract for the operation of on-line games which meet the general criteria set forth in these regulations. The board shall determine the specific details of each on-line lottery game after consultation with the director. These details include, but are not limited to:

1. The type or types of on-line lottery games;
2. Individual prize amounts and overall prize structure;
3. Types of noncash prizes, if any;
4. The amount and type of any jackpot or grand prize which may be awarded and how awarded; and
5. Chances of winning.

**§ 1.2. General definitions for on-line games.**

*"Auto-picks Auto pick" means computer generated numbers or items. The director may select a different name to identify this feature for marketing purposes: the same as "easy pick."*

*"Breakage" means the fraction of a dollar not paid out due to rounding down and shall be used exclusively to fund prizes.*

*"Cancelled ticket" means a ticket that (i) has been placed into the terminal, whereupon the terminal must read the information from the ticket ; and cancel the transaction and brand the ticket with a mark or words indicating that the ticket is cancelled and void or (ii) whose validation number has been manually entered into the terminal via the keyboard and cancelled .*

*"Certified drawing" means a drawing in which a lottery official and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination has occurred.*

*"Drawing" means a procedure by which the lottery randomly selects numbers or items in accordance with the specific game rules for those games requiring random selection of number(s) or item(s).*

*"Duplicate ticket" means a ticket produced by any means other than by an on-line terminal with intent to imitate the original ticket.*

*"Easy pick" means computer generated numbers or items.*

*"On-line game" means a lottery game, the play of which is dependent upon the use of an on-line terminal in direct communication with an on-line game main frame operated by or at the direction of the department.*

*"On-line lottery retailer" means a licensed lottery retailer who has entered an agreement with the department to sell on-line tickets.*

*"On-line system" means the department's on-line computer system consisting of on-line terminals, central processing equipment, and a communication network.*

*"On-line terminal" means computer hardware through which a combination of numbers or items is selected or generated and through which on-line tickets are generated and claims may be validated.*

*"On-line ticket" means a computer-generated ticket issued by an on-line lottery retailer to a player as a receipt for the number, numbers, or items or combination of number or items the player has selected.*

*"Play" means a wager on a single set of selected*

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numbers.

*"Player-selected item"* means a number or item or group of numbers or items selected by a player in connection with an on-line game. Player-selected items include selections of items randomly generated by the computer on-line system. Such computer-generated numbers or items are also known as *"auto-picks auto picks," "easy picks"* or *"quick picks."*

*"Quick pick"* means the same as *"auto easy pick."*

*"Retailer,"* as used in these on-line game regulations, means a licensed on-line lottery retailer, unless the context clearly requires otherwise.

*"Roll stock"* means the paper roll placed into the lottery retailer terminals from which a unique lottery ticket is generated by the computer, displaying the player selected item(s) or number(s).

*"Share"* means a percentage of ownership in a winning ticket.

*"Subscription game"* means a lottery game in which the player can purchase on-line game tickets through the mail, for a specific period of time, and for which the player is automatically entered in each on-line drawing during the period for which the subscription is purchased.

*"Subscription ticket"* means an on-line ticket which provides the ability to play a specific number of games utilizing the same numbers, selected by the player, for a period of consecutive weeks as specified on the ticket.

*"Validation"* means the process of determining whether an on-line ticket presented for payment is a winning ticket.

*"Validation number"* means a unique number assigned by the on-line central computer and printed on the front of each on-line ticket which is used for validation.

*"Winning combination"* means two or more items or numbers selected by a drawing.

## § 1.3. Prize structure.

The prize structure for any on-line game shall be designed to return to winners approximately 50% of gross sales.

A. The specific prize structure for each type of on-line game shall be determined in advance by the board.

B. From time to time, the board may determine temporary adjustments to the prize structure to account for breakage or other fluctuations in the anticipated redemption of prizes.

## § 1.4. Drawing and selling times.

A. Drawings shall be conducted at times and places designated by the director and publicly announced by the department.

B. On-line tickets may be purchased up to a time prior to the drawing as specified in the on-line drawing rules. That time will be designated by the director.

## § 1.5. Ticket price.

A. The sale price of a lottery ticket for each game will be determined by the board and will be between \$.50 and \$15. These limits shall not operate to prevent the sale of more than one lottery play on a single ticket. *Unless authorized by the board,* lottery retailers may not discount the sale price of on-line game tickets or provide free lottery tickets as a promotion with the sale of on-line tickets. This section shall not prevent a licensed retailer from providing free on-line tickets with the purchase of other goods or services customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not be for the primary purpose of inducing persons to participate in the lottery. (see § 1.9)

B. *This section shall not apply to the redemption of a winning on-line game ticket the prize for which is another free ticket.*

## § 1.6. Ticket cancellation.

A ticket may be cancelled and a refund of the purchase price obtained at the request of the bearer of the ticket under the following conditions:

1. To be accepted for cancellation, the ticket must be presented to the lottery retailer location at which the ticket was sold, prior to the time of the drawing and within the same business day it was purchased.

2. Cancellation may only be effected by the following two procedures:

a. Inserting the ticket into the lottery terminal, whereupon the terminal must read the information from the ticket and cancel the transaction.

b. After first determining that the preceding procedure cannot be utilized successfully to cancel the ticket, the terminal operator may cancel the ticket by manually entering the ticket validation number into the terminal via the keyboard.

Any ticket which cannot be cancelled by either of these procedures remains valid for the drawing for which purchased. Any ticket which is mutilated, damaged or has been rendered unreadable, and cannot be inserted into or read by the lottery terminal or whose validation number cannot be read and keyed into the terminal, cannot be cancelled by any other means.

3. The cancelled ticket must be surrendered by the bearer to the retailer.

4. On a case-by-case basis, credit may be provided to retailers for tickets which could not be cancelled by either of the two methods described in § 1.6 2. Such credit may be given provided unusual, verifiable circumstances are present which show that the department's computer system could not accept the cancellation within the same day the ticket was purchased or that the ticket was produced by an unusual retailer error. The retailer must notify the department's Hotline prior to the time of the drawing and within the same business day the ticket was purchased.

5. The director may approve credit for other cancellation requests not described in this section.

6. The lottery's internal auditor will audit cancelled tickets on a sample basis.

## § 1.7. Chances of winning.

The director shall publicize the overall chances of winning a prize in each on-line game. The chances may be printed in informational materials.

## § 1.8. Licensed retailers' compensation.

A. Licensed retailers shall receive 5.0% compensation on all net sales from on-line games. "Net sales" are gross sales less cancels.

B. The board shall approve any bonus or incentive system for payment to retailers. The director will publicize any such system in the rules of the game(s) to which it applies. The director may then award such cash bonuses or other incentives to retailers.

## § 1.9. Retailers' conduct.

A. Retailers shall sell on-line tickets at the price fixed by the board, unless the board allows reduced prices or ticket give-aways.

B. All ticket sales shall be for cash, check, cashier's check, traveler's check or money order at the discretion of and in accordance with the licensed retailer's policy for accepting payment by such means. A ticket shall not be purchased with credit cards, food stamps or food coupons.

C. All ticket sales shall be final. Retailers shall not accept ticket returns except as allowed by department regulations or policies, or with the department's specific approval.

D. Tickets shall be sold during all normal business hours of the lottery retailer when the on-line terminal is available unless the director approves otherwise.

E. Tickets shall be sold only at the location listed on each retailer's license from the department.

F. On-line retailers must offer for sale all lottery products offered by the department.

G. An on-line game ticket shall not be sold to, purchased by, or given as a gift to or redeemed from any individual under 18 years of age.

H. On-line retailers shall furnish players with proper claim forms provided by the department.

I. On-line retailers shall post winning numbers prominently.

J. On-line retailers and employees who will operate on-line equipment shall attend training provided by the department and allow only trained personnel to operate terminals.

K. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. Employees not yet 18 but at least 16 years of age may sell or vend lottery tickets so long as they are supervised by a person 18 years of age or older the manager or supervisor in charge at the location where the tickets are being sold .

## § 1.10. End of game; suspension.

The director may suspend or terminate an on-line game without advance notice if he finds that this action will serve and protect the public interest.

## PART II. LICENSING OF RETAILERS FOR ON-LINE GAMES.

### § 2.1. Licensing.

#### A. Generally.

The director may license persons as lottery retailers for on-line games who will best serve the public convenience and promote the sale of tickets and who meet the eligibility criteria and standards for licensing.

B. For purposes of this part on licensing, "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.

### § 2.2. Eligibility.

#### A. Eighteen years of age and bondable.



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Any person who is 18 years of age or older and who is bondable may be considered for licensure, except no person may be considered for licensure:

1. Who will be engaged solely *primarily* in the business of selling lottery tickets; or
2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as board member, officer or employee of the department; or
3. Who is a vendor to the department of instant or on-line lottery tickets or goods or data processing services, whose tickets, goods or services are provided directly to the lottery department, or whose business is owned by, controlled by, or affiliated with a vendor of instant or on-line lottery tickets or goods or data processing services whose tickets, goods or services are provided directly to the lottery department.

## B. Form submission.

The submission of forms or data for licensure does not in any way entitle any person to receive a license to act as an on-line lottery retailer.

## § 2.3. General standards for licensing.

### A. Selection factors for licensing.

The director may license those persons who, in his opinion, will best serve the public interest and public trust in the lottery and promote the sale of lottery tickets. The director will consider the following factors before issuing or renewing a license:

1. The financial responsibility and integrity of the retailer, to include:
  - a. A credit and criminal record history search or when deemed necessary a full investigation of the retailer;
  - b. A check for outstanding delinquent state tax liability;
  - c. A check for required business licenses, tax and business permits; and
  - d. An evaluation of physical security at the place of business, including insurance coverage.
2. The accessibility of his place of business to public, to include:
  - a. The hours of operation compared to the on-line system selling hours;
  - b. The availability of parking including ease of ingress and egress to parking;

c. Public transportation stops and passenger traffic volume;

d. The vehicle traffic density, including levels of congestion in the market area;

e. Customer transaction count within the place of business;

f. Other factors indicating high public accessibility and public convenience when compared with other retailers; and

g. Adequate space and physical layout to sell a high volume of lottery tickets efficiently.

3. The sufficiency of existing lottery retailers to serve the public convenience, to include:

a. The number of and proximity to other lottery retailers in the market area;

b. The expected impact on sales volume of potentially competing lottery retailers;

c. The adequacy of coverage of all regions of the Commonwealth with lottery retailers; and

d. The population to terminal ratio, compared to other geographical market areas.

4. The volume of expected lottery ticket sales, to include:

a. Type and volume of the products and services sold by the retailer;

b. Dollar sales volume of the business;

c. Sales history of the market area;

d. Sales history for instant tickets, if already licensed as an instant retailer;

e. Volume of customer traffic in place of business; and

f. Market area potential, compared to other market areas.

5. The ability to offer high levels of customer service to on-line lottery players, including:

a. A history demonstrating successful use of lottery product related promotions;

b. Volume and quality of point of sale display;

c. A history of compliance with lottery directives;

d. Ability to display jackpot prize amounts to

pedestrians and vehicles passing by;

e. A favorable image consistent with lottery standards;

f. Ability to pay prizes less than \$600 during maximum selling hours, compared to other area retailers;

g. Commitment to authorize employee participation in all required on-line lottery training; and

h. Commitment and opportunity to post jackpot levels near the point of sale.

## B. Additional factors for selection.

The director may develop and, by director's order, publish additional criteria which, in the director's judgment, are necessary to serve the public interest and public trust in the lottery.

## C. Filing of forms with the department.

After notification of selection as an on-line lottery retailer, the retailer shall file required forms with the department. The retailer must submit all information required to be considered for licensing. Failure to submit required forms and information within the times specified in these regulations may result in the loss of the opportunity to become or remain a licensed on-line retailer. The forms to be submitted shall include:

1. Signed retailer agreement;
2. Signed EFT Authorization form with a voided check or deposit slip from the specified account; and
3. Executed bond requirement.

## § 2.4. Bonding of lottery retailers.

### A. Approved retailer to secure bond.

A lottery retailer approved for licensing shall obtain a surety bond in the amount of \$10,000 from a surety company entitled to do business in Virginia. If the retailer is already bonded for instant games, a second bond will not be required. However, the amount of the original bond must be increased to \$10,000. The purpose of the surety bond is to protect the Commonwealth from a potential loss in the event the retailer fails to perform his responsibilities.

1. Unless otherwise provided under subsection C of this section, the surety bond shall be in the amount and penalty of \$10,000 and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.
2. Within 15 calendar days of receipt of the "On-Line

License Approval Notice," the lottery retailer shall return the properly executed "Bonding Requirement" portion of the "On-Line License Approval Notice" to the State Lottery Department to be filed with his record.

### B. Continuation of surety bond on renewal of annual license review .

A lottery retailer applying for renewal of a license whose license is being reviewed shall:

1. Obtain a letter or certificate from the surety company to verify that the surety bond is being continued for the *annual license renewal review* period; and
2. Submit the surety company's letter or certificate with the required *annual license renewal review* fee to the State Lottery Department.

### C. Sliding scale for surety bond amounts.

The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded. Such sliding scale may require a surety bond amount either greater or lesser than the amount fixed by subsection A of this section.

### D. Effective date for sliding scale.

The sliding scale for surety bonding requirements will become effective when the director determines that sufficient data on lottery retailer ticket sales volume activity are available. Any changes in a retailer's surety bonding requirements that result from instituting the sliding scale will become effective only at the time of the retailer's next renewal action.

## § 2.5. Lottery bank accounts and EFT authorization.

### A. Approved retailer to establish lottery bank account.

A lottery retailer approved for licensing shall establish a separate bank account to be used exclusively for lottery business in a bank participating in the automatic clearing house (ACH) system. A single bank account may be used for both on-line and instant lottery business.

### B. Retailer's use of lottery account.

The lottery account will be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the electronic funds transfer (EFT) process to settle a retailer's account for funds owed by or due to the retailer from the sale of tickets and the payment of prizes. All retailers shall make payments to the department through the electronic funds

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transfer (EFT) process unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

## C. Retailer responsible for bank charges.

The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

## D. Retailer to authorize electronic funds transfer.

Within 15 calendar days of receipt of the "On-Line License Approval Notice," the lottery retailer shall return the properly executed "On-Line Electronic Funds Transfer Authorization" portion of the "License Approval Notice" to the department recording the establishment of his account.

## E. Change in retailer's bank account.

If a retailer finds it necessary to change his bank account from one bank account to another, he must submit a newly executed "Electronic Funds Transfer Authorization" form for the new bank account. The retailer may not discontinue use of his previously approved bank account until he receives notice from the department that the new account is approved for use.

## F. Director to establish EFT account settlement schedule.

The director will establish a schedule for processing the EFT transactions against retailers' lottery bank accounts and issue instructions to retailers on how settlement of accounts will be made.

## § 2.6. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transfers or checks.

### A. Payment due date.

Payments shall be due as specified by the director in the instructions to retailers regarding the settlement of accounts.

### B. Penalty and interest charge for late payment.

Any retailer who fails to make payment when payment is due will have his on-line terminal ~~disconnected~~ *inactivated*. The retailer will not be ~~reconnected~~ *reactivated* until payment is made by cashiers check, certified check or wire transfer. Additionally, interest will be charged on the moneys due plus a \$25 penalty. The interest charge will be equal to the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

### C. Service charge for dishonored EFT transfer or bad

check.

In addition to the penalty authorized by subsection B of this section, the director will assess a service charge of \$25 against any retailer whose payment through electronic funds transfer (EFT) or by check is dishonored.

### D. Service charge for debts referred for collection.

If the department refers a debt of any retailer to the Attorney General, the Department of Taxation or any other central collection unit of the Commonwealth, the retailer owing the debt shall be liable for an additional service charge which shall be in the amount of the administrative costs associated with the collection of the debt incurred by the department and the agencies to which the debt is referred.

### E. Service charge, interest and penalty waived.

*The service charge, interest and penalty charges may be waived when the event which would otherwise cause a service charge, interest or penalty to be assessed is not in any way the fault of the lottery retailer. For example, a waiver may be granted in the event of a bank error or lottery error.*

## § 2.7. License term and renewal annual review .

### A. License term.

A general on-line license for an approved lottery retailer shall be issued for a ~~one-year period on a perpetual basis~~ *subject to an annual determination of continued retailer eligibility and the payment of an annual fee fixed by the board*. A general on-line license requires the retailer to sell both on-line and instant lottery tickets.

### B. License renewal Annual license review .

*A general on-line license shall be renewed annually at least 30 days prior to its expiration date and shall be accompanied by the appropriate fee(s) as specified elsewhere in these regulations. The annual fee shall be collected within the 30 days preceding a retailer's anniversary date. Upon receipt of the annual fee, the general license shall be continued so long as all eligibility requirements are met . The director may implement a staggered, monthly basis for annual license renewals reviews and allow for the proration of annual license fees to credit licensees for the time remaining on their current license when the staggered renewal requirement is imposed . This section shall not be deemed to allow for a refund of license fees when a license is terminated, revoked or suspended for any other reason.*

### C. Amended license term.

*An amended license shall be valid for the remainder of the period of the license it replaces. The annual fee for an amended license will be due on the same date as the*

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*fee for the license it replaced.*

## D. Special license.

The director may issue special licenses. Special licenses shall be for a limited duration and under terms and conditions that he determines appropriate to serve the public interest.

## E. Surrender of license certificate.

*If the license of a lottery retailer is suspended, revoked or not continued from year to year, the lottery retailer shall surrender the license certificate upon demand.*

## § 2.8. License fees.

### A. License fee.

The fee for a lottery retailer general license to sell on-line game tickets shall be \$25. *Payment of this fee shall entitle the retailer to sell both on-line and instant game tickets.* The general license fee to sell on-line game tickets shall be paid for each location to be licensed. This fee is nonrefundable.

### B. Annual license renewal fee.

The annual fee for renewal of a lottery retailer general license to sell on-line game tickets shall be an amount determined by the board at its November meeting or as soon thereafter as practicable for all renewals reviews occurring in the next calendar year. The renewal fee shall be designed to recover all or a portion of the annual costs of the department in providing services to the retailer. The renewal fee shall be paid for each location for which a license is renewed reviewed. This fee is nonrefundable. The renewal fee shall be submitted at least within the 30 days prior to the expiration of preceding a retailer's general license anniversary date.

### C. Amended license fee.

The fee for processing an amended license for a lottery retailer general license shall be an amount as determined by the board at its November meeting or as soon thereafter as practicable for all amendments occurring in the next calendar year. The amended license fee shall be paid for each location affected. This fee is nonrefundable. An amended license shall be submitted in cases where a business change has occurred.

## § 2.9. Fees for operational costs.

### A. Installation fee.

The fee for initial terminal telecommunications installation for the on-line terminal shall be \$275. This fee may be subject to change based upon an annual cost review by the department.

1. If the retailer has purchased a business where a terminal is presently installed or telecommunication service is available, a fee of \$25 per year shall be charged upon issuance of a new license.

2. No installation fee will be charged if interruption of service to the terminal has not occurred.

### B. Weekly on-line telecommunications line charge.

Each retailer shall be assessed a weekly charge of \$15 per week. This fee may be subject to change based upon an annual cost review by the department.

## § 2.10. Transfer of license prohibited; invalidation of license.

### A. License not transferrable.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable to any other person or location.

### B. License invalidated.

A license shall become invalid in the event of any of the following circumstances:

1. Change in business location;
2. Change in business structure (e.g., from a partnership to a sole proprietorship);
3. Change in the business owners listed on the original personal data forms for which submission of a personal data form is required under the license procedure.

### C. Amended personal data form required.

A licensed lottery retailer who anticipates any change listed in subsection B must notify the department of the anticipated change at least 30 calendar days before it takes place and submit an amended personal data form. The director shall review the changed factors in the same manner that would be required for a review of an original personal data form.

## § 2.11. Denial, suspension, revocation or nonrenewal noncontinuation of license.

### A. Grounds for refusal to license.

The director may refuse to issue a license to a person if the person ~~has been~~ does not meet the eligibility criteria and standards for licensing as set out in these regulations or if:

1. The person has been convicted of a felony;

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2. *The person has been convicted of a crime involving moral turpitude;*

3. *The person has been convicted of any fraud or misrepresentation in any connection;*

4. *The person has been convicted of bookmaking or other forms of illegal gambling;*

5. *The person as been convicted of knowingly and willfully falsifying, or misrepresenting, or concealing a material fact or makes a false, fictitious, or fraudulent statement or misrepresentation;*

6. ~~Determined not to meet the eligibility criteria or general standards for licensing~~ *The person's place of business caters to or is frequented predominantly by persons under 18 years of age;*

7. *The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;*

8. *The nature of the person's business is not consonant with the probity of the Commonwealth; or*

9. *The person has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery.*

B. Grounds for refusal to license partnership or corporation.

In addition to refusing a license to a partnership or corporation under subsection A of this section, the director may also refuse to issue a license to any partnership or corporation if he finds that any general or limited partner or officer or director of the partnership or corporation has been convicted of any of the offenses cited in subsection A of this section.

C. Appeals of refusal to license.

Any person refused a license under subsection A or B may appeal the director's decision in the manner provided by VR 447-01-02, Part III, Article 2, § 3.4.

D. Grounds for suspension, revocation or refusal to ~~renew~~ *continue* license.

~~After notice and a hearing,~~ The director may suspend, revoke, or refuse to ~~renew~~ *continue* a license for any of the following reasons:

1. Failure to properly account for on-line terminal ticket roll stock, for cancelled ticket, for prizes claimed and paid, or for the proceeds of the sale of lottery tickets;

2. Failure to file or maintain the required bond or the required lottery bank account;

3. Failure to comply with applicable laws, instructions, terms or conditions of the license, or rules and regulations of the department concerning the licensed activity, especially with regard to the prompt payment of claims;

4. Conviction, following the approval of the license, of any of the offenses cited in subsection A;

5. Failure to file any return or report or to keep records or to pay any fees or other charges as required by the state lottery law or the rules or regulations of the department or board;

6. Commission of any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

7. Failure to maintain lottery ticket sales at a level sufficient to meet the department's administrative costs for servicing the retailer, provided that the public convenience is adequately served by other retailers. This failure may be determined by comparison of the retailer's sales to a sales quota established by the director;

8. Failure to notify the department of a material change, after the license is issued, of any matter required to be considered by the director in the licensing process;

9. Failure to comply with lottery game rules; ~~and~~

10. Failure to meet minimum point of sale standards - ;

11. *The person's place of business caters to or is frequented predominantly by persons under 18 years of age;*

12. *The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons; or*

13. *The nature of the person's business is not consonant with the probity of the Commonwealth.*

E. Notice of intent to suspend, revoke or deny ~~renewal~~ *continuation* of license.

Before taking action under subsection C, the director will notify the retailer in writing of his intent to suspend, revoke or deny ~~renewal~~ *continuation* of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a hearing before the board. Such notice shall be given to the retailer at least 14 calendar days prior to the effective date of suspension, revocation or denial.

F. Temporary suspension without notice.

If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into possible violations is concluded.

G. Surrender of license and lottery property upon revocation or suspension.

A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final accounting of his lottery activities by the date specified by the director.

## § 2.12. Responsibility of lottery retailers.

Each retailer shall comply with all applicable state and federal laws, rules and regulations of the department, license terms and conditions, specific rules for all applicable lottery games, and directives and instructions which may be issued by the director.

## § 2.13. Display of license.

License displayed in general view. Every licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

## § 2.14. Display of material.

### A. Material in general view.

Lottery retailers shall display lottery point-of-sale material provided by the director in a manner which is readily seen by and available to the public.

### B. Prior approval for retailer-sponsored material.

A lottery retailer may use or display his own promotional and point-of-sale material, provided it has been submitted to and approved for use by the department in accordance with instructions issued by the director.

### C. Removal of unapproved material.

The director may require removal of any licensed retailer's lottery promotional material that has not been approved for use by the department.

## § 2.15. Inspection of premises.

Access to premises by department. Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where

the director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect the lottery materials or tickets and the licensed premises.

## § 2.16. Examination of records; seizure of records.

### A. Inspection, auditing or copying of records.

Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing or copying as required by the director between the hours of 8 a.m. and 5 p.m., Mondays through Fridays and during the normal business hours of the licensed retailer.

### B. Records subject to seizure.

All books and records pertaining to the licensed retailer's lottery activities may be seized with good cause by the director without prior notice.

## § 2.17. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

## § 2.18. Reporting requirements and settlement procedures.

Instructions for ordering on-line terminal ticket roll stock, reporting transactions and settling accounts. Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering on-line terminal ticket roll stock; (ii) reporting receipts, transactions and disbursements pertaining to on-line lottery ticket sales; and (iii) settling the retailer's account with the department.

## § 2.19. Training of retailers and their employees.

Retailer training. Each retailer or anyone that operates an on-line terminal at the retailer's location will be required to participate in training given by the department for the operation of each game. The director may consider nonparticipation in the training as grounds for suspending or revoking the retailer's license.

## § 2.20. License termination by retailer.

Voluntary termination of license. The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 30 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property belonging to the department has been

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surrendered.

## PART III. ON-LINE TICKET VALIDATION REQUIREMENTS.

### § 3.1. Validation requirements.

To be valid, a Virginia lottery on-line game ticket shall meet all of the validation requirements listed here:

1. The original ticket must be presented for validation.
2. The ticket validation number shall be presented in its entirety and shall correspond using the computer validation file to the selected numbers printed on the ticket.
3. The ticket shall not be mutilated, altered, or tampered with in any manner. (see § 3.4)
4. The ticket shall not be counterfeited, forged, fraudulently made or a duplicate of another winning ticket.
5. The ticket shall have been issued by the department through a licensed on-line lottery retailer in an authorized manner.
6. The ticket shall not have been cancelled.
7. The ticket shall be validated in accordance with procedures for claiming and paying prizes. (see §§ 3.10 and 3.12)
8. The ticket data shall have been recorded in the central computer system before the drawing, and the ticket data shall match this computer record in every respect.
9. The player-selected items, the validation data, and the drawing date of an apparent winning ticket must appear on the official file of winning tickets and a ticket with that exact data must not have been previously paid.
10. The ticket may not be misregistered or defectively printed to an extent that it cannot be processed by the department.
11. The ticket shall pass any validation requirement contained in the rules published and posted by the director for the on-line game for which the ticket was issued.
12. The ticket shall pass all other confidential security checks of the department.

### § 3.2. Invalid ticket.

An on-line ticket which does not pass all the validation requirements listed in these regulations and any validation

requirements contained in the rules for its on-line game is invalid. An invalid ticket is not eligible for any prize.

### § 3.3. Replacement of ticket.

The director may refund the purchase price of an invalid ticket. If a defective ticket is purchased, the department's only liability or responsibility shall be to refund the purchase price of the defective ticket.

### § 3.4. When ticket cannot be validated through normal procedures.

If an on-line ticket is partially mutilated or if the ticket cannot be validated through normal procedure but can still be validated by other validation tests, the director may pay the prize for that ticket.

### § 3.5. Director's decision final.

All decisions of the director regarding ticket validation shall be final.

### § 3.6. Prize winning tickets.

Prize winning on-line tickets are those that have been validated in accordance with these regulations and the rules of the department and determined to be official prize winners. Criteria and specific rules for winning prizes shall be published for each on-line game and available for all players. Final validation and determination of prize winning tickets remain with the department.

### § 3.7. Unclaimed prizes.

A. *Except for free ticket prizes, all claims for on-line game winning tickets must be postmarked or received for payment as prescribed in these regulations within 180 days after the date of the drawing for which the ticket was purchased. In the event that the 180th day falls on a Saturday, Sunday or legal holiday, a claimant may redeem his prize-winning ticket on the next business day only at a lottery regional office.*

B. *Any on-line lottery cash prize which remains unclaimed after 180 days following the drawing which determined the prize shall revert to the State Lottery Fund. Cash prizes do not include free ticket prizes or other noncash prizes such as merchandise, vacations, admissions to events and the like.*

C. *All claims for on-line game winning tickets for which the prize is a free ticket must be postmarked or received for redemption as prescribed in these regulations within 60 days after the date of the drawing for which the ticket was purchased. In the event that the 60th day falls on a Saturday, Sunday or legal holiday, a claimant may only redeem his prize-winning ticket for a free ticket at an on-line lottery retailer on or before the 60th day. Except for claims for free ticket prizes mailed to lottery*

# State Lottery Department

headquarters and postmarked on or before the 60th day, claims for such prizes will not be accepted at lottery regional offices or headquarters after the 60th day.

## § 3.8. Using winners' names.

The department shall have the right to use the names of prize winners and the city, town or county in which they live. Photographs of prize winners may be used with the written permission of the winners. No additional consideration shall be paid by the department for this purpose.

## § 3.9. No prize paid to people under 18.

No prize shall be claimed by , *redeemed from* or paid to any individual under 18 years of age.

## § 3.10. Where prizes claimed.

Winners may claim on-line game prizes from any licensed on-line retailer or the department in the manner specified in these regulations. Licensed on-line retailers are authorized and required to make payment of all validated prizes of less than \$600.

## § 3.11. Validating winning tickets.

Winning tickets shall be validated by the retailer or the department as set out in these regulations and in any other manner which the director may prescribe in the specific rules for each type of on-line game.

## § 3.12. How prize claim entered.

A prize claim shall be entered in the name of an individual person or legal entity. If the prize claimed is \$600 or greater, the person or entity also shall furnish a tax identification number.

A. An individual shall provide his social security number if a claim form is required by these regulations. A nonresident alien shall furnish their Immigration and Naturalization Service Number. This I.N.S. number begins with an A and is followed by numerical data.

B. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) issued by the Internal Revenue Service. If the department or these regulations require that a claim form be filed, the FEIN must be shown on the claim form.

C. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person(s) to whom winnings are taxable.

D. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN and which does not file IRS Form 5754 with the department shall designate *one individual the individuals* in whose name *names* the claim shall be entered and *that person's those persons'* social security number numbers shall be furnished.

## § 3.13. Right to prize not assignable.

No right of any person to a prize shall be assignable, except that:

1. The director may pay any prize to the estate of a deceased prize winner, and
2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate judicial order.

## § 3.14. No accelerated payments.

The director shall not accelerate payment of a prize for any reason.

## § 3.15. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the board, the director and employees of the department, terminates upon final payment of a lottery prize.

## § 3.16. Delay of payment allowed.

The director may refrain from making payment of the prize pending a final determination by the director, under any of the following circumstances:

1. If a dispute occurs or it appears that a dispute may occur relative to any prize;
2. If there is any question regarding the identity of the claimant;
3. If there is any question regarding the validity of any ticket presented for payment; or
4. If the claim is subject to any set-off for delinquent debts owed to any agency eligible to participate in the Set-Off Debt Collection Act, when the agency has registered such debt with the Virginia Department of Taxation and timely notice of the debt has been furnished by the Virginia Department of Taxation to the State Lottery Department. No liability for interest for such delay shall accrue to the benefit of the claimant pending payment of the claim.

## § 3.17. When installment prize payment may be delayed.

The director may, at any time, delay any installment in order to review a change in circumstance relative to the



# State Lottery Department

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prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed installments shall be brought up to date immediately upon the director's confirmation. Delayed installments shall continue to be paid according to the original payment schedule after the director's decision is given.

## § 3.18. Ticket is bearer instrument.

A ticket that has been legally issued by a licensed lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the bearer of the ticket.

## § 3.19. Payment made to bearer.

Payment of any prize will be made to the bearer of the validated winning ticket for that prize upon submission of a prize claim form, if one is required, unless otherwise delayed in accordance with these regulations. If a validated winning ticket has been signed, the bearer may be required to present proper identification.

## § 3.20. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to claim a prize or by the department or a retailer to identify or to void the ticket.

## § 3.21. Penalty for counterfeit, forged or altered ticket.

Forging, altering or fraudulently making any lottery ticket or knowingly presenting a counterfeit, forged or altered ticket for prize payment or transferring such a ticket to another person to be presented for prize payment is a Class 6 felony in accordance with the state lottery law.

## § 3.22. Lost, stolen, destroyed tickets.

The department is not liable for lost, stolen or destroyed tickets.

*The director may honor a prize claim of an apparent winner who does not possess the original ticket if the claimant is in possession of information which demonstrates that the original ticket meets the following criteria and can be validated through other means. The exception does not apply to an on-line game ticket the prize for which is a free ticket.*

- 1. The claim form and a photocopy of the ticket, or photocopy of the original claim form and ticket, are timely filed with the department;*
- 2. The prize for which the claim is filed is an unclaimed winning prize as verified in the department's records;*
- 3. The prize has not been claimed within the required*

*redemption period; and*

*4. The claim is filed within 180 days of the drawing or within the redemption period, as established by game rules.*

## § 3.23. Retailer to pay all prizes less than \$600.

Prizes less than \$600 shall be paid by any licensed on-line retailer, or by the department at the option of the ticket holder, or by the department when the ticket cannot be validated by the retailer.

## § 3.24. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

- Retailers may pay *cash* prizes in cash, by certified check, cashier's check, business check, or money order, or by any combination of these methods.
- If a check for payment of a prize by a retailer to a claimant is denied for any reason, the retailer is subject to the same service charge for referring a debt to the department for collection and penalty payments that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.
- Retailers shall pay claims for all prizes under \$600 during all normal business hours of the lottery retailer when the on-line terminal is operational and the ticket claim can be validated.
- Prize claims shall be payable only at the location specified on the license.
- The department will reimburse a retailer for prizes paid up to 180 days after the drawing date.

## § 3.25. When retailer cannot validate ticket.

If, for any reason, a retailer is unable to validate a prize winning ticket, the retailer shall provide the ticket holder with a department claim form and instruct the ticket holder on how to file a claim with the department.

## § 3.26. No reimbursement for retailer errors.

The department shall not reimburse retailers for prize claims a retailer has paid in error.

## § 3.27. Retailer to void winning ticket.

After a winning ticket is validated and signed by the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be prescribed by the director.

# State Lottery Department

## § 3.28. Prizes of less than \$600.

A retailer shall pay on-line prizes of less than \$600 won on tickets validated and determined by the department to be official prize winners, regardless of where the tickets were sold. The retailer shall display special informational material provided by or approved by the department informing the public that the retailer pays all prizes of less than \$600.

## § 3.29. When prize shall be claimed from the department.

The department will process claims for payment of prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall send or present the signed ticket and a completed claim form to the department for validation with a completed claim form regional office or mail both the signed ticket and a completed claim form to the department central office .

2. If a ticket holder is unable to return to any on-line retailer ; a completed claim form and the ticket may be presented to claim a prize which the retailer otherwise would pay, the ticket holder may present the signed ticket at any department regional office or mailed mail both the signed ticket and a completed claim form to the department for validation central office .

3. If the prize amount is \$600 or more, the ticket holder may present the signed ticket and a completed claim form with the ticket shall be presented at any department regional office or mailed mail both the signed ticket and a completed claim form to the department for validation central office .

## § 3.30. Prizes of \$25,000 or less.

Prizes of \$25,000 or less may be claimed from any of the department's regional offices. Regional offices will pay prizes by check after tickets are validated and after any other applicable requirements contained in these regulations are met.

## § 3.31. Prizes of more than \$25,000.

Prizes of more than \$25,000 and noncash prizes other than free lottery tickets may be claimed from the department's central office in Richmond. The central office will pay cash prizes by check, after tickets are validated and after any other applicable requirements contained in these regulations are met.

## § 3.32. Grand prize event.

If an on-line game includes a grand prize or jackpot event, the following general criteria shall be used:

1. Entrants in the event shall be selected from tickets which meet the criteria stated in specific game rules set by the director consistent with § 1.1 of these regulations.

2. Participation in the drawing(s) shall be limited to those tickets which are actually purchased by the entrants on or before the date announced by the director.

3. If, after the event is held, the director determines that a ticket should have been entered into the event, the director may place that ticket into a grand prize drawing for the next equivalent event. That action is the extent of the department's liability.

4. The director shall determine the date(s), time(s) and procedures for selecting grand prize winner(s) for each on-line game. The proceedings for selection of the winners shall be open to members of the news media and to either the general public or entrants or both.

## § 3.33. When prize payable over time.

Unless the rules for any specific on-line game provide otherwise, any cash prize of ~~\$500,000~~ \$100,001 or more will be paid in multiple payments over time. The schedule of payments shall be designed to pay the winner equal dollar amounts over a period of years in each year, with the exception of the first, until the total payments equal the prize amount.

## § 3.34. Rounding total prize payment.

When a prize or share is to be paid over time, except for the first payment, the director may round the actual amount of the prize or share to the nearest \$1,000 to facilitate purchase of an appropriate funding mechanism.

## § 3.35. When prize payable for "life."

If a prize is advertised as payable for the life of the winner, only an individual may claim the prize. If a claim is filed on behalf of a group, company, corporation or any other type of organization, the life of the claim shall be 20 years.

## § 3.36. When claims form required.

A claim form for a winning ticket may be obtained from any department office or any licensed lottery retailer. A claim form shall be required to claim any prize from the department's central office. A claim form shall be required to claim any prize of \$600 or more from the department's regional offices.

## § 3.37. Department action on claims for prizes submitted to department.

The department shall validate the winning ticket claim

# State Lottery Department

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according to procedures contained in these regulations as follows:

1. If the claim is not valid, the department will promptly notify the ticket holder.
2. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be mailed to the winner.
3. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the bearer.

§ 3.38. Withholding, notification of prize payments.

When paying any prize of \$600 or more, the department shall:

1. File the appropriate income reporting form(s) with the Virginia Department of Taxation and the Federal Internal Revenue Service;
2. Withhold any moneys due for delinquent debts listed with the Commonwealth's Set-Off Debt Collection Program; and
3. Withhold federal and state taxes from any winnings over \$5,000.

§ 3.39. Director may postpone drawing.

The director may postpone any drawing to a certain time and publicize the postponement if he finds that the postponement will serve and protect the public interest.

\* \* \* \* \*

NOTICE: The forms used in administering the On-Line Game Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

- On-Line Game Survey (SLD-120)
- Retailer Data Collection
- On-Line License Approval Notice
- Lottery Retailer Surety Bond
- Retailer Agreement Form (SLD-130, 3/89)
- Virginia Lottery Licensed Retailer Certificate (4/90)
- Request for Inactivating Retailer Terminal (X-0118, 6/89)
- Things to Do
- Bond Continuation Certificate (letter)
- Commonwealth of Virginia Lottery Bond Application
- Special Notice on Bonding for Lottery Retailers
- Security Check (X-0077, 2/89)

- Virginia Lottery On-Line Play Center;
- Agreement/Order Form (SLD-0136, 4/89)
- Ticket Stock Central Distribution Form (X-0095, 6/89)
- Ticket Stock Regional Distribution Form (X-0133, 6/89)
- On-Line Ticket Stock Return (X-0120, 6/89)
- On-Line Ticket Stock Destruction Form (X-0121, 6/89)
- Seal Verification Chart - Pick 3/4 (X-0103, 6/89)
- Draw Verification Sheet (SLD-0137, 4/89)
- On-Line Weekly Settlement Envelope (SLD-0127)
- Weekly Settlement Form
- A/R Online Accounting Transaction Form (X-0105, 6/89)
- Cash Tickets Envelope/Cancelled Tickets Envelope
- Ticket Problem Report
- Hot Line Report (X-0079, 2/89)
- Winner Claim Form (SLD-0007, 3/89)
- Winner-Gram (SLD-0016)
- We're Sorry But . . . (SLD-0015)

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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 AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: VR 115-06-01. Rules Governing the  
Solicitation of Contributions.

Governor's Comment:

These regulations are intended to help protect the public  
from fraudulent charitable solicitors. Pending public  
comment, I approve the proposed regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: November 6, 1990

### STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: VR 120-01. Regulations for the  
Control and Abatement of Air Pollution.

Governor's Comment:

The intent of this regulation is to protect the public's  
health and welfare by establishing an operating permit  
system to improve control over stationary source  
emissions. Pending public comment, I recommend approval  
of this regulation.

/s/ Lawrence Douglas Wilder  
Governor  
Date: October 29, 1990

### DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: VR 480-05-9.2. Rules and Regulations  
Governing the Use of Diesel Powered Equipment in  
Underground Coal Mines.

Governor's Comment:

The proposed amendments to regulations governing the  
use of diesel-powered equipment in underground coal  
mines are intended to better protect the health and safety  
of coal miners. I recommend approval of the amended  
regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: August 27, 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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## BOARD FOR ACCOUNTANCY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Accountancy intends to consider amending regulations entitled: **VR 105-01-02. Board for Accountancy Regulations.** The purpose of the proposed action is to initiate a review process to consider establishing continuing professional education requirements to assure continued competency of licensees.

Statutory Authority: § 54.1-201(5) of the Code of Virginia.

Written comments may be submitted until December 19, 1990.

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).

## DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider promulgating regulations entitled: **VR 230-30-004. Adult Community Residential Services Standards.** The purpose of the proposed action is to establish minimum standards for Adult Community Residential Programs.

Statutory Authority: § 53.1-178 of the Code of Virginia.

Written comments may be submitted until January 21, 1991.

Contact: R. M. Woodard, Regional Manager, Adult Community Alternatives, 302 Turner Road, Richmond, VA 23225, telephone (804) 674-3729.

## VIRGINIA STATE LIBRARY AND ARCHIVES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.1 Standards for the**

**Microfilming of Public Records for Archival Retention.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.2. Archival Standards for Recording Deeds and other Writings by a Procedural Microphotographic Process.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-134.4. Standards for the Microfilming of Ended Law Chancery and Criminal Cases the Clerks of the Circuit Courts prior to Disposition.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804)

786-5579.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.5. Standards for Computer Output Microfilm (COM) for Archival Retention.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.6. Standards for Plats.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider amending regulations entitled: **VR 440-01-137.7. Standards for Recorded Instruments.** The purpose of the proposed action is to update the current standard as part of the general five-year review.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia State Library and Archives intends to consider promulgating regulations entitled: **VR 440-01-137.8. Standards for Paper for Permanent Circuit Court Records.** The purpose of the proposed action is to ensure the preservation of the permanent records of the Commonwealth by establishing minimum requirements for the paper used in creating or storing the record.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until January 2, 1991.

Contact: Dr. Louis Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

## BOARD OF OPTOMETRY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Optometry intends to consider amending regulations entitled: **VR 510-01-1. Regulations of the Board of Optometry.** The purpose of the proposed action is to solicit public comments on all existing regulations as to the assessment of their effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with Executive Order 5 (86). This notice replaces the Notice of Intent published in July, 1990.

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

Written comments may be submitted until January 8, 1991.

Contact: Lisa J. Russell, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9915 or toll-free 1-800-533-1560.

## 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: **Regulations Pertaining to Horse Racing With Pari-Mutuel Wagering - Horsemen's Representative.** The purpose of the proposed action is to establish procedure under which the commission will recognize the representative of the horsemen.

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

Written comments may be submitted until January 15,

# General Notices/Errata

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1991, to Donald Price, Virginia Racing Commission, P.O. Box 1123, Richmond, Virginia.

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

## † 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: **Regulations Pertaining to Horse Racing With Pari-Mutuel Wagering - Prohibited Acts**. The purpose of the proposed action is to establish those actions by permit holders that will compromise the integrity of horse racing in the Commonwealth.

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

Written comments may be submitted until January 15, 1991, to Donald Price, Virginia Racing Commission, P.O. Box 1123, Richmond, Virginia.

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

## STATE WATER CONTROL BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-07. Oil Discharge Contingency Plans and Financial Responsibility Requirements**. The purpose of the proposed action is to (i) establish the standards, content and requirements of oil discharge contingency plans and plan application; (ii) establish the requirements for maintaining evidence of financial responsibility; (iii) establish a fee for the approval of the required oil discharge contingency plans; and (iv) establish a fee for the approval of the tank vessel evidence of financial responsibility.

Statutory Authority: §§ 62.1-44.34:15(10), 62.1-44.34:15 and 62.1-44.34:16 of the Code of Virginia.

Written comments may be submitted until December 21, 1990.

Contact: David Ormes, Office of Policy Analysis, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-9704.

## GENERAL NOTICES

### DEPARTMENT OF LABOR AND INDUSTRY

#### † Notice to the Public

Board Policy Statement No. 1-90

Subject: Endorsement of Grant Applications/Proposals

Reference: Chapter 24 of the Code of Virginia

Effective Date: August 22, 1990

#### I. Purpose

The purpose of this policy statement is to establish MSFW Board procedures for responding to requests for endorsement of grant applications received on behalf of the Board.

#### II. Background

Section 9-149 of the Code of Virginia mandates that the Migrant and Seasonal Farmworkers Board shall provide for the coordination and evaluation of state and federal services. It further provides that, to the extent possible, this mandate applies to other governmental, public and private agency services to migrant and seasonal farmworkers within the Commonwealth.

#### III. Statement of Policy

##### A. General:

1. It is the Board's intent to provide due consideration of all requests for its endorsement of grant applications.

2. Because board meetings are normally held quarterly, adequate time must be provided for review and responses to members inquiries. The agency requestor shall designate an official spokesperson to attend the board's meeting for these purposes.

##### B. Procedures for submitting request:

1. All requests for consideration shall be in writing. Each request should, to the extent feasible or practicable, include a copy of the grant application. A synopsis of the proposed activities to be accomplished under the grant should be furnished whether or not a copy of the grant application is available.

2. Requests must be presented at a regularly scheduled meeting of the board.

3. A request for consideration must be included on the board's agenda. The requestor must notify the staff director that they wish to be placed on the agenda, either in writing or by telephone, at least two (2) weeks prior to a scheduled meeting of the board.

#### C. Board review procedures:

1. The MSFW Board can receive the request and will hear the presentation at an open, regular meeting.
2. The agency requestor shall respond to inquiries from board members and members may request additional information.
3. A decision by the board shall be made in accordance with Section 6 of the By-Laws adopted July 29, 1988.
4. Upon approval of a request for endorsement, the staff director will forward an appropriate letter on behalf of the board.
5. If a request for endorsement is not approved by the board, a notice will be sent to the agency requestor citing the board's action.
6. The board's action on a request shall apply only to the proposed application's grant year.

#### IV. Recisions

None

#### BY-LAWS OF THE MIGRANT AND SEASONAL FARMWORKERS BOARD

Adopted: July 26, 1988

Amended: April 26, 1989

#### Section 1: Officers

There shall be elected biennially from the membership of the Migrant and Seasonal Farmworkers Board a Chairperson and Vice Chairperson. The Chairperson and Vice Chairperson shall be elected on an open ballot by a majority vote of a quorum of those present at the Biennial Meeting.

The Chairperson shall be the presiding officer at all meetings of the Board. The Chairperson shall be responsible for calling meetings as set out in these By-laws. The Vice Chairperson shall, in the absence of the Chairperson, perform the duties of the Chairperson. The Chairperson may serve two consecutive terms in that capacity. (Amended 4/26/89)

The Chairperson shall make all rulings on procedure

and points of order. Such ruling shall be final unless overruled by a majority of the members present.

#### Section 2: Meetings

The board shall meet at least once every six months with other meetings called by the Chairperson or any three members of the board. The first meeting held after the first of October in each even-numbered year shall be designated as the biennial meeting.

#### Section 3: Quorum

A majority of the members of the board shall constitute a quorum.

#### Section 4: Agenda

Unless circumstances otherwise dictate, a proposed agenda will be sent to each member of the board at least two weeks prior to the time for meeting. Any member of the board may notify the Chairperson of any item they wish placed on the agenda and it shall be placed on the proposed agenda for the board. The Chairperson shall set the proposed agenda in the following order:

1. Call to order
2. Approval of the agenda for the meeting
3. Approval of the minutes of any previous meetings
4. Presentations when appropriate
5. Area Council Reports
6. Old Business
7. New Business
8. Items of interest from staff
9. Items of interest from any member of the board
10. Public comments
11. Adjournment

#### Section 5: Conduct the meeting

The Chairperson or, in his or her absence, the Vice Chairperson shall preside over the meetings. If both the Chairperson and the Vice Chairperson are absent, the meeting shall be chaired temporarily by the Staff Director and the first order of business shall be the election of a Chairperson for the meeting.

All decisions of the board shall be by open ballot. Actions of the board shall be by majority vote of quorum of those present. Each member, including the Chairperson, shall have one vote on any matter coming before the



# General Notices/Errata

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board, and each vote shall be recorded.

## Section 6: Motions

Any member including the Chairperson may make a motion concerning any item on the agenda which is pending before the board. The Chairperson shall require the movant to either reduce the motion to writing or to state it clearly. All motions are required to have a second. The Chairperson shall allow reasonable time to debate any motion and, at his or her discretion, may set time limits and the order of debate. The Chairperson's limitation on debate can be overridden by a majority vote of a quorum of those present. All motions may be amended provided there is a second and an amended motion shall take precedence over the main motion. Amendments to amended motions shall either be accepted or voted upon without debate.

## Section 7: Attendance at regular meetings

Regular attendance at the board's meetings ensure active participation. Any member absent for two (2) consecutive regular board meetings will receive a reminder from the Chairperson. Each year, prior to the board's first meeting after July 1, the Secretary of the Commonwealth will be notified of any member who has not attended a regular meeting during the previous 12 months.

## Section 8: Executive sessions

No executive session of the board shall be held unless a majority of those present vote in open session to hold such meeting. The reason for such meeting shall be one designated in the Virginia Freedom of Information Act. The general matter and the purpose of the executive session shall be fully stated in the agenda or in the minutes of the board. Minutes of an executive meeting shall be taken only as the Chairperson shall direct.

## Section 9: Amending By-Laws

These By-Laws may be amended in whole or in part in accordance with the following procedure:

- a. At least one month prior to a regular meeting, a member shall notify the Chairperson and have placed upon the agenda, the proposed amendment(s) to these By-Laws.
- b. The proposed amendment(s) may be reviewed by the Office of the Attorney General and the board will be advised of its consistency with law.
- c. The board will act on any proposed amendment(s) to these By-Laws at the regular board meeting.
- d. Amendment(s) will become effective upon approval by a majority vote of a quorum of those present.

## 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

### STATE WATER CONTROL BOARD

Title of Regulation: VR 680-11-05. Occoquan Policy.

Publication: 7:3 VA.R. 382-388 November 5, 1990.

### Correction to the Final Regulation:

Page 382, column 2, lines 53 and 54 should read:

"Shortly after UOSA began operations, costs and charges for sewage treatment in systems tributary to UOSA..."

Page 386, column 2, lines 39 and 41 should read:

"...Upper Occoquan Sewage Authority (UOSA) - and the elimination of eleven (11) low-performance treatment plants in favor of the UOSA..."

Page 388, column 1, line 29 should read:

"...high-performance sewage treatment facility (UOSA)..."

# CALENDAR OF EVENTS

## Symbols Key

- † Indicates entries since last publication of the Virginia Register
- ☒ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

## NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

## VIRGINIA CODE COMMISSION

### EXECUTIVE

#### BOARD FOR ACCOUNTANCY

December 4, 1990 - 10:30 a.m. - Open Meeting  
Capitol Building, House Room One, Capitol Square, Ninth and Grace Streets, Richmond, Virginia.

A meeting to conduct a formal hearing:

File numbers 89-00962 and 89-01300, Board for Accountancy v. Brenda G. Radford.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8524.

#### DEPARTMENT FOR THE AGING

##### Long-Term Care Ombudsman Program Advisory Council

† December 6, 1990 - 9:30 a.m. - Open Meeting  
Department for the Aging, 700 East Franklin Street, 10th Floor, Richmond, Virginia. ☒

Quarterly meeting will include a review of the Ombudsman's Future Directors Plan, and the development of Council goals for 1991.

Contact: Virginia Dize, State Ombudsman, Department for the Aging, 700 East Franklin Street, 10th Floor, Richmond, VA 23219, telephone (804) 225-2271/TDD ☎ or toll-free

1-800-552-3402.

#### BOARD OF AGRICULTURE AND CONSUMER SERVICES

† December 6, 1990 - 1 p.m. - Open Meeting  
† December 7, 1990 - 9 a.m. - Open Meeting  
Washington Building, Room 204, 1100 Bank Street, Richmond, Virginia. ☒

At this regular meeting, the board will review issues relating to legislation, regulations, and fiscal matters and will receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of other business on December 7, the board will review public comment, total of which not to exceed thirty minutes.

Contact: Roy E. Seward, Secretary to the Board, Virginia Department of Agriculture and Consumer Services, Room 210, Washington Building, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-3501 or (804) 371-6344/TDD ☎

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

Title of Regulations: VR 115-04-12. Rules and Regulations for the Enforcement of the Virginia Gasoline and Motor Fuels Law.

NOTICE: The Board of Agriculture and Consumer Services has decided to hold the record open until 5 p.m., January 22, 1991, on the referenced proposed regulation published July 16, 1990, for the purpose of receiving further public comment. See General Notices in 7:2 V.A.R. 321-322 October 22, 1990, for details.

\* \* \* \* \*

December 6, 1990 - 2 p.m. - Public Hearing  
1100 Bank Street, Room 204, Washington Building, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: VR 115-06-01. Rules Governing the Solicitation of Contributions. The proposed amendments to the regulation are for the purpose of bringing the regulation into conformity with amendments in the statute; to define certain terms contained in the statute regarding exemption from

# Calendar of Events

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annual registration; to specify, pursuant to § 57-55.2(i) of the Code of Virginia, the name or names by which a professional solicitor may identify himself and his employer; to standardize documentation required for filing with the Commissioner of the Department of Agriculture and Consumer Services; to establish procedures for compliance with the statute; to consider other measures to enforce laws governing the solicitation of contributions in Virginia (§ 57-48 et seq. of the Code of Virginia), hereinafter referred to as the "Virginia Solicitation of Contributions Law"; and to assure uniform regulation of charitable solicitations throughout the Commonwealth.

## PLEASE NOTE:

"The statement of basis, purpose, substance, issues, and impact on proposed regulation VR 115-06-01, Rules Governing the Solicitation of Contributions, published on August 27, 1990, in the Virginia Register (pp. 4045-4047 (Volume 6, issue 24)), states as one of the proposed regulation's purposes the establishment of certain evidence deemed adequate to lift a suspension of registration. This is not one of the purposes of the proposed regulation, and the proposed regulation does not address this matter."

Statutory Authority: § 57-66 of the Code of Virginia.

## NOTE: CORRECTION IN WRITTEN COMMENT DATE.

Written comments may be submitted until November 12, 1990.

Contact: Jo Freeman, Chair, Revisions Committee, Virginia Department of Agriculture and Consumer Services, Division of Consumer Affairs, P.O. Box 1163, Richmond, VA 23209 or 1100 Bank Street, Room 204, Richmond, VA 23219, telephone (804) 786-1343 or toll-free 1-800-552-9963.

## STATE AIR POLLUTION CONTROL BOARD

**December 19, 1990 - 10 a.m. - Public Hearing**  
Washington County, Board of Supervisors' Meeting Room, 205 Adademy Drive, Abingdon, Virginia.

**December 19, 1990 - 10 a.m. - Public Hearing**  
Virginia Department of Transportation, Auditorium, 731 Harrison Avenue, Salem, Virginia.

**December 19, 1990 - 10 a.m. - Public Hearing**  
Auditorium of the Recreation Center, 301 Grove Street, Lynchburg, Virginia.

**December 19, 1990 - 10 a.m. - Public Hearing**  
Department of Air Pollution Control, Northeastern Virginia Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia.

**December 19, 1990 - 10 a.m. - Public Hearing**

Virginia War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia.

**December 19, 1990 - 2:30 p.m. - Public Hearing**  
Hampton Roads Planning District Commission, Regional Building, 723 Woodlake Drive, Chesapeake, Virginia.

**December 19, 1990 - 10 a.m. - Public Hearing**  
Pohick Regional Library Meeting Room, 6450 Sydenstricker Road, Burke, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed regulation amendments concerns emission standards for noncriteria pollutants and the amendments are being made in response to problems discovered during the first five years of implementation of these rules. The amendments include changes to the Significant Ambient Air Concentration guidelines and to the method used to determine exemptions. Other changes are made and new provisions are added.

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

Written comments may be submitted until January 18, 1991, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240.

Contact: Nancy S. Saylor, Policy Analyst, Department of Air Pollution Control, Division of Program Development, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249.

## DEPARTMENT OF AIR POLLUTION CONTROL

† **December 5, 1990 - 7:30 p.m. - Open Meeting**  
Halifax County High School, State Route 129 East of US Route 501. ☐

A meeting to allow public comments on a permit application from Old Dominion Electric Cooperative to construct and operate an electric utility facility, consisting of two 4085 million BTU per hour coal fired boilers and associated auxiliary equipment, located on the Roanoke River near Clover, Virginia.

Contact: Thomas Henderson, Department of Air Pollution Control, 7701-03 Timberlake Rd., Lynchburg, VA 24502, telephone (804) 947-6641.

## ALCOHOLIC BEVERAGE CONTROL BOARD

**December 10, 1990 - 9:30 a.m. - Open Meeting**  
2901 Hermitage Road, Richmond, Virginia. ☐

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

## ASAP POLICY BOARD - CENTRAL VIRGINIA

† December 6, 1990 - 7 p.m. - Open Meeting  
Cedar Street, 3009 Old Forest Road, Lynchburg, Virginia.

Winter Policy Board meeting regarding program activities for the previous quarter and future operations.

Contact: L. T. Townes, P. O. Box 4345, Fort Hill Station, Lynchburg, VA 24501, telephone (804) 528-4073.

## ASAP POLICY BOARD - RAPPAHANNOCK-RAPIDAN

### Division of Court Services Executive Board

† December 17, 1990 - 6:30 p.m. - Open Meeting  
155 West Davis Street, Room 206, Culpeper, Virginia.

A quarterly business meeting to review the budget, personnel, program activities, legislation and VASAP Commission update.

Contact: R. Dean Irvine, Director, 155 West Davis Street, Culpeper, VA 22701, telephone (703) 825-4550.

## AUCTIONEERS BOARD

December 19, 1990 - 10 a.m. - Open Meeting  
Board of Supervisors Conference Room, Massey Building, A Level, 4100 Chain Bridge Road, Fairfax, Virginia.

A meeting to conduct a formal hearing:

File numbers 90-00117 and 90-00044, Board for Auctioneers v. Anwar M. Khan.

† December 27, 1990 - 10 a.m. - Open Meeting  
Department of Commerce, Conference Room One, 5th Floor, 3600 West Broad Street, Richmond, Virginia.

The Board for Auctioneers will meet to conduct a formal hearing: File Numbers 86-01650 and 86-01573, Board for Auctioneers v. George W. Minson.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8524.

\* \* \* \* \*

December 11, 1990 - 10 a.m. - Public Hearing  
Department of Commerce, 3rd Floor, Room #395, 3600 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Auctioneers Board intends to amend regulations entitled: VR 150-01-2. Rules and Regulations of the Virginia Auctioneers Board. The proposed amendments will adjust fee structure of the board and bring its application in line with these adjustments for auctioneers in the Commonwealth of Virginia.

Statutory Authority: §§ 54.1-113 and 54.1-602 of the Code of Virginia.

Written comments may be submitted until January 18, 1991.

Contact: Gerald W. Morgan, Administrator, Department of Commerce, 3600 West Broad Street, Richmond, Virginia 23230-4917, telephone (804) 367-8534.

## BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

December 13, 1990 - 10 a.m. - Open Meeting  
1606 Santa Rosa Road, Richmond, Virginia. ☐

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23220-5005, telephone (804) 662-9907.

## VIRGINIA AVIATION BOARD

† December 18, 1990 - 10 a.m. - Open Meeting  
Best Western Airport Inn, 5700 Williamsburg Road, Richmond, Virginia. ☐

A meeting to discuss matters of interest to the aviation community in Virginia and to hear applications for state grants for airport aid.

Contact: Nancy C. Brent, 4508 S. Laburnum Ave., Richmond, VA 23231-2422, telephone (804) 786-6284.

## BOARD FOR BRANCH PILOTS

† December 14, 1990 - 9 a.m. - Open Meeting  
The Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. ☐

A regular quarterly meeting to consider routine business.

Contact: Florence R. Brassier, Deputy Director for Regulatory Programs, Department of Commerce, 3600 W.

# Calendar of Events

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Broad St., Fifth Floor, Richmond, VA 23230-4917, telephone (804) 367-8534.

## DEPARTMENT FOR CHILDREN

### State-Level Runaway Youth Services Network

**December 6, 1990 - 10:30 a.m. - Open Meeting**  
Department of Corrections, 6900 Atmore Drive, Rooms 2103-2104, Richmond, Virginia. ☒

A general meeting open to the public.

**Contact:** Dr. Joseph McGreal, Deputy Director, Virginia Department for Children, 805 East Broad Street, 11th Floor, Richmond VA 23219, telephone (804) 786-5990.

## BOARD OF COMMERCE

**January 10, 1991 - 1 p.m. - Open Meeting**  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

This meeting is scheduled to coincide with convening of the General Assembly short session. Members will meet in the morning with legislators; the afternoon meeting will address legislation expected to have an impact upon the department.

**Contact:** Alvin D. Whitley, Staff Assistant to the Board of Commerce, Department of Commerce, 3600 W. Broad St., Fifth Floor, Richmond, VA 23230, telephone (804) 367-8564, SCATS 367-8519 or toll-free 1-800-552-3016.

## DEPARTMENT OF COMMERCE

† **February 3, 1991EB - Written comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Commerce intends to amend regulations entitled: **VR 190-03-1. Regulations Governing Polygraph Examiners.** The proposed regulation will adjust the fee structure of the board and bring its application in line with these adjustments for polygraph examiners in the Commonwealth of Virginia.

### STATEMENT

Pursuant to §§ 54.1-113, 54.1-201 and 54.1-1802 of the Code of Virginia, the Polygraph Examiners Advisory Board proposes to amend its regulations to adjust fees for examination, licensure, intern license, renewal, and reinstatement. These regulations apply to approximately 250 licensed polygraph examiners in Virginia.

The purpose of the proposed amendments is to adjust examination, licensure, intern license, renewal and reinstatement fees in order to assure that the variance between revenues and expenditures for the board does not exceed 10% in any biennium as required by § 54.1-113 of the Code.

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-1802 of the Code of Virginia.

Written comments may be submitted until February 3, 1991.

**Contact:** Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

## Private Security Services Advisory Committee

† **December 21, 1990 - 10 a.m. - Open Meeting**  
Department of Commerce, 3600 W. Broad St., Fifth Floor, Conference Room Two, Richmond, Virginia.

The Department of Commerce/Private Security Services Advisory Committee will meet to conduct a formal hearing: File Number 90-01623, Department of Commerce v. Audie Ray Clark.

**Contact:** Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8524.

## COMPENSATION BOARD

**December 20, 1990 - 5 p.m. - Open Meeting**  
Ninth Street Office Building, 202 North Ninth Street, 9th Floor, Room 913/913A, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A routine business meeting.

**Contact:** Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, VA 23206-0686, telephone (804) 786-3886 or (804) 786-3886/TDD ☎

## DEPARTMENT OF CONSERVATION AND RECREATION

### Rappahannock Scenic River Advisory Board

† **December 5, 1990 - 7 p.m. - Open Meeting**  
C. M. Bradley Elementary School, 614 Hasting Lane, Warrenton, Virginia.

A meeting to review river issues and programs.

**Contact:** Richard G. Gibbons, Environmental Programs Manager, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor

Street, Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or 786-2121/TDD ☎

## Falls of the James Scenic River Advisory Board

December 14, 1990 - noon - Open Meeting  
December 21, 1990 - noon - Open Meeting  
Planning Commission Conference Room, 5th Floor, City Hall, Richmond, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Programs Manager, Department of Conservation and Recreation, 203 Governor Street, Suite 326, Richmond, VA 23209, telephone (804) 786-4132 or 786-2121/TDD ☎

## Virginia Soil and Water Conservation Board

December 5, 1990 - 9 a.m. - Open Meeting  
Williamsburg Hilton, 50 Kings Mill Road, Williamsburg, Virginia.

Bimonthly meeting held in conjunction with VA Association Soil and Water Conservation Districts Annual Meeting.

January 17, 1991 - 9 a.m. - Open Meeting  
Colonial Farm Credit, 6525 Mechanicsville Turnpike, Williamsburg, Virginia.

Bimonthly board meeting.

Contact: Donald L. Wells, Deputy Director, Department of Conservation and Recreation, Division of Soil and Water Conservation, 203 Governor St., Suite 206, Richmond, VA 23210, telephone (804) 786-2064.

## BOARD FOR CONTRACTORS

† December 10, 1990 - 2:30 p.m. - Open Meeting  
Tysons Corner Marriott, 8028 Leesburg Pike, Vienna, Virginia.

A meeting to conduct a formal hearing: File Number 88-01897, Board for Contractors v. Gary Konvelski t/a Janco of Northern Virginia.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

## Complaints Committee

† December 18, 1990 - 9 a.m. - Open Meeting  
3600 W. Broad St., 5th Floor, Conference Room 1, Richmond, Virginia.

A meeting to review and consider complaints filed by consumers against licensed contractors.

Contact: A. R. Wade, Complaints Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0196.

## BOARD OF CORRECTIONS

December 12, 1990 - 10 a.m. - Open Meeting  
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia. ☒

A regular monthly meeting to consider such matters as may be presented.

Contact: Ms. Vivian Toler, Secretary of the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

## BOARD FOR COSMETOLOGY

January 18, 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 Cosmetology intends to amend regulations entitled: VR 235-01-02. **Board for Cosmetology Regulations.** The proposed amendments change the fees charged by the board to ensure compliance with § 54.1-113 of the Code of Virginia.

Statutory Authority: §§ 54.1-201(5) of the Code of Virginia.

Written comments may be submitted until January 18, 1991.

Contact: Roberta L. Banning, Assistant Director, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only).

## BOARD OF DENTISTRY

December 6, 1990 - 8:30 a.m. - Open Meeting  
December 7, 1990 - 8:30 a.m. - Open Meeting  
1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia.

A meeting to consider the following committee reports: Regulatory Committee, Advertising Committee, Executive Committee, Legislative Committee, Budget Committee, Exam Committee, and to consider regular board business and formal hearings.

The public may observe the meeting; however, no comments from the public will be accepted on any item except the following:

Regulatory Committee (comments accepted during discussion of item).

# Calendar of Events

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Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9906.

## BOARD OF EDUCATION

† December 5, 1990 - 3 p.m. - Open Meeting  
MEETING PLACE TO BE ANNOUNCED

The Board of Education and the State Council of Higher Education will meet in joint session.

† January 24, 1991 - 9 a.m. - Open Meeting  
† January 25, 1991 - 9 a.m. - Open Meeting  
Conference Rooms D and E, James Monroe Building, 101 North Fourteenth Street, Richmond, Virginia. ☒  
(Interpreter for deaf provided if requested)

† February 28, 1991 - 9 a.m. - Open Meeting  
† March 1, 1991 - 9 a.m. - Open Meeting  
Berkeley Hotel, 12th and Cary Streets, Richmond, Virginia.  
☒ (Interpreter for deaf provided if requested)

The Board of Education and the Board of Vocational Education will hold its regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request. Public comment will not be received at the meeting.

Contact: Margaret Roberts, Executive Director, State Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2540.

## GOVERNOR'S COMMISSION ON EDUCATIONAL OPPORTUNITY FOR ALL VIRGINIANS

NOTE: CHANGE IN MEETING LOCATION  
December 5, 1990 - 9:30 a.m. - Open Meeting  
Monroe Building, Conference Rooms D & E, 1st Floor, Richmond, Virginia. ☒

A full commission meeting.

Contact: Kris Ragan, Staff, P.O. Box 1422, Ninth Street Office Bldg., Room 329, Richmond, VA 23211, telephone (804) 786-1688.

## LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

December 6, 1990 - 5:30 p.m. - Open Meeting  
Chesterfield County Administration Building, 10,001 Ironbridge Road, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services

Coordination, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

## LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

† January 23, 1991 - 6:30 p.m. - Open Meeting  
Gloucester County Administration Building, Conference Room, corner of Duval and Main Street, Gloucester, Virginia. ☒

The winter quarterly meeting of the LEPC will be held and matters on the agenda to be addressed include: (i) selection of officers for 1991, (ii) a status report on the public information campaign and (iii) appointment of a committee to review and update the County Hazardous Materials Plan.

Contact: Georgette N. Hurley, Assistant County Administrator, Gloucester County Administrator's Office, Box 329, Gloucester, VA 23061, telephone (804) 693-4042.

## LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF MANASSAS, CITY OF MANASSAS PARK AND COUNTY OF PRINCE WILLIAM

December 17, 1990 - 1:30 p.m. - Open Meeting  
1 County Complex Court, Prince William, Virginia. ☒

A meeting to discharge the provisions of SARA Title III.

Contact: Thomas J. Hajduk, Information Coordinator, 1 County Complex Court, Prince William, VA 22192-9201, telephone (703) 335-6800.

## LOCAL EMERGENCY PLANNING COMMITTEE - NEW KENT COUNTY

† December 4, 1990 - 7:30 p.m. - Open Meeting  
New Kent County Administration Building, New Kent, Virginia. ☒

Updated Emergency Response Plan as required by SARA Title III.

Contact: J. Lawrence Gallaher, Director of Public Safety, P.O. Box 33, New Kent, VA 23124, telephone (804) 966-9680.

## FAMILY AND CHILDREN'S TRUST FUND OF VIRGINIA

### Board of Trustees

NOTE: CHANGE IN MEETING TIME  
December 7, 1990 - 9 a.m. - Open Meeting  
Koger Executive Center, West End, Blair Building,

Conference Room C, 8007 Discovery Drive, Richmond, Virginia. ☒

The board will plan and evaluate its fall fundraising campaign. It will carry out all the activities necessary for implementation of this project.

**Contact:** Molly Moncure Jennings, Executive Director, Family and Children's Trust Fund, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

## VIRGINIA FIRE SERVICES BOARD

† December 14, 1990 - 9 a.m. - Open Meeting  
Linden Row, 100 East Franklin Street, Richmond, Virginia.

A regular business meeting of the board. This meeting is open to the public for their input and comments.

### Fire/EMS Training and Education Committee

† December 13, 1990 - 1 p.m. - Open Meeting  
Linden Row, 100 East Franklin Street, Richmond, Virginia.

Committee meeting to discuss fire training and fire policies. The committee meeting is open to the public for their input.

### Fire Prevention and Control Committee

† December 13, 1990 - 9 p.m. - Open Meeting  
Linden Row, 100 East Franklin Street, Richmond, Virginia.

Committee meeting to discuss fire training and fire policies. The committee meeting is open to the public for their input.

### Legislative Committee

† December 13, 1990 - 1 p.m. - Open Meeting  
Linden Row, 100 East Franklin Street, Richmond, Virginia.

Committee meeting to discuss fire training and fire policies. The committee meeting is open to the public for their input.

**Contact:** Anne J. Bales, Executive Secretary Senior, James Monroe Bldg., 17th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2681.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

December 14, 1990 - 9 a.m. - Open Meeting  
1601 Rolling Hills Drive, Conference Room 3, Richmond, Virginia. ☒

FDE Informals.

**Contact:** Meredyth P. Partridge, Executive Director, 1601

Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9907.

## DEPARTMENT OF GENERAL SERVICES

### Division of Forensic Science

† December 7, 1990 - 10 a.m. - Open Meeting  
Monroe Building, Conference Room B, 101 North 14th Street, Richmond, Virginia.

The advisory board will discuss issues, concerns, and programs that impact the Division of Forensic Science and its user agencies.

**Contact:** Paul B. Ferrara, PH.D., Director, 1 N. 14th St., Richmond, VA 23219, telephone (804) 786-2281.

### Division of Consolidated Laboratory Services

† December 14, 1990 - 9:30 a.m. - Open Meeting  
Consolidated Lab Building, Room 147, 1 North 14th Street, Richmond, Virginia.

The advisory board will discuss issues, concerns, and programs that impact the Division of Consolidated Laboratory Services and its user agencies.

**Contact:** Dr. A. W. Tiedemann, Jr., Director, 1 N. 14th St., Richmond, VA 23219, telephone (804) 786-7905.

## GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

† December 10, 1990 - 10:30 a.m. - Open Meeting  
Holiday Inn-Crossroads, 2000 Staples Mill Road, Richmond, Virginia. ☒

This is a general meeting of the council and is open to the public.

**Contact:** Abria M. Singleton, Executive Secretary, 4615 W. Broad St., The Commonwealth Bldg., Third Floor, Richmond, VA 23230, telephone (804) 367-9816.

## VIRGINIA HAZARDOUS MATERIALS EMERGENCY RESPONSE ADVISORY COUNCIL

† December 18, 1990 - 10 a.m. - Open Meeting  
Sheraton Park South, 9901 Midlothian Turnpike, Richmond, Virginia.

The business of the meeting will consist of a status report of the hazardous materials emergency response program, a report on Title III of SARA, and a report from the hazardous materials training subcommittee.

Immediately following the advisory council meeting,



# Calendar of Events

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there will be a meeting of the Virginia Emergency Response Council to discuss Title III.

**Contact:** Addison E. Slayton, Jr., State Coordinator, Department of Emergency Services, 310 Turner Road, Richmond, VA 23225, telephone (804) 674-2497.

## STATE BOARD OF HEALTH

† **December 10, 1990 - 11 a.m. - Open Meeting**  
Department of Health, Main Street Station, Training Room, Richmond, Virginia. ☒

Work session to review health policy issues.

† **December 11, 1990 - 9 a.m. - Open Meeting**  
State Capitol, House Room 1, Richmond, Virginia. ☒

Regular business meeting.

**Contact:** Susan R. Rowland, Assistant to the Health Commissioner, Virginia Department of Health, 109 Governor St., Suite 400, Richmond, VA 23219, telephone (804) 786-3561.

## DEPARTMENT OF HEALTH

### Radiation Advisory Board

**December 5, 1990 - 9 a.m. - Open Meeting**  
State Capitol Building, House Room 1, Richmond, Virginia. ☒

The department will inform the Radiation Advisory Board of its activities regarding radiation protection and solicit the board for their comments.

Public comment will not be received.

**Contact:** Leslie P. Foldesi, Director, Madison Bldg., Room 914, 109 Governor St., Richmond, VA 23219, telephone (804) 786-5932 or 1-800-468-0138.

## BOARD OF HEALTH PROFESSIONS

### Administration and Budget Committee

**December 5, 1990 - 10 a.m. - Open Meeting**  
**NOTE: CHANGE IN MEETING LOCATION**  
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 4, Richmond, Virginia. ☒

A meeting to consider department budget, General Fund Assessments and Fund Transfers.

### Executive Committee

**December 5, 1990 - 1 p.m. - Open Meeting**

## NOTE: CHANGE IN MEETING LOCATION

Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 4, Richmond, Virginia. ☒

A meeting to consider matters requiring Executive Committee attention.

**Contact:** Richard Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9919.

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

**December 18, 1990 - 9:30 a.m. - Open Meeting**  
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ☒

A monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting.

**Contact:** G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☒

\* \* \* \* \*

**December 21, 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 Virginia Health Services Cost Review Council intends to amend regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The proposed amendments will allow investor-owned institutions organized as proprietorships, partnerships, or S-corporations to have their income tax imputed into the aggregate cost of operating the facility to allow them to be treated similarly to corporations.

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

Written comments may be submitted until December 21, 1990.

**Contact:** G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

## BOARD FOR HEARING AID SPECIALISTS

† **February 3, 1991 - Written comments may be submitted until this date.**

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Hearing

Aid Specialists intends to amend regulations entitled: **VR 375-01-02. Board for Hearing Aid Specialists Regulations.** The proposed regulation will adjust the fee structure of the board and bring its application in line with these adjustments for hearing aid specialists in the Commonwealth of Virginia.

## STATEMENT

Pursuant to §§ 54.1-201 and 54.1-113 of the Code of Virginia, the Board for Hearing Aid Specialists proposes to amend its regulations to adjust fees for licensure by adding a section for application fee and a section clarifying the licensure fee for physicians. The regulations will apply to approximately 350 licensed hearing aid specialists and to approximately 30 temporary permit holders.

The purpose of the proposed amendments is to add a section for application fees (fee was not changed, but was not previously stated in the regulations) and to add a section clarifying the licensure fee for physicians. This will assure that the variance between revenues and expenditures for the board does not exceed 10% in any biennium as required by § 54.1-113 of the Code.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until February 3, 1991.

Contact: Gerald W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† December 5, 1990 - 1 p.m. - Open Meeting  
Monroe Building, Council Conference Room, 9th Floor, Richmond, Virginia. ☒

A general business meeting. Contact Council for more information.

Contact: Barry M. Dorsey, Deputy Director, 9th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2629.

## DEPARTMENT OF HISTORIC RESOURCES

### Historic Resources Board

† December 11, 1990 - 1:30 p.m. - Open Meeting  
General Assembly Building, Senate Room B, Richmond, Virginia. ☒

A general business meeting. The board will consider the addition of the following properties to the Virginia

### Landmarks Register:

1. Colonial Hotel, Wise Co.
2. Frying Pan Church, Fairfax Co.
3. Kentlands, Montgomery Co.
4. Piedmont, Albemarle Co.
5. Rose Bower, Dinwiddie Co.
6. Tetley, Orange Co.
7. Rochester House, Westmoreland Co.
8. Seven Islands, Buckingham Co.
9. Oregon Hill Historic District, Richmond
10. Bristoe Battlefield Historic District, Prince William Co.

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☒

### State Review Board

† December 11, 1990 - 10 a.m. - Open Meeting  
General Assembly Building, Senate Room B, Richmond, Virginia. ☒

A meeting to consider the nomination of the following properties to the Virginia Landmarks Register and the National Register of Historic Places:

1. Colonial Hotel, Wise Co.
2. Frying Pan Church, Fairfax Co.
3. Kentlands, Montgomery Co.
4. Piedmont, Albemarle Co.
5. Rose Bower, Dinwiddie Co.
6. Tetley, Orange Co.
7. Rochester House, Westmoreland Co.
8. Seven Islands, Buckingham Co.
9. Oregon Hill Historic District, Richmond (City)

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☒

### HOPEWELL INDUSTRIAL SAFETY COUNCIL

December 4, 1990 - 9 a.m. - Open Meeting  
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for deaf provided upon request)

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

# Calendar of Events

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

### Amusement Device Technical Advisory Committee

† December 6, 1990 - 9 a.m. - Open Meeting  
Seventh Floor Conference Room, 205 North Fourth Street,  
Richmond, Virginia. ☐

A meeting to review and discuss regulations pertaining to the construction, maintenance, operation and inspection of amusement devices adopted by the Board of Housing and Community Development.

Contact: Jack A. Proctor, CPCA, Deputy Director, Department of Housing and Community Development, 205 North Fourth Street, Richmond, VA 23219, telephone (804) 786-4752 or (804) 786-5405/TDD#1211 1/3

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† December 18, 1990 - 11 a.m. - Open Meeting  
601 South Belvidere Street, Richmond, Virginia. ☐

A regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; (iv) consider and, if appropriate, approve proposed amendments to the Rules and Regulations for Allocation of Low-Income Housing Tax Credits; and (v) consider such other matters and take such other actions as they may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 786-1986.

\* \* \* \* \*

† December 14, 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 Virginia Housing Development Authority intends to amend regulations entitled: **VR 400-02-0011. Rules and Regulations for Allocation of Low-Income Housing Tax Credits.** The purpose of this action is to amend the rules and regulations for allocation of low-income housing tax credits ("Credits") available under § 42 of the Internal Revenue Code (the "IRC") to impose additional restrictions on the eligibility of applicants for credits

from the pools or subpools designated by the authority for developments in which certain nonprofit organizations materially participate in the operation and development thereof.

## STATEMENT

Basis: § 36-55.30:3 of the Code of Virginia.

Subject, Substance and Issues: The proposed amendments to the rules and regulations implement the intent of § 42 of the IRC to limit the eligibility of those applicants for credits from the pools or subpools constituting at least 10% of the total amount of credits ("nonprofit pools or subpools") which have been designated by the authority for developments in which "qualified nonprofit organizations" (as defined in the IRC) materially participate in the development and operation of the development as required by the IRC. Specifically, the proposed amendments impose on each such applicant which receives from the nonprofit pools or subpools either (i) a reservation of credits ratified or approved by the authority's Board of Commissioners on or after December 18, 1990, or (ii) an allocation of credits made pursuant to such a reservation, the IRC-mandated requirements that the qualified nonprofit organization have an ownership interest in the development and that such qualified nonprofit organization not be affiliated with or controlled by a for-profit organization. In addition, in order to ensure that the intent of the IRC is fully implemented, the proposed amendments impose on those same applicants the requirements that the authority determine that the qualified nonprofit organizations involved therewith have not been nor will be created by a for-profit entity for the principal purpose of being included in such nonprofit pools or subpools and that the qualified nonprofit organization's ownership interest in the development is substantial.

Impact: The authority does not expect that the proposed amendments to the rules and regulations will have any impact on the number of units produced or the number of low-income persons served in connection with the authority's allocation of credits. The authority does not expect that any significant costs will be incurred for the implementation of and compliance with the proposed amendments to the rules and regulations.

Statutory Authority: § 36-55.30.3 of the Code of Virginia.

Written comments may be submitted until December 14, 1991.

Contact: J. Judson McKellar, Jr., General Counsel, 601 S. Belvidere St., Richmond, VA 23220.

## COUNCIL ON INDIANS

December 12, 1990 - 2 p.m. - Open Meeting  
Koger Executive Complex, Blair Building, Conference Room C, 8007 Discovery Drive, Richmond, Virginia.

A regular meeting to conduct general business and to receive reports from the council standing committees.

Contact: Mary Zoller, Secretary Manager, 8007 Discovery Drive, Richmond, VA 23229-9285, telephone (804) 662-9285 or 1-800-552-7096/TDD

COUNCIL ON INFORMATION MANAGEMENT

December 14, 1990 - 9 a.m. - Open Meeting Washington Building, 9th Floor Conference Room, 1100 Bank Street, Richmond, Virginia.

A regular business meeting to consider adoption of certain information technology resource management policy, standard and guidelines.

Contact: Linda Hening, Administrative Assistant, Washington Building, Suite 901, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-3622 or toll-free 1-800-225-3624/TDD

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

Coordinating Committee

December 14, 1990 - 8:30 a.m. - Open Meeting Office of the Coordinator, Interdepartmental Regulation, 1603 Santa Rose Road, Tyler Building, Richmond, Virginia.

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental Regulation, Office of the Coordinator, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-7124.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

December 4, 1990 - 10 a.m. - Open Meeting State Capitol Building, House Room 2, Capitol Square, Richmond, Virginia.

An open meeting without public comment period to: (i) review the response of Dorey Electric Company; and (ii) consider staff proposal on evaluation and selection of related instruction agents.

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

January 8, 1991 - 10 a.m. - Public Hearing Virginia Housing and Development Authority Conference Center, 601 South Belvidere Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Labor and Industry intends to amend regulations entitled: VR 425-01-74. Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees. The proposed regulation provides a procedure for notification to the Department of Labor and Industry of asbestos projects and establishes permit fees for those projects.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Written comments may be submitted until October 15, 1990.

Contact: John J. Crisanti, Director, Office of Enforcement Policy, P.O. Box 12064, Richmond, VA 23241-0064, telephone (804) 786-2384.

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January 8, 1991 - 10 a.m. - Public Hearing Virginia Housing Development Authority, Conference Center #1, 601 South Belvidere Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Safety and Health Codes Board intends to amend regulations entitled: VR 425-01-75. Boiler and Pressure Vessel Rules and Regulations. Included in these proposed amendments are changes due to required departmental regulatory review and a requirement for the National Board "R" Stamp for organizations performing repairs and alterations to boilers and pressure vessels.

Statutory Authority: § 40.1-51.6 of the Code of Virginia.

Written comments may be submitted until December 28, 1990, to Anna Bradley, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241.

Contact: Jim Hicks, Director of Boiler and Pressure Vessel Safety, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-3262.

VIRGINIA STATE LIBRARY AND ARCHIVES (LIBRARY BOARD)

† January 4, 1991 - 2 p.m. - Public Hearing Virginia State Library and Archives, Supreme Court Room, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Library Board intends

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to amend regulations entitled: **VR 440-02-02. Requirements Which Must Be Met in Order to Receive Grants-In-Aid.** The proposed action will amend local minimum expenditure requirements libraries must meet to receive grants.

**Subject:** Virginia State Library and Archives intends to amend regulations VR 440-02-02. Requirements Which Must Be Met in Order to Receive Grants-In-Aid. The major change would raise the requirement for local minimum expenditures to match state aid funds from \$2.00 to 50% of the median statewide local operating expenditures per capita.

**Substance:** The proposed regulations (i) require public libraries to have operating expenditures of at least 50% of the median statewide local operating expenditure per capita by July 1, 1992, or submit a five-year plan for reaching the minimum; (ii) reduce state aid grants by 25% to those libraries which do not have a certified librarian in the position of director; (iii) require three consecutive evening hours and appropriate weekend hours of service; (iv) require libraries to publish their telephone number in the local directory; and (v) require libraries to provide basic services listed in the regulations free of charge to the public.

**Issues:** The major issue considered in drafting the proposed amendments is the increase in the local expenditures required to match state aid grants.

**Basis:** This regulation is issued under the authority granted by § 42.1-52 the Code of Virginia.

**Purpose:** The State Library Board has not revised the local minimum expenditure requirement for public libraries since 1977.

**Estimated Impact:** The major change in the requirements will affect approximately 15 of 90 public libraries which have not raised local expenditures for library services significantly above the \$2.00 per capita amount. The current estimated median local expenditure of libraries participating in the state aid program is \$7.20 per capita.

Statutory Authority: § 42.1-52 of the Code of Virginia.

Written comments may be submitted until February 3, 1991.

**Contact:** Anthony Yankus, Director, PLDD, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2320 or toll-free 1-800-336-5266.

## LOCAL GOVERNMENT ADVISORY COUNCIL

† **December 10, 1990 - 1 p.m. - Open Meeting**  
State Capitol, House Room 4, Richmond, Virginia.

A regular meeting of the council to consider issues for

the LGAC's 1991 work program.

**Contact:** Robert H. Kirby, Secretary, 702 Eighth Street Office Bldg., 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6508 or SCATS (804) 786-1860.

## LONGWOOD COLLEGE

### Academic/Student Affairs Committee

† **December 7, 1990 - 1 p.m. - Open Meeting**  
Longwood College, East Ruffner, Board Room, Farmville, Virginia. ☒

A meeting to conduct routine business of the committee.

**Contact:** William F. Dorrill, President, Longwood College, Farmville, VA 23901, telephone (804) 395-2001.

## STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

† **February 27, 1991 - 10 a.m. - Public Hearing**  
State Lottery Department, 2021 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: **VR 447-01-2. Administration Regulations.** These amendments clarify department procurement procedures and conform to amendments in the Code of Virginia.

## STATEMENT

The proposed regulations amend the existing Administration Regulations which were promulgated to set out the general operational parameters for the department and the board. They include industry-related definitions; requirements for approval of banks and depositories; board procedures for the conduct of business and promulgation of regulations; procedures for appeals on licensing actions; standards for appeals on licensing actions; standards for agency procurement action; and procedures for procurement appeals and disputes.

The proposed regulations are being promulgated to address substantive changes in the procurement procedures and to address Code requirements, definition changes, and housekeeping measures.

Estimated Impact:

A. Entities affected: Because changes to the procurement procedures are substantive, all potential vendors desiring to conduct business with the department will be affected.

B. Fiscal Impact:

- 1. Costs to affected entities: None
- 2. Costs to agency: The cost to the agency is negligible.
- 3. Source of agency funds: State Lottery Fund

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2021 West Broad Street, Richmond, Virginia 23220, telephone (804) 367-9433.

\* \* \* \* \*

† February 27, 1991 - 10 a.m. - Public Hearing  
State Lottery Department, 2021 West Broad Street,  
Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: VR 447-02-1. **Instant Game Regulations.** These amendments clarify standards for licensing; authorize issuance of lottery retailer license on a perpetual basis; establish annual license review process instead of license renewal; under certain circumstances, authorize prize payment based on photocopy of lottery ticket; clarify when prizes are payable over time and conform to amendments in the Code.

STATEMENT

The proposed regulations amend the existing Instant Game Regulations of the State Lottery Department which were promulgated to establish procedures specifically related to instant lottery games. These procedures include: standards and requirements for licensing retailers, specific operational parameters for the conduct of the game, instant ticket validation requirements, and payment of prizes.

The proposed regulations also amend portions of the Instant Game Regulations to conform with the state lottery law and to refine sections which deal with the lottery retailer application procedure, ticket price, retailer's compensation, standards for licensing, settlement of accounts prize payment, and the elimination of claim forms under certain circumstances. Also promulgated are the emergency regulations on "License Term and Annual Review" that were adopted by the State Lottery Board, signed by the Governor, and filed with the Registrar of Regulations on May 14, 1990.

Estimated Impact:

Entities affected: There are approximately 5,550 lottery instant game retailers and a lottery player base of approximately 2,200,000 people, all of whom will be

affected by these revisions.

In October 1990, a Notice of Intended Regulatory Action was published in the Virginia Register notifying interested parties of these amendments. All revisions have been reviewed by the Attorney General's office and approved by the State Lottery Board. The proposed regulations are not expected to be controversial or generate any negative response.

Fiscal Impact:

1. Costs to affected entities: There are no anticipated costs to lottery instant ticket retailers or lottery players resulting from any of the revisions.

2. Costs to agency: No additional costs to the department are anticipated. By adopting the perpetual license and annual review systems, the agency anticipates an annual savings of \$6,300 from the elimination of the annual cost of printing and mailing new license certificates to approximately 5,550 lottery retailers.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2021 West Broad Street, Richmond, Virginia 23220, telephone (804) 367-9433.

\* \* \* \* \*

† February 27, 1991 - 10 a.m. - Public Hearing  
State Lottery Department, 2021 West Broad Street,  
Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Lottery Board intends to amend regulations entitled: VR 447-02-2. **On-Line Game Regulations.** These amendments clarify standards for licensing; authorize issuance of lottery retailer license on a perpetual basis; reduce prize redemption period for free tickets from 180 to 60 days; under certain circumstances, authorize prize payment based on photocopy of lottery ticket; clarify when prizes are payable over time and conform to amendments in the Code.

STATEMENT

The proposed regulations amend the existing On-line Game Regulations of the State Lottery Department which were promulgated to establish procedures specifically related to on-line lottery games. These procedures include: standards and requirements for licensing retailers, specific operational parameters for the conduct of the game, on-line ticket validation requirements, and payment of prizes.

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The proposed regulations also amend portions of the On-Line Game Regulations to: (i) authorize issuance of a lottery retailer license on a perpetual basis subject to an annual determination of continued retailer eligibility and the payment of an annual fee fixed by the board; (ii) reduce the prize redemption period for free on-line tickets from 180 to 60 days; and (iii) provide for additional game features, e.g., subscription services. Item 1 was adopted as an emergency regulation by the State Lottery Board, signed by the Governor, and filed with the Registrar of Regulations on May 14, 1990.

## Estimated Impact:

Entities affected: There are approximately 1,800 on-line lottery retailers and a lottery player base of approximately 2,200,000 people, all of whom will be affected by these revisions.

In October 1990, a Notice of Intended Regulatory Action was published in the Virginia Register notifying interested parties of these amendments. All revisions have been reviewed by the Attorney General's office and approved by the State Lottery Board. The proposed regulations are not expected to be controversial or generate any negative response.

## Fiscal Impact:

1. Costs to affected entities: There are no anticipated costs to lottery on-line ticket retailers or lottery players resulting from any of the revisions.

2. Costs to agency: No additional costs to the department are anticipated. By adopting the perpetual license and annual review systems, the agency anticipates an annual savings of \$2,300 from the elimination of the annual cost of printing and mailing new license certificates to approximately 1,800 on-line lottery retailers.

Clarity and simplicity: The proposed regulations were reviewed for clarity and simplicity by the department's regulatory coordinator as well as the director, board, and the office of the Attorney General. Any suggestions for improving the clarity and simplicity which resulted from these reviews were incorporated into these changes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until January 23, 1991.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2021 West Broad Street, Richmond, Virginia 23220, telephone (804) 367-9433.

## VIRGINIA MARINE PRODUCTS BOARD

† December 4, 1990 - 5 p.m. - Open Meeting  
The Ramada Inn, 950 J. Clyde Morris Boulevard, Newport

News, Virginia.

The board will meet to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, old/new business.

Contact: Shirley Estes Berg, 97 Main St., Room 103, Newport News, VA 23601, telephone (804) 594-7261.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

December 7, 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 adopt regulations entitled: **VR 460-04-8.11. Home and Community-Based Services to Individuals with Acquired Immune Deficiency Syndrome and Aids Related Complex.** This regulation will provide for home and community based services for individuals with AIDS/ARC.

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

Written comments may be submitted until 4:30 p.m., December 7, 1990, to Chris Pruett, Manager, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

\* \* \* \* \*

January 18, 1991 - 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 460-02-2.6100 Eligibility Conditions and Requirements; VR 460-03-2.6113, § 1924 Provisions; and VR 460-04-8.6, Spousal Impoverishment.** This proposed regulation intends to promulgate permanent regulations consistent with the Medicare Catastrophic Coverage Act of 1988 re-eligibility rules for persons institutionalized for a continuous period.

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

Written comments may be submitted until 4:30 p.m., January 18, 1991, to Ann E. Cook, Regulatory and Eligibility Consultant, Division of Policy and Research, Department of Medical Assistance Services, 600 E. Broad

St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

## BOARD OF MEDICINE

December 5, 1990 - 9 a.m. - Open Meeting  
December 6, 1990 - 9 a.m. - Open Meeting  
Springfield Hilton, 6550 Loisdale Road, Springfield, Virginia. ☒

The Informal Conference Committee of the board 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 § 2.1-344 of the Code of Virginia.

Public comment will not be received.

† December 5, 1990 - 9:30 a.m. - Open Meeting  
Radisson Hotel Lynchburg, 601 East Main Street, Lynchburg, Virginia. ☒

† December 13, 1990 - 9 a.m. - Open Meeting  
Fredricksburg Inn and Conference Center, I-95 and Route 3, Fredericksburg, Virginia. ☒

† December 14, 1990 - 9 a.m. - Open Meeting  
Williamsburg Hilton, 50 Kings Mill Road, Williamsburg, Virginia. ☒

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The Informal Conference Committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia.

Contact: Karen D. Waldron, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

December 8, 1990 - 9 a.m. - Open Meeting  
December 9, 1990 - 9 a.m. - Open Meeting  
The Boar's Head Inn, Charlottesville, Virginia. ☒

The board and its staff will meet to plan for accomplishing the work as assigned to it. No public comments will be received. No regular business of the board will be conducted.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9925.

\* \* \* \* \*

January 19, 1991 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: VR 465-01-01. **Public Participation Guidelines.** The amendments to this regulation establish requirements for filing a re-petition for proposed amendments by the public on specific issues previously acted on by the Board of Medicine.

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

Written comments may be submitted until January 19, 1991, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 1601 Rolling Hills Drive, Richmond, Virginia.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9925.

## STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

December 11, 1990 - 6 p.m. - Open Meeting  
SEE AGENDA FOR LOCATION.

A committee meeting and informal session.

December 12, 1990 - 10 a.m. - Open Meeting  
James Monroe Building, 13th Floor Conference Room, Central Office, 109 Governor Street, Richmond, Virginia. ☒

A regular monthly meeting. The agenda will be published on December 5 and may be obtained by calling Jane Helfrich.

Committee meetings 8:45 a.m.

Regular Session 10 a.m.

## Joint Board Liaison Committee

December 7, 1990 - 10 a.m. - Open Meeting  
Eastern Henrico Government Complex, Parham and Hungry Springs Road, Richmond, Virginia. ☒

A quarterly meeting of the Joint Board Liaison Committee comprised of representatives of the Boards of Education, Health, Mental Health, Mental Retardation and Substance Abuse Services, Rehabilitative Services and Social Services. Agenda items include topics of common interest and the development of joint policies relative to clients who are mutually served.

Contact: Jane Helfrich, Board Administrator, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone



# Calendar of Events

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(804) 786-3921.

## State Human Rights Committee

**December 14, 1990 - 9 a.m. - Open Meeting**  
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, James Monroe Building, 13th Floor Conference Room, Richmond, Virginia. ☒

A regularly scheduled meeting of the State Human Rights Committee to discuss business relating to human rights issues. Agenda items are listed prior to the meeting.

**Contact:** Elsie D. Little, ACSW, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988.

**University of Virginia Institute of Law, Psychiatry and Public Policy, Division of Continuing Education, Office of Continuing Legal Education and Office of Continuing Medical Education**

† **March 7, 1991 - 9 a.m. - Open Meeting**  
† **March 8, 1991 - 9 a.m. - Open Meeting**  
Richmond Marriott Hotel, Richmond, Virginia. ☒

Fourteenth Annual Symposium on Mental Health and the Law. An annual symposium addressing issues related to mental health and the law. Approximately 9 hours in Category 1 CME, 9 CEU and 9 CLE credits applied for.

**Contact:** Carolyn Engelhard, Administrator, Institute of Law, Psychiatry and Public Policy, Box 100, Blue Ridge Hospital, Charlottesville, VA 22901, telephone (804) 924-5435.

## MIGRANT AND SEASONAL FARMWORKERS BOARD

† **December 12, 1990 - 10 a.m. - Open Meeting**  
State Capitol, House Room 1, Richmond, Virginia. ☒

A regular meeting of the board, and biennial meeting for election of a Chairman and Vice Chairman.

**Contact:** Marilyn Mandel, Director, Department of Labor and Industry, Office of Planning and Policy, P.O. Box 12964, Richmond, VA 23241, telephone (804) 786-2385.

## STATE MILK COMMISSION

† **December 5, 1990 - 11 a.m. - Open Meeting**  
1015 Ninth Street Office Building, Richmond, Virginia. ☒

A routine meeting.

**Contact:** C. H. Coleman, Administrator, 1015 Ninth Street Office Bldg., Richmond, VA 23219, telephone (804) 786-2013.

† **December 5, 1990 - 2 p.m. - Public Hearing**  
State Capitol, House Room 2, Richmond, Virginia.

The purpose of this hearing is to receive evidence and testimony relative to adjusting all Class I prices by amending Regulation No. 8 of the current Rules and Regulations or by adopting a temporary pricing ORDER.

All interested parties will be afforded an opportunity to be heard and to submit written proposals, objections, amendments, evidence and arguments.

**Contact:** C. H. Coleman, Administrator, State Milk Commission, 1015 Ninth St. Office Bldg., Richmond, VA 23219, telephone (804) 786-2013.

## BOARD OF NURSING

### Special Conference Committee

† **December 11, 1990 - 8:30 a.m. - Open Meeting**  
† **December 14, 1990 - 8:30 a.m. - Open Meeting**  
Department of Health Professions, Conference Room 4, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to inquire into allegations that certain licensees may have violated laws and regulations governing the practice of nursing in Virginia.

Public comment will not be received.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909 or toll-free 1-800-533-1560.

## BOARD OF NURSING HOME ADMINISTRATORS

**December 5, 1990 - 9 a.m. - Open Meeting**  
NOTE: CHANGE IN LOCATION  
1601 Rolling Hills Drive, Conference Rooms 3 and 4, Richmond, Virginia. ☒

Nursing Home Administrators Examinations.

**December 6, 1990 - 8:30 a.m. - Open Meeting**  
1601 Rolling Hills Drive, Conference Rooms 3 and 4, Richmond, Virginia. ☒

A regularly scheduled board meeting.

**Contact:** Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9907.

## BOARD FOR OPTICIANS

† December 7, 1990 - 2:30 p.m. - Open Meeting  
J. Sargeant Reynolds Community College, Downtown  
Campus, 7th and Jackson Streets, Richmond, Virginia. ☒

A meeting to discuss proposed regulations and adjustments to its fee structure and bringing its application in line with the adjustments.

Contact: Gerald W. Morgan, Administrator, Department of Commerce, 3600 W. Broad, St., Richmond, VA 23230-4917, telephone (804) 367-8534.

## VIRGINIA OUTDOORS FOUNDATION

December 10, 1990 - 10:30 a.m. - Open Meeting  
State Capitol, House Room 2, Richmond, Virginia. ☒

A general business meeting.

Contact: Tyson B. Van Auken, Executive Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-5539.

## POLYGRAPH EXAMINERS ADVISORY BOARD

† December 12, 1990 - 9 a.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street,  
Richmond, Virginia. ☒

The meeting is for the purpose of administering the Polygraph Examiners licensing examination to eligible polygraph examiner interns and to consider other matters which require board action.

Contact: Gerald W. Morgan, Administrator, Department of Commerce, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8534.

## BOARD OF PROFESSIONAL COUNSELORS

† December 10, 1990 - 8 a.m. - Open Meeting  
† December 11, 1990 - 8 a.m. - Open Meeting  
† December 12, 1990 - 8 a.m. - Open Meeting  
† December 13, 1990 - 8 a.m. - Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,  
Richmond, Virginia. ☒

Meeting of Oral Examiners for orientation. No public comments will be received.

† December 12, 1990 - 6 p.m. - Open Meeting  
Embassy Suites Hotel, 2925 Emerywood Parkway,  
Richmond, Virginia.

Committee meeting of the Board of Professional Counselors with members of the American Association

of Marriage and Family Counselors.

† December 14, 1990 - 9 a.m. - Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,  
Richmond, Virginia. ☒

A meeting to conduct general board business. The board will receive committee reports, respond to correspondence, and conduct regulatory review. No public comments will be received at this meeting.

Contact: Evelyn B. Brown, Executive Director or Joyce D. Williams, Administrative Assistant, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9912.

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† January 14, 1991 - 9 a.m. - Public Hearing  
1601 Rolling Hills Drive, Conference Room 1, Richmond,  
Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors intends to adopt regulations entitled: **VR 560-01-02. Regulations Governing the Practice of Professional Counseling.** The proposed regulations establish standards of practice for professional counseling, including education, supervised experience and examination for licensure.

## STATEMENT

The proposed regulations establish requirements governing the practice of professional counseling in the Commonwealth. They include requirements necessary for licensure; criteria for the examinations; standards of practice, and procedures for the disciplining of licensed professional counselors.

Basis: Title 54.1, Chapter 1, §§ 54.1-100 through 54.1-114; Chapter 24, §§ 54.1-2400 and 54.1-2510; and Chapter 35, §§ 54.1-3500 through 54.1-3506 of the Code of Virginia provide the statutory basis for promulgation of the regulations by the Board of Professional Counselors. The Board of Professional Counselors has approved the proposed revisions for a 60-day public comment period.

Purpose: The proposed regulations are designed to ensure the public protection by establishing standards for licensure, examination, training and practice of licensed professional counselors.

The proposed regulations result from a biennial review.

Impact: The regulations will impact all licensed professional counselors.

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

Written comments may be submitted until February 4, 1991.

# Calendar of Events

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Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 1601 Rolling Hills Drive, Suite 200, Richmond, VA 23229, telephone (804) 662-9912.

\* \* \* \* \*

† January 14, 1991 - 9 a.m. - Public Hearing  
1601 Rolling Hills Drive, Conference Room 1, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors intends to adopt regulations entitled: **VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.** The proposed regulations establish standards of practice for substance abuse counseling, including education, supervised experience and examination for certification.

## STATEMENT

The proposed regulations establish requirements governing the practice of substance abuse counseling in the Commonwealth. They include requirements necessary for licensure; criteria for the examinations; standards of practice, and procedures for the disciplining of certified substance abuse counselors.

Basis: Title 54.1, Chapter 1, §§ 54.1-100 through 54.1-114; Chapter 24, §§ 54.1-2400 and 54.1-2510; and Chapter 35, §§ 54.1-3500 through 54.1-3506 of the Code of Virginia provide the statutory basis for promulgation of the regulations by the Board of Professional Counselors. The Board of Professional Counselors has approved the proposed revisions for a 60-day public comment period.

Purpose: The proposed regulations are designed to ensure the public protection by establishing standards for certification, examination, training and practice of certified substance abuse counselors.

The proposed regulations result from a biennial review.

Impact: The regulations will impact all certified substance abuse counselors.

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

Written comments may be submitted until February 4, 1991.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 1601 Rolling Hills Drive, Suite 200, Richmond, VA 23229, telephone (804) 662-9912.

## BOARD OF PSYCHOLOGY

December 7, 1990 - 10 a.m. - Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☐

Informal hearings.

Contact: Evelyn B. Brown, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9913.

## VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

December 10, 1990 - 10 a.m. - Open Meeting  
110 South Seventh Street, Richmond, Virginia.

The Virginia Public Telecommunications Board's staff in the Department Information Technology will conduct a teleconference to receive comments by interested parties on the proposed Master Plan for Public Telecommunications. Teleconference locations will be in Roanoke, Norfolk, Harrisonburg, Fairfax and Richmond. Contact, by December 7, the address below to preregister or submit written comments.

Contact: Mamie White, Administrative Assistant to the Virginia Public Telecommunications Board, 110 South 7th St., 1st Floor, Richmond, VA 23219, telephone (804) 344-5522.

## REAL ESTATE BOARD

December 10, 1990 - 10 a.m. - Open Meeting  
Tysons Corner Mariott, 8028 Leesburg Pike, Vienna, Virginia.

The board will conduct a formal hearing: File Number 89-01137, Real Estate Board v. Frank M. Connell, Jr.

December 10, 1990 - 1 p.m. - Open Meeting  
Tysons Corner Mariott, 8028 Leesburg Pike, Vienna, Virginia.

The board will conduct a formal hearing: File Numbers 83-00336 and 87-01470, Real Estate Board v. H. M. Gradi.

December 11, 1990 - 10 a.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, Fifth Floor, Richmond, Virginia.

The board will conduct a formal hearing: File Number 88-00968, Real Estate Board v. Richard D. Lyttle.

December 11, 1990 - 2 p.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, Fifth Floor, Conference Room One, Richmond, Virginia.

The board will conduct a formal hearing: File Number 89-00933, Real Estate Board v. William S. Ives.

December 12, 1990 - 10 a.m. - Open Meeting  
Board of Supervisors Conference Room, Massey Building, A Level, 4100 Chain Bridge Road, Fairfax, Virginia.

# Calendar of Events

The board will conduct a formal hearing: File Number 88-00473, Real Estate Board v. Irvin L. Barb.

**December 17, 1990 - 10:30 a.m. - Open Meeting**  
Fredericksburg Juvenile and Domestic Relations Court, 601 Caroline Street, Third Floor, Juvenile Courtroom, Fredericksburg, Virginia.

The board will conduct a formal hearing: File Number 88-00749, Real Estate Board v. Nancy Neely.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

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† **December 19, 1991 - 2 p.m. - Public Hearing**  
Department of Commerce, 3600 W. Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **VR 585-01-1. Real Estate Board Regulations.** The board proposes to adjust fees for license applications and renewals.

## STATEMENT

### 1. Statement of purpose

Pursuant to §§ 54.1-201 and 54.1-2105 of the Code of Virginia and in accordance with Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia, the Real Estate Board proposes to amend its regulations to adjust fees for licensure, registration and renewal.

### 2. Estimated Impact.

a. These regulations apply directly to approximately 15,000 brokers, 70,000 salespersons, 3,100 firms, 75 rental location agents and 35 proprietary schools in Virginia.

b. Costs are shown in the regulations in the form of application and renewal fees for licenses. The fees were established in accordance with § 54.1-113 of the Code of Virginia to ensure sufficient revenues to cover expenses.

c. There are no anticipated additional costs to the department.

d. This program is supported through licensing, registration and renewal fees.

3. The legal authority for the Real Estate Board to promulgate these regulations is found in §§ 54.1-201, 54.1-2105 and 54.1-113 of the Code of Virginia.

4. Current forms will be revised to reflect new fees as

forms are reprinted. Prior to that time supplemental fee schedules will be provided to all applicants and licensees.

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-2105 of the Code of Virginia.

Written comments may be submitted until February 2, 1991.

Contact: Joan L. White, Assistant Director, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8552.

## BOARD OF REHABILITATIVE SERVICES

**December 13, 1990 - 11 a.m. - Open Meeting**  
4901 Fitzhugh Avenue, Richmond, Virginia ☐

The board will (i) receive department reports, (ii) consider regulatory matters and (iii) conduct the regular business of the board.

### Finance Committee

**December 13, 1990 - 9:30 a.m. - Open Meeting**  
4901 Fitzhugh Avenue, Richmond, Virginia ☐

The committee will review monthly financial reports and budgetary projections.

### Legislation and Evaluation Committee

**December 13, 1990 - 9:30 a.m. - Open Meeting**  
4901 Fitzhugh Avenue, Richmond, Virginia ☐

A meeting to consider the program evaluation and legislation update.

### Program Committee

**December 13, 1990 - 9:30 a.m. - Open Meeting**  
4901 Fitzhugh Avenue, Richmond, Virginia ☐

A meeting to consider the (i) Independent Living Report; (ii) Specific Learning Disability Program Update; and (iii) WWRC Program Report.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Avenue, Richmond, VA 23230, telephone (804) 367-0319, toll-free 1-800-552-5019 TDD or Voice or (804) 367-0280/TDD ☐

## STATE SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

**December 5, 1990 - 10 a.m. - Open Meeting**  
General Assembly Building, 910 Capitol Street, Senate Room A, Richmond, Virginia.

# Calendar of Events

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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, telephone (804) 786-3559.

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

January 3, 1991 - 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 615-01-35. Monthly Reporting in the Food Stamp Program.** This regulation requires monthly reports from all Food Stamp households that are required to file them for the Aid to Dependent Children Program or which contain at least one person with earnings.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until January 3, 1991, to Burt Richman, Virginia Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699.

Contact: Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

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January 18, 1991 - 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 615-01-34. Aid to Dependent Children-Unemployed Parent (ADC-UP) Program.** The purpose of the proposed amendments is to limit the number of months to which a family may receive benefits to six months in a 12-consecutive-month period.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until January 18, 1991, to Guy Lusk, Director, Division of Benefit Programs, 8007 Discovery Dr., Richmond, Virginia.

Contact: Peggy Friedenber, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

## DEPARTMENT OF TAXATION

January 4, 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 Department of Taxation intends to adopt regulations entitled: **VR 630-2-322.01. Virginia Individual Income Tax: Self-employment Tax Addback and Subtraction.** The purpose of this regulation is to establish the requirements for the addback and subsequent subtraction of self-employment tax for taxable years 1990-1993.

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

Written comments may be submitted until January 4, 1991.

Contact: Janie E. Bowen, Director, Tax Policy Division, P.O. Box 6-L, Department of Taxation, Richmond, VA 23282, telephone (804) 367-8010.

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December 7, 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 Department of Taxation intends to adopt regulations entitled: **VR 630-2-322.02 Individual Income Tax: Age Subtraction.** This proposed regulation sets forth the age 62 and over income subtraction available to taxpayers.

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

Written comments may be submitted until December 7, 1990.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

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December 7, 1990 - Written comments may be submitted this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-3-323.1 Corporation Income Tax: Excess Cost Recovery.** The amendment to the statutory recovery period and percentages for the outstanding balance of ACRS depreciation affects the subtraction claimed by corporate taxpayers. The adoption of this regulation will make the regulation consistent with the changes made to the law.

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

Written comments may be submitted until December 7, 1990.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

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**December 7, 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 Department of Taxation intends to amend regulations entitled: **VR 630-2-492. Declaration of Estimated Income Tax: Failure by Individual to Pay Estimated Tax.** This regulation sets forth the \$150 tax threshold on the underpayment of estimated taxes by an individual.

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

Written comments may be submitted until December 7, 1990.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

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**December 7, 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 Department of Taxation intends to amend regulations entitled: **VR 630-3-302. Corporation Income Tax: Definitions - "Sales" and VR 630-3-414. Corporation Income Tax: Sales Factor.** The amendment to the statutory definition of "sales" affects the computation of the sales factor for multistate corporations with sales of intangible property. The adoption of these regulations will make the regulations consistent with the revised statutory definition and set forth the method for computing net gain from the sale of intangible property for multistate corporations required to compute the Virginia sales factor.

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

Written comments may be submitted until December 7, 1990.

Contact: Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

## COMMONWEALTH TRANSPORTATION BOARD

**December 19, 1990 - 2 p.m.** – Open Meeting  
Virginia Department of Transportation, Board Room, 1401 E. Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

**December 20, 1990 - 10 a.m.** – Open Meeting

Virginia Department of Transportation, Board Room, 1401 E. Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A monthly meeting of the Commonwealth Transportation Board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring Board approval.

Public comment will be received at the outset of the meeting, on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: Albert W. Coates, Jr., Assistant Commissioner, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-9950.

## TRANSPORTATION SAFETY BOARD

**December 14, 1990 - 10 a.m.** – Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☒

A meeting to discuss various subjects which pertain to Transportation Safety.

Contact: William H. Leighty, Deputy Commissioner for Transportation Safety, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23219, telephone (804) 367-6614 or (804) 367-1752/TDD ☎

## BOARD OF VETERINARY MEDICINE

† **December 5, 1990 - 9 a.m.** – Open Meeting  
1601 Rolling Hills Drive, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

Informal conferences.

Contact: Terri H. Behr, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9915.

## COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

† **December 4, 1990 - 10 a.m.** – Open Meeting  
General Assembly Building, Courts Committee Room C, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A regular meeting of the commission.

Contact: William T. McCollum, Executive Director,

# Calendar of Events

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Commission on Virginia Alcohol Safety Action Program,  
Richmond, VA 23219, telephone (804) 786-5895.

## BOARD FOR THE VISUALLY HANDICAPPED

† January 17, 1991 - 2 p.m. - Open Meeting  
Virginia Department for the Visually Handicapped, 397  
Azalea Avenue, Richmond, Virginia. ☒ (Interpreter for  
deaf provided upon request)

A quarterly meeting to review policy and procedures  
of the Department for the Visually Handicapped. The  
board will review and comment on the department's  
budget.

Contact: Joseph A. Bowman, Executive Assistant, 397  
Azalea Avenue, Richmond, VA 23227, telephone (804)  
371-3140 or toll-free 1-800-662-2155.

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

### Advisory Committee on Services

January 12, 1991 - 11 a.m. - Open Meeting  
Administrative Headquarters, 397 Azalea Avenue,  
Richmond, Virginia. ☒ (Interpreter for deaf provided upon  
request)

The committee meets quarterly to advise the Virginia  
Board for the Visually Handicapped on matters related  
to serves for blind and visually handicapped citizens  
of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary, 397  
Azalea Avenue, Richmond, VA 23227, telephone (804)  
371-3350, toll-free 1-800-662-2155 or (804) 371-3340/TDD ☎

## VIRGINIA VOLUNTARY FORMULARY BOARD

December 7, 1990 - 10 a.m. - Public Hearing  
Main Floor Conference Room, James Madison Building,  
109 Governor Street, Richmond, Virginia.

A public hearing to consider the proposed adoption  
and issuance of revisions to the Virginia Voluntary  
Formulary. The proposed revisions to the Formulary  
add and delete drugs and drug products to the  
Formulary that became effective on April 23, 1990,  
and the most recent supplement to that Formulary.  
Copies of the proposed revisions to the Formulary are  
available for inspection at the Virginia Department of  
Health, Bureau of Pharmacy Services, James Madison  
Building, 109 Governor Street, Richmond, Virginia  
23219. Written comments sent to the above address  
and received prior to 5 p.m. on December 7, 1990,  
will be made a part of the hearing record and  
considered by the board.

January 17, 1990 - 10:30 a.m. - Open Meeting  
Washington Building, 1100 Bank Street, 2nd Floor Board  
Room, Richmond, Virginia.

A Meeting to consider public hearing comments and  
new product data for products being considered for  
inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of  
Pharmacy Services, 109 Governor St., Richmond, VA 23219,  
telephone (804) 786-4326 or (804) 786-3596 (SCATS).

## VIRGINIA WASTE MANAGEMENT BOARD

† December 14, 1990 - 10 a.m. - Open Meeting  
General Assembly Building, House Room C, Richmond,  
Virginia. ☒

A general business meeting.

Contact: Loraine Williams, Secretary, 101 N. 14th St.,  
Richmond, VA 23219, telephone (804) 225-2667, toll-free  
1-800-552-2075 or (804) 225-3753/TD ☎

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

† January 8, 1991 - 10 a.m. - Open Meeting  
Monroe Building, Conference Room B, 101 North 14th  
Street, Richmond, Virginia. ☒

The public will be acquainted with the contents of the  
proposed Amendment 11 to the Virginia Hazardous  
Waste Management Regulations. This amendment will  
contain revisions and additions equivalent to those  
promulgated by the United States Environmental  
Agency during the period from January 31, 1989, to  
June 30, 1990.

Contact: W. Gulevich, Director, Division of Technical  
Services, Department of Waste Management, 11th Floor,  
Monroe Bldg., 101 N. 14th St., Richmond, VA 23219,  
telephone (804) 225-2975, (SCATS) 225-2667, toll-free  
1-800-552-2075 or (804) 371-8737/TD ☎

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† January 8, 1991 - 11 a.m. - Public Hearing  
Monroe Building, Conference Room B, 101 North 14th  
Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Virginia Waste  
Management Board intends to amend regulations  
entitled: **VR 627-10-1. Virginia Hazardous Waste  
Management Regulations.** Since the adoption of  
Amendment 10 to the Virginia Hazardous Waste  
Management Regulations on December 18, 1989, with  
the effective date of February 1, 1990, the United

States Environmental Protection Agency made a large number of changes in its regulations mainly dealing with land disposal restrictions. During the period from January 31, 1989, and June 30, 1990, EPA also revised the method for determination of the toxicity characteristic and promulgated new requirements for air emissions from certain process equipment at the hazardous waste management facilities. These and other less far-reaching changes require prompt regulatory adoption by the Commonwealth.

## STATEMENT

**Basis:** Section 10.1-1402 of the Virginia Waste Management Act of the Code of Virginia authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Act and consistent with the federal statutes and regulations.

**Purpose:** The Virginia Waste Management Board and the Director of the Department of Waste Management propose to amend the existing Virginia Hazardous Waste Management Regulations (VR 672-10-1) to continue the effective monitoring of the generation, transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. By regulating these activities the Commonwealth protects public health, natural resources and the environment. By maintaining the equivalence of its regulations with those issued by the United States Environmental Protection Agency (EPA) under the Resource Conservation and Recovery Act and its amendments, the Commonwealth remains eligible to carry out its own hazardous waste management program instead of the federal program.

**Issues:** Since the adoption of Amendment 10 to the Virginia Hazardous Waste Management Regulations on December 18, 1989, with the effective date of February 1, 1990, EPA made a large number of changes in its regulations mainly dealing with land disposal restrictions. During the period from January 31, 1989, and June 30, 1990, EPA also revised the method for determination of the toxicity characteristic and promulgated new requirements for air emissions from certain process equipment at the hazardous waste management facilities. These and other less far-reaching changes require prompt regulatory adoption by the Commonwealth.

### Impact:

Number and types of regulated entities:

- 581\* Large quantity generators of hazardous waste
- 6 Large quantity generators of mixed radioactive waste
- 1374\* Small quantity generators
- 81 Treatment, storage and disposal facilities

## 319 Transporters

**Projected costs to regulated entities:** The changes in the federal regulations issued by EPA in 1989 and 1990 as the result of the Hazardous and Solid Waste Amendments of 1984 (HSWA) have impacted significantly the regulated community, as all the wastes identified or listed prior to November 8, 1984, are made subject to the land disposal restrictions. Many types of hazardous wastes will require pretreatment before they may be accepted for disposal.

Responding to the Congressional mandate, EPA has adopted a new testing method to determine the toxicity characteristic of the waste and included tests for numerous additional organic constituents that were not required by the superseded Extraction Procedure Toxicity test. As the result of the expanded set of tests, the number of regulated generators of hazardous waste in Virginia is expected to increase substantially.

The increased costs associated with the federal changes are already being borne by these handlers since the federal requirements are enforceable in Virginia and other states and are independent of Virginia regulations.

**Projected cost to agency for implementation and enforcement:** The amounts of federal grants made available to the department have increased over several years and have been sufficient to reimburse the Commonwealth for its implementation of the program.

**Source of funds:** The sources and the amounts of funds available to the department will not be affected by the amendment, with the exception that should it not be issued, the loss of authorization to conduct the program will result in the loss of \$1.9 million in federal grant funds.

\* These numbers are expected to increase substantially as the result of the new Toxicity Characteristic Leaching Procedure adopted the EPA on March 29, 1990.

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

Written comments may be submitted until February 1, 1991.

**Contact:** W. Gulevich, Director, Division of Technical Services, Department of Waste Management, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2975, (SCATS) 225-2667 or toll-free 1-800-552-2075.

## STATE WATER CONTROL BOARD

† December 3, 1990 - 9 a.m. - Open Meeting  
General Assembly Building, Senate Room B, 9th and Broad Streets, Richmond, Virginia.

† January 7, 1991 - 9 a.m. - Open Meeting  
Henrico County Board of Supervisors Room, Parham and



# Calendar of Events

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Hungry Spring Roads, Richmond, Virginia.

A regularly scheduled meeting.

**Contact:** Doneva A. Dalton, Office of Policy Analysis, State Water Control Board, 2111 N. Hamilton St., P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6829.

\* \* \* \* \*

**December 4, 1990 - 7 p.m. - Public Hearing**

**NOTE: CHANGE IN LOCATION**

Spotsylvania County General District Courtroom, 9109 Courthouse Road, Spotsylvania, Virginia.

**December 5, 1990 - 7 p.m. - Public Hearing**

Virginia War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-15-02. Virginia Water Protection Permit Regulation.** The proposed regulation delineates the procedures and requirements to be followed for issuance of a Virginia Water Protection Permit.

Statutory Authority: §§ 62.1-44.15:5 and 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until December 24, 1990, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia.

**Contact:** Martin G. Ferguson, Jr., Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-1868.

**December 10, 1990 - 7 p.m. - Public Hearing**

Virginia Beach City Council Chambers, City Hall Building, Courthouse Drive, Virginia Beach, Virginia.

**December 12, 1990 - 7 p.m. - Public Hearing**

Roanoke County Administration Center Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

A public meeting to receive views and comments and to answer questions of the public on the promulgation of regulations entitled Oil Discharge Contingency Plans and Financial Responsibility Requirements.

**Contact:** David Ormes, Office of Policy Analysis, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-9704.

† **December 13, 1990 - 7 p.m. - Public Hearing**

Northampton Senior High School Auditorium, Eastville, Virginia. ☒

A public hearing to receive comments on the proposed ground water withdrawal permit application for Brown

and Root, Incorporated to withdraw 1.1 million gallons of potable water. Additionally, the hearing is being held to receive comments on the proposed issuance or denial of the ground water withdrawal permit and to determine whether the proposed withdrawal will conflict with existing rights to withdraw ground water.

**Contact:** Lori A. Freeman, Hearing Reporter, Office of Policy Analysis, State Water Control Board, 2111 N. Hamilton, St., P.O. Box 11143, Richmond, VA 23230-1143, telephone (804) 367-6815.

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**December 3, 1990 - 8:30 a.m. - Open Meeting**

**December 4, 1990 - 8:30 a.m. - Open Meeting**

Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

An open meeting to conduct regulatory review and routine board business.

**Contact:** Mr. 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.

## COUNCIL ON THE STATUS OF WOMEN

**December 3, 1990 - 1 p.m. - Open Meeting**

Richmond Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A regular meeting of the Council on the Status of Women to conduct general business and to receive reports from the council standing committees.

**Contact:** B. J. Northington, Executive Director, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9200 or toll-free 1-800-552-7096/TDD ☒

## BOARD OF YOUTH AND FAMILY SERVICES

† **December 12, 1990 - 7 p.m. - Open Meeting**

† **December 13, 1990 - 10 a.m. - Open Meeting**  
Martha Washington Inn, Abingdon Virginia.

December 12 - Public forum.

December 13 - Board meeting.

**Contact:** Paul E. Steiner, Policy Coordinator, P.O. Box 3-AG, Richmond, VA 23208-1108, telephone (804) 371-0700.

## LEGISLATIVE

### JOINT SUBCOMMITTEE STUDYING DIVORCEMENT AND REPRESENTATIVE OFFERING FOR INCLUSION IN THE VIRGINIA PETROLEUM FRANCHISE ACT

December 6, 1990 - 2 p.m. - Open Meeting  
General Assembly Building, House Room C, 910 Capitol  
Street, Richmond, Virginia. ☐

A working session is scheduled. HJR: 120.

Contact: Maria J. K. Everett, Staff Attorney, Division of  
Legislative Services, 910 Capitol St., Richmond, VA 23219,  
telephone (804) 786-3591.

### JOINT SUBCOMMITTEE STUDYING EARLY INTERVENTION SERVICES TO INFANTS AND TODDLERS

† December 17, 1990 - 10 a.m. - Open Meeting  
General Assembly Building, 6th Floor, Conference Room,  
910 Capitol Street, Richmond, Virginia. ☐

A meeting to review material received by committee  
at meetings and develop its recommendations for 1991  
session. HJR 164.

Contact: Jessica F. Bolecek, Staff Attorney, Division of  
Legislative Services, 910 Capitol St., Richmond, VA 23219,  
telephone (804) 786-3591.

### HOUSE APPROPRIATIONS COMPENSATION SUBCOMMITTEE AND SENATE GENERAL GOVERNMENT SUBCOMMITTEE

† December 4, 1990 - 1:30 p.m. - Open Meeting  
General Assembly Building, House Appropriations  
Committee Room, 9th Floor, 910 Capitol Street, Richmond,  
Virginia. ☐

A meeting to discuss Game Warden Retirement issues.

Contact: Linda Ladd, House Appropriations, General  
Assembly Bldg., 910 Capitol St., Richmond, VA 23219,  
telephone (804) 786-1837.

### HOUSE OF DELEGATES COURTS OF JUSTICE COMMITTEE

December 7, 1990 - 9 a.m. - Executive Session  
General Assembly Building, House Room C, 910 Capitol  
Street, Richmond, Virginia. ☐

An Executive Session to interview judges.

Contact: Mary K. Geisen, Staff Attorney, Division of  
Legislative Services, 910 Capitol St., Richmond, VA 23219,  
telephone (804) 786-3591.

### HOUSE GENERAL LAWS COMMITTEE

December 19, 1990 - 10 a.m. - Public Hearing  
General Assembly Building, House Room C, 910 Capitol  
Street, Richmond, Virginia. ☐

A public hearing has been scheduled by subcommittee  
no. 2 of the House General Laws Committee for the  
purpose of receiving input regarding the Property  
Owners' Association Act.

Contact: Maria J. K. Everett, Staff Attorney, Division of  
Legislative Services, 910 Capitol St., Richmond, VA 23219,  
telephone (804) 786-3591.

### JOINT SUBCOMMITTEE STUDYING LICENSING OF BOAT OPERATORS AND WAYS TO ENHANCE BOATING SAFETY

December 6, 1990 - 1 p.m. - Open Meeting  
General Assembly Building, 6th Floor Conference Room,  
Richmond, Virginia.

A final working session. HJR 102.

Contact: Deanna Sampson, Staff Attorney, or Mary K.  
Geiser, Research Associate, Division of Legislative Services,  
General Assembly Bldg., 910 Capitol St., Richmond, VA  
23219, telephone (804) 786-3591.

### JOINT SUBCOMMITTEE STUDYING MEANS OF REDUCING PREVENTABLE DEATH AND DISABILITY IN THE COMMONWEALTH AND TO EXAMINE THE FEASIBILITY OF IMPLEMENTING A COMPREHENSIVE PREVENTION PLAN IN VIRGINIA

December 4, 1990 - 10 a.m. - Open Meeting  
General Assembly Building, House Room D, Richmond,  
Virginia.

December 18, 1990 - 2 p.m. - Open Meeting  
State Capitol, House Room 2, Richmond, Virginia.

The committee will meet to continue its study. HJR  
179.

Contact: Kathleen G. Harris, Staff Attorney, Division of  
Legislative Services, General Assembly Bldg., 910 Capitol  
St., Richmond, VA 23219, telephone (804) 786-3591.

### JOINT SUBCOMMITTEE STUDYING THE NECESSITY AND DESIRABILITY OF REVISING THE COMMONWEALTHS "COMPARATIVE PRICE

# Calendar of Events

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## ADVERTISING\* STATUTE

**December 5, 1990 - 10 a.m. - Public Hearing**  
Virginia Beach Center for the Arts, 2200 Park Avenue,  
Virginia Beach, Virginia.

A public hearing in a continuation of its study on  
Comparative Price Advertising. HJR 184.

**December 19, 1990 - 10 a.m. - Public Hearing**  
General Assembly Building, House Room C, Richmond,  
Virginia.

A work session and public hearing in a continuation of  
its study of the necessity and desirability of revising  
the Commonwealth's "Comparative Price Advertising"  
Statute. HJR 184.

**Contact:** Mary Geisen, Research Associate, Division of  
Legislative Services, General Assembly Bldg., 910 Capitol  
St., Richmond, VA 23219, telephone (804) 786-3591.

## COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

**December 20, 1990 - 10 a.m. - Open Meeting**  
NOTE: CHANGE OF LOCATION  
Virginia Tech College of Architecture's  
Washington/Alexandria Center, 1001 Prince Street,  
Alexandria, Virginia.

Statutory Commission, §§ 9-145.11 through 9-145.15  
(c.833, 1990).

Agendas have not been set.

**Contact:** Jeff Finch, Assistant Clerk for Projects and  
Research, House of Delegates, P.O. Box 406, Richmond, VA  
23203, telephone (804) 786-2227.

## HOUSE APPROPRIATIONS JOINT SUBCOMMITTEE STUDYING REGIONAL JAIL CONSTRUCTION FUNDING

**† December 17, 1990 - 2:30 p.m. - Public Hearing**  
General Assembly Building, House Appropriations  
Committee Room, 9th Floor, Richmond, Virginia.

A meeting to consider comments on issues related to  
certain jail construction and operating policies  
including: operating and construction cost review and  
reimbursement, financial incentives for regional jails,  
and financial incentives for developing alternatives to  
incarceration as a means to reduce the need for  
additional jail construction.

Those desiring to offer comments on these issues  
should pre-register by calling the House Appropriations  
Committee at 804-786-1837. Speakers will be taken in  
order of registration. Persons wishing to pre-register

by mail or to offer their comments in writing should  
mail them to: R. R. Jordan, Legislative Fiscal Analyst,  
House Appropriations Committee, State Capitol, P.O.  
Box 406, Richmond, Virginia 23203.

**Contact:** Linda Ladd, House Appropriations, General  
Assembly Bldg., 910 Capitol St., Richmond, VA 23219,  
telephone (804) 786-1837.

## JOINT SUBCOMMITTEE STUDYING SCHOOL DROPOUTS AND WAYS TO PROMOTE THE DEVELOPMENT OF SELF-ESTEEM IN YOUTH AND ADULTS

**† December 19, 1990 - 10 a.m. - Open Meeting**  
State Capitol, House Room 1, Richmond, Virginia.

A meeting of the Task Force on Parental and  
Community Involvement.

**Contact:** Jeff Finch, Assistant Clerk for Projects and  
Research, House of Delegates, P.O. Box 406, Richmond, VA  
23203, telephone (804) 786-2227.

## JOINT SUBCOMMITTEE STUDYING USE OF VEHICLES POWERED BY CLEAN TRANSPORTATION FUELS

**† December 3, 1990 - 1 p.m. - Open Meeting**  
State Capitol, House Room 4, Richmond, Virginia.

Final working session for this study committee on  
clean fuel alternatives. HJR 113.

**Contact:** Dr. Alan Wambold, Research Associate, Division  
of Legislative Services, 910 Capitol St., Richmond, VA  
23219, telephone (804) 786-3591.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### December 3

† Water Control Board, State  
Waterworks and Wastewater Works Operators, Board  
for

† Use of Vehicles Powered by Clean Transportation  
Fuels, Joint Subcommittee Studying  
Women, Council on the Status of

#### December 4

Accountancy, Board for  
† Emergency Planning Committee, Local - New Kent  
County  
Hopewell Industrial Safety Council  
† House Appropriations Compensation Subcommittee

# Calendar of Events

and Senate General Government Subcommittee  
Labor and Industry, Department of  
- Virginia Apprenticeship Council  
† Marine Products Board, Virginia  
Reducing Preventable Death and Disability in the  
Commonwealth and to Examine the Feasibility of  
Implementing a Comprehensive Prevention Plan in  
Virginia, Joint Subcommittee Studying  
† Virginia Alcohol Safety Action Program, Commission  
on the  
Waterworks and Wastewater Works Operators, Board  
for

## December 5

† Air Pollution Control, Department of  
Conservation and Recreation, Department of  
- Virginia Soil and Water Conservation Board  
† - Rappahannock Scenic River Advisory Board  
† Education, Board of  
Educational Opportunity for All Virginians, Governor's  
Commission on  
Health, Department of  
- Radiation Advisory Board  
Health Professions, Board of  
- Administration and Budget Committee  
† Higher Education for Virginia, State Council of  
Medicine, Board of  
† Milk Commission, State  
Nursing Home Administrators, Board of  
Sewage Handling and Disposal Appeals Review Board  
† Veterinary Medicine, Board of

## December 6

† Aging, Department for the  
- Long-Term Care Ombudsman Program Advisory  
Council  
† Agriculture and Consumer Services, Board of  
† ASAP Policy Board, Central Virginia  
Children, Department for  
- State-Level Runaway Youth Services Network  
Dentistry, Board of  
Divorcement and Representative Offering for Inclusion  
in the Virginia Petroleum Franchise Act, Joint  
Subcommittee Studying  
Early Childhood and Day Care Programs, Joint  
Subcommittee Studying  
Emergency Planning Committee, Local - Chesterfield  
County  
† Housing and Community Development, Board of  
- Amusement Device Technical Advisory Committee  
Licensing of Boat Operators and Ways to Enhance  
Boating Safety, Joint Subcommittee Studying  
Medicine, Board of  
Nursing Home Administrators, Board of

## December 7

† Agriculture and Consumer Services, Board of  
Dentistry, Board of  
Family and Children's Trust Fund of Virginia  
- Board of Trustees  
† General Services, Department of

- Division of Forensic Science  
House of Delegates Courts of Justice Committee  
† Longwood College  
- Academic/Student Affairs Committee  
Mental Health, Mental Retardation and Substance  
Abuse Services, Department of  
- Joint Board Liaison Committee  
† Opticians, Board for  
Psychology, Board of

## December 8

Medicine, Board of

## December 9

Medicine, Board of

## December 10

Alcoholic Beverage Control Board  
† Contractors, Board for  
† Governor's Job Training Coordinating Council  
† Health, State Board of  
† Local Government Advisory Council  
Outdoors Foundation, Virginia  
† Professional Counselors, Board of  
Public Telecommunications Board, Virginia  
Real Estate Board

## December 11

† Health, State Board of  
† Historic Resources, Department of  
- Historic Resources Board  
- State Review Board  
† Nursing, Board of  
- Special Conference Committee  
† Professional Counselors, Board of  
Real Estate Board

## December 12

Corrections, Board of  
Indians, Council on  
Mental Health, Mental Retardation and Substance  
Abuse Services Board, State  
† Migrant and Seasonal Farmworkers Board  
† Polygraph Examiners Advisory Board  
† Professional Counselors, Board of  
Real Estate Board  
† Youth and Family Services, Board of

## December 13

Audiology and Speech Pathology, Board of  
† Fire Services Board, Virginia  
- Fire/EMS Training and Education Committee  
- Fire Prevention and Control Committee  
- Legislative Committee  
Health Professions, Department of  
† Professional Counselors, Board of  
Rehabilitative Services, Board of  
- Finance Committee  
- Legislation and Evaluation Committee  
† Medicine, Board of  
† Youth and Family Services, Board of

# Calendar of Events

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## December 14

† Branch Pilots, Board for  
Conservation and Recreation, Department of  
- Falls of the James Scenic River Advisory Board  
† Fire Services Board, Virginia  
† Funeral Directors and Embalmers, Board of  
† General Services, Department of  
- Division of Consolidated Laboratory Services  
Information Management, Council on  
Interdepartmental Regulation of Residential Facilities  
for Children  
- Coordinating Committee  
† Medicine, Board of  
Mental Health, Mental Retardation and Substance  
Abuse Services, Department of  
- State Human Rights Committee  
† Nursing, Board of  
- Special Conference Committee  
† Professional Counselors, Board of  
Transportation Safety Board  
† Waste Management Board, Virginia

## December 17

† ASAP Policy Board, Rappahannock-Rapidan  
† Early Intervention Services to Infants and Toddlers,  
Joint Subcommittee Studying  
Real Estate Board

## December 18

† Aviation Board, Virginia  
† Contractors, Board for  
- Complaints Committee  
† Hazardous Materials Emergency Response Advisory  
Council, Virginia  
Health Service Cost Review Council, Virginia  
† Housing Development Authority, Virginia  
Reducing Preventable Death and Disability in the  
Commonwealth and to Examine the Feasibility of  
Implementing a Comprehensive Prevention Plan in  
Virginia, Joint Subcommittee Studying

## December 19

Auctioneers, Board for  
Lottery Board, State  
† School Dropouts and Ways to Promote the  
Development of Self-Esteem in Youth and Adults, Joint  
Subcommittee Studying  
Transportation Board, Commonwealth

## December 20

Compensation Board  
Population Growth and Development, Commission on  
Transportation Board, Commonwealth

## December 21

Conservation and Recreation, Department of  
- Falls of the James Scenic River Advisory Board  
† Commerce, Department of  
- Private Security Services Advisory Committee

## December 27

† Auctioneers, Board for

## January 7, 1991

† Water Control Board, State

## January 8, 1991

† Waste Management, Department of

## January 10, 1991

Commerce, Board of

## January 12

Visually Handicapped, Department for the  
- Advisory Committee on Services

## January 17

Conservation and Recreation, Department of  
- Virginia Soil and Water Conservation Board  
† Visually Handicapped, Board for the  
Voluntary Formulary Board, Virginia

## January 23

† Emergency Planning Committee, Local - Gloucester

## January 24

† Education, Board of

## January 25

† Education, Board of

## February 28

† Education, Board of

## March 1

† Education, Board of

## March 7

† Mental Health, Mental Retardation and Substance  
Abuse Services, Department of  
- University of Virginia Institute of Law, Psychiatry  
and Public Policy, Division of Continuing Education,  
Office of Continuing Legal Education and Office of  
Continuing Medical Education

## March 8

† Mental Health, Mental Retardation and Substance  
Abuse Services, Department of  
- University of Virginia Institute of Law, Psychiatry  
and Public Policy, Division of Continuing Education,  
Office of Continuing Legal Education and Office of  
Continuing Medical Education

## PUBLIC HEARINGS

## December 4

Water Control Board, State

## December 5

## Calendar of Events

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† Milk Commission, State  
Necessity and Desirability of Revising the  
Commonwealth's "Comparative Price Advertising"  
Statute, Joint Subcommittee Studying  
Water Control Board, State

**December 6**

Agriculture and Consumer Services, Department of

**December 7**

Voluntary Formulary Board, Virginia

**December 10**

Water Control Board, State

**December 11**

Auctioneers Board

**December 12**

Water Control Board, Virginia

**December 13**

† Water Control Board, State

**December 17**

† Jail Construction Funding, House Appropriations  
Joint Subcommittee Studying

**December 19**

Air Pollution Control Board, State  
Necessity and Desirability of Revising the  
Commonwealth's "Comparative Price Advertising"  
Statute, Joint Subcommittee Studying  
† Real Estate Board

**January 4, 1991**

† Library and Archives, Virginia State

**January 8, 1991**

Labor and Industry, Department of  
- Safety and Health Codes Board  
† Waste Management, Department of

**January 14, 1991**

† Professional Counselors, Board of

**February 27, 1991**

† Lottery Department, State

## Calendar of Events

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