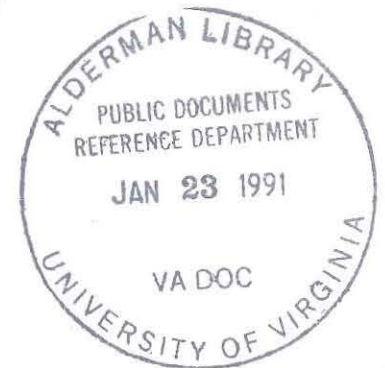
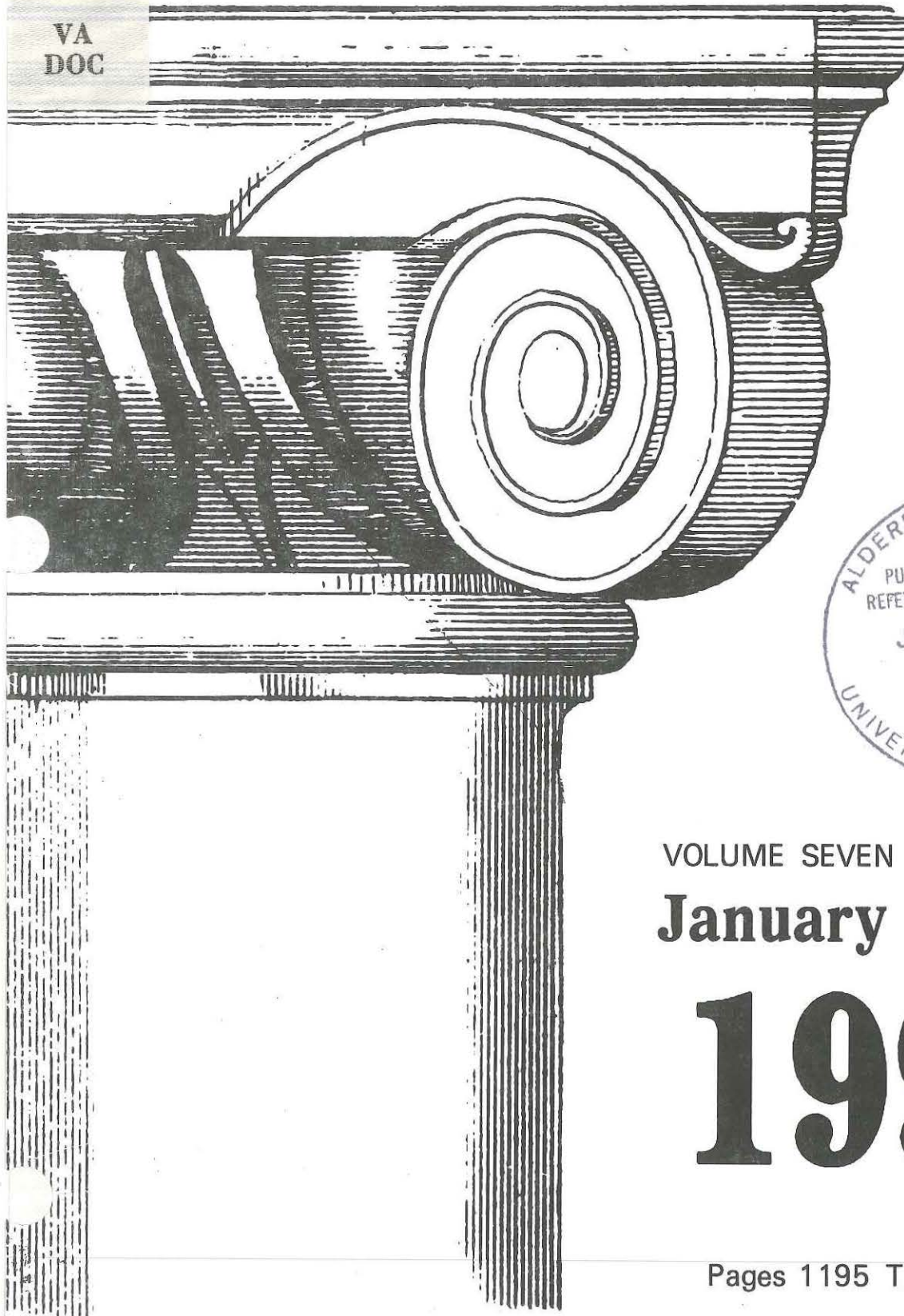


# THE VIRGINIA REGISTER

OF REGULATIONS

COD  
5/R26/  
7-8 R

VA  
DOC



VOLUME SEVEN • ISSUE EIGHT  
**January 14, 1991**

# 1991

Pages 1195 Through 1306

## VIRGINIA REGISTER

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

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

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

### ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

### EMERGENCY REGULATIONS

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

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

### STATEMENT

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

### CITATION TO THE VIRGINIA REGISTER

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

"The *Virginia Register of Regulations*" (USPS-001831) is published bi-weekly, except four times in January, April, July and October for \$100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. POSTMASTER: Send address changes to the *Virginia Register of Regulations*, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

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

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

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

VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

September 1990 through December 1991

MATERIAL SUBMITTED BY                      PUBLICATION DATE  
Noon Wednesday

Volume 7 - 1990-91

Sept. 19	Oct. 8
Oct. 3	Oct. 22
Oct. 17	Nov. 5
Oct. 31	Nov. 19
Nov. 14	Dec. 3
Nov. 28	Dec. 17
Dec. 12	Dec. 31
Index 1 - Volume 7	

Dec. 26	Jan. 14, 1991
Jan. 9	Jan. 28
Jan. 23	Feb. 11
Feb. 6	Feb. 25
Feb. 20	Mar. 11
Mar. 6	Mar. 25
Index 2 - Volume 7	

Mar. 20	Apr. 8
Apr. 3	Apr. 22
Apr. 17	May 6
May 1	May 20
May 15	June 3
May 29	June 17
Index 3 - Volume 7	

June 12	July 1
June 26	July 15
July 10	July 29
July 24	Aug. 12
Aug. 8	Aug. 26
Aug. 21	Sept. 9
Sept. 4	Sept. 23
Final Index - Volume 7	

Volume 8 - 1991-92

Sept. 18	Oct. 7
Oct. 2	Oct. 21
Oct. 16	Nov. 4
Oct. 30	Nov. 18
Nov. 13	Dec. 2
Nov. 27	Dec. 16
Dec. 11	Dec. 30
Index 1 - Volume 8	

# TABLE OF CONTENTS

## PROPOSED REGULATIONS

### DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

Regulations Governing Permits for the  
Archaeological Excavation of Human Remains. (VR  
390-01-02) ..... 1197

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

State Plan for Medical Assistance Relating to  
Restoration of Income and Resource Methodologies.

Groups Covered and Agencies Responsible for  
Eligibility Determination. (VR 460-02-2.2100) ..... 1202

Eligibility Conditions and Requirements. (VR  
460-02-2.6100) ..... 1203

Methodologies for Treatment of Income and  
Resources that Differ from those of the SSI  
Program. (VR 460-03-2.6105) ..... 1207

More Liberal Methods under Social Security Act  
§ 1902(r)(2). (VR 460-03-2.6112) ..... 1211

### BOARD FOR PROFESSIONAL SOIL SCIENTISTS

Board for Professional Soil Scientists Regulations.  
(VR 627-02-01) ..... 1212

## FINAL REGULATIONS

### VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Rules and Regulations for Allocation of Low Income  
Housing Tax Credits. (VR 400-02-0011) ..... 1217

### DEPARTMENT OF MINORITY BUSINESS ENTERPRISE

Public Participation Guidelines. (VR 486-01-01) ..... 1229

## EMERGENCY REGULATIONS

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

Virginia Statewide Fire Prevention Code/1987. (VR  
394-01-06) ..... 1231

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Client Medical Management Program. (VR  
460-04-8.3) ..... 1248

Home and Community Based Care Services for  
Individuals with Mental Retardation. (VR 460-04-8.12)  
..... 1256

## STATE CORPORATION COMMISSION

### ORDERS

Investigation into the promulgation of filing  
requirements for independent power products.  
(PUE900044) ..... 1266

### ADMINISTRATIVE LETTERS

Long-Term Care Insurance Consumer's Guide.  
(1990-23) ..... 1269

## MARINE RESOURCES COMMISSION

Pertaining to the Taking of Bluefish. (VR  
450-01-0059) ..... 1270

Pertaining to the Setting of Eel Pots. (VR  
450-02-0066) ..... 1270

Pertaining to the Setting of Crab Pots. (VR  
450-01-0067) ..... 1271

## GOVERNOR

### EXECUTIVE ORDERS

Commonwealth's Offensive Mobilization Against  
Narcotic Distribution. (28-90) ..... 1272

### COMMENTS

### ALCOHOLIC BEVERAGE CONTROL BOARD

Advertising. (VR 125-01-2) ..... 1272

Tied House. (VR 125-01-3) ..... 1272

Retail Operations. (VR 125-01-5) ..... 1272

Manufacturers and Wholesalers Operations. (VR  
125-01-6) ..... 1272

# Table of Contents

---

## COMMISSION ON VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Virginia Alcohol Safety Action Program Policy and Procedure Manual. (VR 647-01-02) .....	1273
Case Management Policy and Procedure Manual. (VR 647-01-03) .....	1273
Certification Requirements Manual. (VR 647-01-04) ...	1273

## GENERAL NOTICES/ERRATA

### NOTICES OF INTENDED REGULATORY ACTION

Notices of Intent .....	1274
-------------------------	------

### GENERAL NOTICES

#### DEPARTMENT OF LABOR AND INDUSTRY

Notice to the public that the department intends to study the need for requesting elimination of the requirement that apprenticeship related instruction funds be prioritized to construction and basic industry before being distributed to other industries. ....	1279
---	------

Notice to the public that the department intends to study the adoption of policy regarding the evaluation and selection of related instruction administrative agents. ....	1280
--	------

#### DEPARTMENT OF SOCIAL SERVICES

Notice of Demonstration Project. ....	1283
---------------------------------------	------

#### DEPARTMENT OF WASTE MANAGEMENT

Notice of Tentative Decision to Grant a Variance from Regulation, Notice of Availability of Draft Amended Solid Waste Permit, Scheduled Public Hearing on the Draft Amended Permit (No. 314) for the Hanover County Landfill, Hanover, Virginia. ....	1283
---	------

Notice to the public regarding the designation of Regional Solid Waste Management Planning Area as petitioned by the Rappahannock Regional Solid Waste Management Board. ....	1284
---	------

Notice to the public regarding the designation of Regional Solid Waste Management Planning Area as petitioned by the Hampton Roads PDC and the Southeastern Public Service Authority of Virginia. ....	1284
--	------

#### NOTICE TO STATE AGENCIES

Change of address and FAX number. ....	1284
--	------

Forms for filing material on date for publication in the Virginia Register of Regulations. ....	1284
---	------

## CALENDAR OF EVENTS

### EXECUTIVE

Open Meetings and Public Hearings .....	1286
---	------

### LEGISLATIVE

Open Meetings and Public Hearings .....	1303
---	------

### CHRONOLOGICAL LIST

Open Meetings .....	1303
Public Hearings .....	1305

# PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

## Symbol Key

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

## DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

**Title of Regulation:** VR 390-01-02. Regulations Governing Permits for the Archaeological Excavation of Human Remains.

**Statutory Authority:** § 10.1-2300 et seq. of the Code of Virginia.

**Public Hearing Date:** February 20, 1991 - 7 p.m.  
(See Calendar of Events section for additional information)

### Summary:

The purpose of the proposed regulations is to implement the Virginia Antiquities Act, § 10.1-2305 of the Code of Virginia, governing the issuance of permits for the archaeological excavation of unmarked human burials. This permitting process will affect any persons or entities who conduct any type of archaeological field investigation involving the removal of human remains or associated artifacts from any unmarked human burial site. It will also affect any such removal involving archaeological investigation as part of a court-approved removal of a cemetery.

VR 390-01-02. Regulations Governing Permits for the Archaeological Excavation of Human Remains.

### § 1. Definitions.

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

"Archaeological site" means a geographic area on dry land that contains any evidence of human activity which is or may be the source of important historic, scientific, archaeological or educational data or objects, regardless of age. Dry land includes land which is saturated or under water on a temporary basis.

"Board" means the Virginia Board of Historic Resources.

"Curation" means the care and maintenance of artifacts or human remains from the time they are removed from the ground during any period of analysis and study, and as a possible option for long-term disposition of excavated materials.

"Department" means the Virginia Department of Historic Resources.

"Director" means the Director of the Department of Historic Resources.

"Emergency" means a situation in which human burials which have or may have scientific or historic significance are threatened with immediate and unavoidable destruction, or in which there likely will be a loss of scientific data because of the disturbance or destruction of human burials. Emergency situations exist where failure to initiate a scientific investigation immediately would result in irreversible loss of significant information. An emergency may exist regardless of whether the human remains are encountered unexpectedly, or may reasonably be anticipated, or suspected. Such situations include but are not limited to (i) construction projects where avoidance or delays are not possible or would constitute major hardships; (ii) sites where natural processes such as floods or erosion threaten destruction; and (iii) sites where looting is occurring, or is expected to occur within a short period of time.

"Field investigation" means the study of the traces of human culture at any site by means of surveying, sampling, excavation, or removing surface or subsurface material, or going on a site with that intent.

"Person" means any natural individual, partnership, association, corporation, or other legal entity.

### § 2. Applicability.

This regulation shall apply to any person who conducts any field investigation involving the removal of human remains or associated artifacts from any unmarked burial on an archaeological site. This regulation also applies if archaeological investigations are undertaken as part of a court-approved removal of a cemetery.

### § 3. General provisions.

Any person intending to conduct any field investigation involving, or which may reasonably be anticipated to involve, the removal of human remains or associated artifacts from any unmarked human burial on an archaeological site shall first obtain a permit from the director.

1. No field investigation shall be conducted without a permit.

2. No field investigation shall be performed except under the supervision and control of an archaeologist meeting the qualifications stated in § 4 of this regulation.

# Proposed Regulations

---

3. Any human remains removed in the course of field investigations shall be examined by a skeletal biologist or other specialist meeting the qualifications stated in § 4.

4. Any approved field investigation shall include a report summarizing the field portion of the permitted investigation within 30 days of completion of the removal of all human remains and associated artifacts.

5. A copy of the final report shall be delivered to the director according to the timetable described in the application.

## § 4. Permit application.

A. Application for a permit shall be in such form as required by the director, but shall include the following basic information:

1. Name, address, phone number and institutional affiliation of the applicant.

2. Location and description of the archaeological site for which field investigation is proposed, including site number if assigned.

3. A written statement of the landowner's permission to both conduct such research and to remove human remains on his property, and allowing the director or his designee access to the field investigation site at any reasonable time for the duration of the permit. The landowner's signature should be notarized.

4. Applicant shall provide evidence indicating that adequate support is available to carry out research design.

B. A statement of goals and objectives of the project and proposed research design shall be provided. The research design shall, at a minimum, include the following:

1. The research design for archaeology shall adhere to professionally accepted methods, standards, and processes in order to obtain, evaluate, and analyze data on mortuary practices in particular and cultural practices in general.

2. Field recordation shall include, but not be limited to (i) photographs, (ii) maps, (iii) drawings, and (iv) written records. Collected information shall include, but not be limited to (i) considerations of containment devices, (ii) burial shaft or entombment configuration, (iii) burial placement processes, (iv) skeletal positioning and orientation, (v) evidence of ceremonialism or religious practices, and (vi) grave items or artifacts analyses.

To the extent possible, the cultural information shall be examined at the regional level with appropriate archival research. The results of the evaluation, along

with the osteological analysis, will be submitted in report form to the director for review, comment, and final acceptance.

3. Osteological examination of the human skeletons shall include determinations of age, sex, racial affiliation, dental structure, and bone inventories for each individual in order to facilitate comparative studies of bone and dental disease. Said inventories shall provide a precise count of all skeletal elements observed, as well as the degree of preservation (complete or partial); separate tabulation of the proximal and distal joint surfaces for the major long bones should be recorded.

The bones should be examined, and x-rayed if necessary, to detect lesions or conditions resulting from disease, malnutrition, trauma, or congenital defects. The presence of dental pathological conditions including carious lesions, premortem tooth loss, and alveolar abscessing should be recorded. Craniometric and postcraniometric data should be obtained in a systematic format that provides basic information such as stature. Although the initial focus concerns description and documentation of a specific sample, the long-term objective is to obtain information that will facilitate future comparative research. The report based on the osteological analysis should identify the research objectives, method of analysis, and results. Specific data (e.g., measurements, discrete trait observations) supplementing those traits comprising the main body of the report may be provided in a separate file including, for example, tables, graphs, and copies of original data collection forms. Unique pathological specimens should be photographed as part of basic documentation.

4. A timetable for excavation, analysis and preparation of the final report on the entire investigation.

C. A resume, vitae, or other statement of qualification demonstrating that the persons planning and supervising the field investigation and subsequent analyses meet the appropriate professional qualifications as follows:

1. The qualifications of the archaeologist performing the work shall include a graduate degree in archaeology, anthropology, or closely related field plus:

a. At least one year of full-time professional experience or equivalent specialized training in archaeological research, administration or management;

b. A least four months of supervised field and analytic experience in general North American archaeology; and

c. Demonstrated ability to carry research to completion.



# Proposed Regulations

In addition to these minimum qualifications, a professional in prehistoric archaeology shall have at least one year of full-time professional experience at a supervisory level in the study of archaeological resources of the prehistoric period. A professional in historic archaeology shall have at least one year of full-time experience at a supervisory level in the study of archaeological resources of the historic period.

2. The qualifications of the skeletal biologist needed to undertake the types of analyses outlined in subdivision B 3 of § 4 should have at least a Masters degree in human skeletal biology, bioarchaeology, forensic anthropology, or some other field of physical anthropology, plus two years of laboratory experience in the analysis of human skeletal remains. The individual must be able to develop a research design appropriate to the particular circumstances of the study and to conduct analyses of skeletal samples (including, age, sex, race, osteometry, identification of osteological and dental disease, and the like), employing state-of-the-art technology. The individual must have the documented ability to produce a concise written report of the findings and their interpretation.

D. Under extraordinary circumstances, the director shall have the authority to waive the requirements of research design and professional qualifications.

E. The application shall include a statement describing the curation, which shall be respectful, and the proposed disposition of the remains upon completion of the research. When any disposition other than reburial is proposed, then the application shall also include a statement of the reasons for alternative disposition and the benefits to be gained thereby.

F. When a waiver of public notice or other requirement based on an emergency situation is requested by the applicant then the application must include:

1. A statement describing specific threats facing the human skeletal remains or associated artifacts. This statement must make it clear why the emergency justifies the requested waiver.
2. A statement describing the known or expected location of the burials or the factors that suggest the presence of burials.
3. A statement describing the conservation methods that will be used, especially for skeletal material. Note that conservation treatment of bones should be reversible.

## § 5. Public comment.

A. Upon receiving notice from the director that the permit application is complete, the applicant shall arrange for public notification as deemed appropriate by the

department.

B. In all cases, the applicant shall publish or cause to be published a notice in a newspaper of general circulation in the area where the field investigation will occur. This notice shall include:

1. Name and address of applicant.
2. Brief description of proposed field investigation.
3. A statement informing the public that they can request public meeting.
4. A contact name, address and the phone number where they can get more information, including a location in the project vicinity where a copy of the complete application can be viewed.
5. A statement that the complete application can be reviewed and copied at the department.
6. When any disposition other than reburial is proposed this must be stated in the public notice. The notice should contain a statement of the proposed disposition and specifically request public comment on this aspect of the application.
7. Deadline for receipt of comments.

The notice shall be of a form approved by the director and shall invite interested persons to express their views on all aspects of the proposed field investigation to the director by a date certain prior to the issuance of the permit. Such notice shall be published once each week for four consecutive weeks.

C. Such notice may be waived:

1. If the applicant can document that the family of the deceased has been contacted directly and is in agreement with the proposed actions.
2. In cases where applicant has demonstrated that, due to the rarity of the site or its scientific or monetary value and where security is not possible, there is a likelihood that looting would occur as a result of the public notice.
3. If in the opinion of the director the severity of a demonstrated emergency is such that compliance with the above public notice requirements may result in the loss of significant information, or that the publication of such notice may substantially increase the threat of such loss through vandalism, the director may issue a permit prior to completion of the public notice and comment requirements. In such cases the applicant shall provide for such public notice and comment as determined by the director to be appropriate under the circumstances.



# Proposed Regulations

---

D. In cases of marked burials, evidence shall be provided of a reasonable effort to identify and notify next of kin.

E. In addition to the notification described in subsection B of § 5, in the case of both prehistoric and historic Native American burials, the department shall inform the Virginia Council on Indians, and the appropriate tribe where tribal affiliation has been determined, and request comments from each of these groups. Comments will specifically be requested in cases where the proposed disposition is anything other than reburial.

F. Prior to the issuance of a permit, the director may elect to hold a public hearing on the permit application. The purpose of the public meeting shall be to obtain public comment on the proposed field investigations. The director shall decide whether or not to hold a public meeting on a case-by-case basis, and will include any requests following from the public notice in such considerations.

## § 6. Issuance or denial of permit.

A. Upon completion of the public comment period, the director shall decide whether to issue the permit. In the event the director received no adverse public comment, no further action is required prior to decision.

B. The director shall consider any adverse comment received and evaluate it in the light of the benefits of the proposed investigation, the severity of any emergency, or the amount of scientific information which may be lost in the event no permit is issued. The director may also take such comments into account in establishing any conditions of the permit.

C. In making his decision on the permit application, the director shall consider the following:

1. The level of threat facing the human skeletal remains and associated cultural resources.
2. The appropriateness of the goals, objectives, research, design, and qualifications of the applicants to complete the proposed research in a scientific fashion. The director shall consider the Standards and Guidelines of the United States Secretary of the Interior for Archaeology and Historic Preservation, set out at 48 Fed. Reg. 44716 (September 29, 1983), in determining the appropriateness of the proposed research and in evaluating the qualifications of the applicants.
3. Comments received from the public.
4. The appropriateness of the proposed disposition of remains upon completion of the research. The director may specify a required disposition as a condition of granting the permit.

5. The performance of the applicant on any prior permitted investigation.

D. In the event the director proposes to deny a permit application, the director shall conduct an informal conference in accordance with § 9-6.14:11 of the Administrative Process Act.

E. The permit shall contain such conditions which, in the judgment of the director, will protect the excavated human remains or associated artifacts.

F. A permit shall be valid for a period of time to be determined by the director as appropriate under the circumstances.

G. The director may revoke any permit issued under these regulations for good cause shown. Such revocation shall be in accordance with the provisions of the Administrative Process Act.

## § 7. Excavations by the department.

The director may perform or cause to be performed a field investigation without a permit. The director shall comply with the public notice and comment provisions described above.

## § 8. Appeals.

A. The decision of the director made following the informal conference required by subsection D of § 6 shall be a final case decision subject to judicial review in accordance with the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

B. Any interested party may appeal the director's decision to issue a permit or to act directly to excavate human remains to the local circuit court in accordance with § 10.1-2305 E of the Code of Virginia.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

**NOTICE:** Due to the length of VR 460-02-2.2100 and VR 460-02-2.6100, only the amended pages of the regulations and a summary are being published. The full text of the regulations may be viewed at the office of the Registrar of Regulations or the Department of Medical Assistance Services. The full text of VR 460-03-2.6105 and VR 460-03-2.6112 is being published.

**Title of Regulation:** State Plan for Medical Assistance Relating to Restoration of Income and Resource Methodologies.

**VR 460-02-2.2100. Groups Covered and Agencies Responsible for Eligibility Determination.**

**VR 460-02-2.6100. Eligibility Conditions and Requirements.**

**VR 460-03-2.6105. Methodologies for Treatment of Income and Resources That Differ from Those of the SSI**

**Program.**

VR 460-03-2.6112. More Liberal Methods under Social Security Act § 1902(r)(2).

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

Public Hearing Date: N/A – Written comments may be submitted until March 15, 1991.

(See Calendar of Events section for additional information)

Summary:

*The authority to impose more restrictive eligibility requirements was originally given to states in 1972, in section 209(b) of P.L. 92-603. The intent was to help states whose eligibility criteria for Aid to the Aged, Aid to the Blind and Aid to the Permanently and Totally Disabled had been lower than the national eligibility standards for the new SSI Program. Mandating Medicaid eligibility for all SSI eligibles would have resulted in additional expenditures of state funds for the cost of Medicaid.*

*The 209(b) option allows the state the flexibility to set eligibility criteria more restrictive than SSI but no more restrictive than those set by the State Medicaid Program on January 1, 1972.*

*In Virginia the 209(b) option has been used to contain Medicaid expenditures in selected areas of eligibility criteria when changes in the criteria for SSI would have caused large additional expenditures for Medicaid. The more restrictive criteria have concentrated on the way resources are handled.*

*Section 303(e) of the Medicare Catastrophic Coverage Act created a new section of the Social Security Act, 1902(r)(2)(A) which reads "The methodology to be employed in determining income and resource eligibility for individuals under subsection (a)(10)(A) (i) (III), (A)(10)(A)(i)(IV), (a)(10)(A)(ii), (a)(10)(C)(i)(III), or under subsection (f) may be less restrictive, and shall be no more restrictive, than the methodology:*

*(i) in the case of groups consisting of aged, blind, or disabled individuals, under the Supplemental Security Income Program under Title XVI, or*

*(ii) in the case of other groups, under the State plan most closely categorically related."*

*The Health Care financing Administration (HCFA) has advised DMAS that Virginia and other § 1902(f) States [sic] can continue to reflect in their Medicaid plans more restrictive eligibility requirements consistent with the authority of § 1902(f).*

# Proposed Regulations

VR 460-02-2.2100. Groups Covered and Agencies  
Responsible for Eligibility Determination.

Revision: HCFA-PM-87-4  
MARCH 1987

(BERC)

ATTACHMENT 2.2A

Page 6a

OMB NO.: 0938-0193

Agency*	Citation(s)	Groups Covered
---------	-------------	----------------

e. Have earnings that are not sufficient to provide for himself or herself a reasonable equivalent of the Medicaid, SSI (including any Federally administered SSP), or public funded attendant care services that would be available if he or she did have such earnings.

— Not applicable with respect to individuals receiving only SSP because the State either does not make SSP payments or does not provide Medicaid to SSP only recipients.

1619(b)(8)  
of the Act,  
P. L. 99-643  
(Section 7)

XX The State applies more restrictive eligibility requirements for Medicaid than under SSI and under 42 CFR 435.121. Individuals who qualify for benefits under section 1619(a) of the Act or individuals described above who meet the eligibility requirements for SSI benefits under section 1619(b)(1) of the Act and who met the State's more restrictive requirements in the month before the month they qualified for SSI under section 1619(a) or met the requirements of section 1619(b)(1) of the Act are covered. Eligibility for these individuals continues as long as they continue to qualify for benefits under section 1619(a) of the Act or meet the SSI requirements under section 1619(b)(1) of the Act.

1634(c) of  
the Act,  
P.L. 99-643  
(Section 6)

11. Blind or disabled individuals who—

- a. Are at least 18 years of age;
- b. Lose SSI eligibility because they become entitled to OASDI child's benefits under section 202(d) of the Act or an increase in these benefits based on their disability. Medicaid eligibility for these individuals continues for as long as they would be eligible for SSI, absent their OASDI eligibility.

\*Agency that determines eligibility for coverage.

Revision: HCFA-PM-87-4 (BERC) ATTACHMENT 2.6-A  
 MARCH 1987 Page 9  
 Omb No.: 0938-0193

Citation Condition or Requirement

1905(p)(1)(c) and (m)(5)(B) of the Act, P.L. 99-509 (Secs. 9403(b) and (E))

f. In determining countable income for qualified Medicare beneficiaries covered under Section 1902(a)(10)(E) of the Act, the following disregards are applied:

~~XX~~ The disregards of the SSI program.

— The disregards of the State supplementary payment program, as follows:

~~XX~~ The disregards of the SSI program except for the following restrictions, applied under the provisions of Section 1902(f) of the Act.

Supplement 1 to ATTACHMENT 2.6-A specifies for non-1902(f) and 1902(f) states the income levels for optional categorically needy groups of individuals with incomes up to the Federal nonfarm income poverty line—pregnant women and infants or children covered under §1902(a)(10)(A)(ii)(IX) of the Act and aged and disabled individuals covered under §1902(a)(10)(A)(ii)(X) of the Act—and groups of qualified Medicare beneficiaries covered under §1902(a)(10)(E) of the Act.

Supplement 7 to ATTACHMENT 2.6-A specifies for 1902(f) states the income levels for categorically needy aged, blind and disabled persons who are covered under requirements more restrictive than SSI.

Supplement 1 to ATTACHMENT 2.6-A specifies for non-1902(f) and 1902(f) states the income levels for optional categorically needy groups of individuals with incomes up to the Federal nonfarm income poverty line—pregnant women and infants or children covered under §1902(a)(10)(A)(ii)(IX) of the Act and aged and disabled individuals covered under §1902(a)(10)(A)(ii)(X) of the Act—and groups of qualified Medicare beneficiaries covered under §1902(a)(10)(E) of the Act.

Revision: HCFA-PM-87-4 (BERC) ATTACHMENT 2.6-A  
 MARCH 1987 Page 12  
 OMB No.: 0938-0193

Citation Condition or Requirement

4. Other deductions from income applied under the Medicaid Plan.

5. Required incurred medical and remedial services.

5. Resource Exemptions - Categorically and Medically Needy.

a. Except as specified in item C.5.e. below, in determining countable resources for AFDC related individuals, the disregards and exemptions in the State's approved AFDC plan are applied. For the Medically needy, See Supplement 5 to Attachment 2.6A.

b. In determining countable resources for aged individuals, including aged individuals with incomes up to the Federal nonfarm poverty line described in section 1902(m)(1) of the Act, the following disregards are applied:

— The disregards of the SSI program.

~~XX~~ The disregards of the SSI program, except for the following restrictions, applied under the provisions of section 1902(f) of the Act: See NOTE/BELOW Supp. 5 to Attachment 2.6A.

c. In determining countable resources for blind individuals, the following disregards are applied:

— The disregards of the SSI program.

~~XX~~ The disregards of the SSI program, except for the following restrictions applied under the provisions of section 1902(f) of the Act: See Supp. 5 to Attachment 2.6-A

1902(a)(10) and 1902(m)(1) (C) of the Act P.L. 97-248 (Section 137) and P.L. 99-509 (Section 9402)

NOTE: The State uses more liberal resource exemptions than the cash assistance programs, as allowed under DEFRA. See Supplement 5 to Attachment 2.6-A for the exemptions used for all medically needy groups. Prior approved state plan pages are appended.

Revision: HCFA-PM-87-4 (BERC) ATTACHMENT 2.6-A  
 MARCH 1987 Page 13  
 OMB No.: 0938-0193

Revision: HCFA-PM-87-4 (BERC) ATTACHMENT 2.6-A  
 MARCH 1987 Page 14  
 OMB No.: 0938-0193

Citation	Condition or Requirement
1902(a)(10) and 1902(m)(1)(C) of the Act, P.L. 97-248 (Section 137) and P.L. 99-509 (Section 9402)	<p>d. In determining countable resources for disabled individuals, including disabled individuals with incomes up to the Federal nonfarm poverty line described in section 1902(m)(1) of the Act, the following disregards are applied:</p> <p>— The disregards of the SSI program.</p> <p><del>XX</del> The disregards of the SSI program, except for the following restrictions applied under the provisions of §1902(f) of the Act:</p> <p>See <del>NOTE//b66//VJ</del> Supplement 5 to Attachment 2.6A.</p>
1902(1)(3)(B) of the Act, P.L. 99-509 (Section 9401(b))	<p>e. In determining countable resources of women during pregnancy and during the 60-day period beginning on the last day of pregnancy covered under the provisions of section 1902(a)(10)(A)(ii)(IX) of the Act, the following disregards are applied:</p> <p><del>XX</del> Not applicable. No resource standard is applied.</p> <p>— The disregards of the SSI program.</p> <p>— The following disregards which are different but not more restrictive than the disregards of the SSI program:</p>

Citation	Condition or Requirement
1902(1)(3)(C) of the Act, P.L. 99-509 (Section 9401(b))	<p>f. In determining countable resources of infants and children under 5 covered under the provisions of §1902(a)(10)(A)(ii)(IX) of the Act, the following disregards are applied:</p> <p>— Not applicable. No resource standard is applied.</p> <p><del>XX</del> The disregards and exemptions in the State's approved AFDC plan.</p> <p>— The following disregards and exemptions, which are different but no more restrictive than those in the State's approved AFDC plan.</p>
1902(p)(1)(D) of the Act, P.L. 99-509 (Section 9403(b))	<p>g. In determining countable resources of qualified Medicare beneficiaries covered under §1902(a)(10)(E) of the Act, the following disregards are applied:</p> <p><del>XX</del> The disregards of the SSI program.</p> <p>— The disregards of the SSI program, except for the following restrictions, applied under the provisions of §1902(f) of the Act:</p>

Revision: HCFA-PM-87-4 (BERC) ATTACHMENT 2.6-A  
MARCH 1987 Page 15  
OMB No.: 0938-0193

Citation	Condition or Requirement
	6. Resource Standard - Categorically Needy
	a. 1902(f) States (except as specified under items 6.c. and d. below)
	<input checked="" type="checkbox"/> Same as SSI resource standards.
	<input type="checkbox"/> More restrictive.
	b. Non-1902(f) States (except as specified under items 6.c. and d. below)
	The resource standards are the same as those in the related cash assistance program or State supplement.
	Supplement 8 to ATTACHMENT 2.6-A specifies for 1902(f) States the categorically needy resource levels for all covered categorically needy groups.
1902(i)(3)(A), (B) and (C) of the Act, P.L. 99-509 (Sec. 9401(b))	c. For pregnant women and infants or children covered under the provisions of section 1902(a)(10)(A)(ii)(IX) of the Act, the agency applies a resource standard:
	<input type="checkbox"/> Yes. Supplement 2 to ATTACHMENT 2.6-A specifies the standard, which for pregnant women, is no more restrictive than the standard under the SSI program; and for infants and children, is no more restrictive than the standard applied in the State's approved AFDC plan.
	<input checked="" type="checkbox"/> No. The agency does not apply a resource standard to these individuals.

Revision: HCFA-PM-87-4 (BERC) ATTACHMENT 2.6-A  
MARCH 1987 Page 18  
OMB No.: 0938-0193

Citation	Condition or Requirement
	10. Treatment of Income and Resources - Categorically and Medically Needy and Qualified Medicare Beneficiaries
	a. AFDC related individuals (other than under items 9.e. and f. below)
	The agency uses the same methodologies for treatment of income and resources as used in the State's approved AFDC State plan.
1902(a)(10)(A)	*b. Aged individuals, <del>including</del> excluding individuals covered under §1902(a)(10)(A)(ii)(X) of the Act.
1902(a)(10)(C), and 1902 (m)(i)(B) and (C) of the Act, P.L.99-509 (Section 9402(a))	<input type="checkbox"/> The agency uses the same methodologies for treatment of income and resources as used in the SSI program (or the optional State supplement program which meets the requirements of 42 CFR 435.230, as appropriate).
	<input checked="" type="checkbox"/> The agency uses methodologies for treatment of income and resources that differ from those of the SSI program. These differences result from restrictions applied under §1902(f) of the Act. The methodologies are described in Supplement 5 to ATTACHMENT 2.6-A.
	*c. Blind individuals
	<input type="checkbox"/> The agency uses the same methodologies for treatment of income and resources as used in the SSI program (or the optional State supplement program which meets the requirements of 42 CFR 435.230, as appropriate).
	<input checked="" type="checkbox"/> The agency uses methodologies for treatment of income and resources that differ from those of the SSI program. These differences result from restrictions applied under §1902(f) of the Act.

\*NOTE: The State uses some more liberal resource exemptions than the cash assistance programs, as allowed under DEFRA. See Supplement 5 to Attachment 2.6 A for the exemptions used for all medically needy groups. Prior approved State Plan pages are appended.

Revision: HCFA-PM-87-4 (BERC) ATTACHMENT 2.6-A  
 MARCH 1987 Page 19  
 OMB No.: 0938-0193

Revision: HCFA-PM-87-4 (BERC) ATTACHMENT 2.6-A  
 MARCH 1987 Page 21  
 OMB No.: 0938-0193

Citation	Condition or Requirement
1902(a)(10)(A), 1902(a)(10)(C), and 1902(m)(1)(B) and (C) of the Act, P.L. 99-509 (Section 9402(a))	<p>The methodologies are described in Supplement 5 to ATTACHMENT 2.6-A.</p> <p>*d. Disabled individuals, <del>including</del> excluding individuals covered under §1902(a)(10)(A)(ii)(X) of the Act.</p> <p>— The agency uses the same methodologies for treatment of income and resources as used in the SSI program (or the optional State supplement program which meets the requirements of 42 CFR 435.230, as appropriate).</p> <p><u>XX</u> The agency uses methodologies for treatment of income and resources that differ from those of the SSI program. These differences result from restrictions applied under §1902(f) of the Act. The methodologies are described in Supplement 5 to ATTACHMENT 2.6-A.</p>
1902(1)(3) of the Act, P.L. 99-509 (Section 9401(b))	<p>e. Individuals who are pregnant women covered under §1902(a)(10)(A)(ii)(X)(A) of the Act.</p> <p>(1) <u>Treatment of Income</u></p> <p>The agency uses the same methodologies for treatment of income as used under--</p> <p>— The State's approved AFDC plan.</p> <p>— The approved title IV-E plan.</p> <p>(2) <u>Treatment of Resources</u></p> <p>— The agency uses the same methodologies for treatment of resources as used in the SSI program.</p>

\*NOTE: The State uses some more liberal resource exemptions than the cash assistance programs, as allowed under DEBRA. See Supplement 5 to Attachment 2.6 A for the exemptions used for all medically needy groups. Prior approved State Plan pages are appended.

Citation	Condition or Requirement
1905(p)(1) (C) and (D) of the Act, P.L. 99-509 (Section 9403)	<p>g. Qualified Medicare beneficiaries covered under §1902(a)(10)(E) of the Act--</p> <p><u>XX</u> The agency uses the same methodologies for treatment of income and resources as used in the SSI program (or the optional State supplement program which meets the requirements of 42 CFR 435.230, as appropriate).</p> <p>— The agency uses methodologies for treatment of income and resources that differ from those of the SSI program. These differences result from restrictions applied under §1902(f) of the Act. The methodologies are described in Supplement 5 to ATTACHMENT 2.6-A.</p>
435.914	<p>11. Effective Date of Eligibility - Categorically and Medically Needy and Qualified Medicare Beneficiaries</p> <p>a. Groups Other Than Qualified Medicare Beneficiaries</p> <p>(1) For the prospective period.</p> <p>Coverage is available for the full month if the following individuals are eligible at any time during the month.</p> <p><u>XX</u> Aged, blind, disabled.</p> <p><u>XX</u> AFDC-related.</p>



# Proposed Regulations

## VR 460-03-2.6105. Methodologies for Treatment of Income and Resources that Differ from those of the SSI Program.

§ 100. Income and resource requirements applicable to all groups.

A. The value of real and personal property resources owned by the applicant/recipient may not exceed \$2,000 for a single person, \$3,000 for a couple or two-person family unit. For each additional person in the family unit, an additional \$100 in resources is allowed.

B. Real or personal property of a spouse is considered available to a spouse if they are living together. Real or personal property of parent living in the home is considered available to his ~~her~~ child(ren), except property owned by an SSI recipient is not considered available to his ~~her~~ children in determining their eligibility for Medicaid.

C. No lien may be imposed or any encumbrance placed upon any property, real or personal, owned by a recipient of medical assistance except pursuant to a court judgment on account of benefits incorrectly paid.

D. For income-producing property and other nonresidential property, appropriate equity and profit is to be determined by the prorata share owned by an individual in relation to his proportionate share of the equity and profit.

E. Property in the form of an interest in an undivided estate is to be regarded as an asset unless it is considered unsaleable for reasons other than being an undivided estate. An heir can initiate a court action to partition. However, if such an action would not result in the applicant/recipient securing title to property having value substantially in excess of the cost of the court action, the property would not be regarded as an asset.

F. The current market value of real property is determined by ascertaining the tax assessed value of the property and applying to it the local assessment rate. The equity value is the current market value less the amount due on any recorded liens against the property. "Recorded" means written evidence that can be substantiated, such as deeds of trust, liens, promissory notes, etc.

G. The following limitations apply to income and resources in addition to the income and resource requirements of the Supplemental Security Income (SSI) program for the aged, blind and disabled, and of the Aid to Dependent Children (ADC) cash assistance program for all other individuals:

§ 200. Aged, blind, and disabled (SSI-related) individuals.

§ 201. Real property.

§ 201.1. Home ownership.

Ownership of a dwelling occupied by the Applicant as his home does not affect eligibility.

For those medically needy persons whose eligibility for medical assistance is required by federal law to be dependent on the budget methodology for Aid to Dependent Children, a home means the house and lot used as the principal residence and all contiguous property. For all other persons, a home shall mean the house and lot used as the principal residence and all contiguous property as long as the value of the land, exclusive of the lot occupied by the house, does not exceed \$5,000. In any case in which the definition of home as provided here is more restrictive than that provided in the state plan for medical assistance in Virginia as it was in effect on January 1, 1972, then a home means the house and lot used as the principal residence and all contiguous property essential to the operation of the home regardless of value.

The lot occupied by the house shall be a measure of land as designated on a plat or survey or whatever the locality sets as a minimum size for a building lot, whichever is less. In localities where no minimum building lot requirement exists, a lot shall be a measure of land designated on a plat or survey or one acre, whichever is less.

Contiguous property essential to the operation of the home means:

A. land used for the regular production of any food or goods for the household's consumption only, including:

1. vegetable gardens,

2. pastureland which supports livestock raised for milk or meat, and land used to raise chickens, pigs, etc. (the amount of land necessary to support such animals is established by the local extension service; however, in no case shall more land be allowed than that actually being used to support the livestock.),

3. outbuildings used to process and/or store any of the above;

B. driveways which connect the homesite to public roadways;

C. land necessary to the home site to meet local zoning requirements (e.g. building sites, mobile home sites, road frontage, distance from road, etc.);

D. land necessary for compliance with state or local health requirements (e.g. distance between home and septic tank, distance between septic tanks, etc.);

E. water supply for the household;

F. existing burial plots.

# Proposed Regulations

---

G. outbuilding used in connection with the dwelling, such as garages or tool sheds.

All of the above facts must be fully reevaluated and documented in the case record before the home site determination is made.

§ 201.2. Income-producing real property other than the home; does not affect eligibility if:

A) 1. It is used in a trade or business or is otherwise income-producing and

B) 2. The equity value (current market value less the balance of any recorded lien(s) liens against the property) of the property does not exceed \$6,000, and

C) 3. The property produces a net annual income to the individual of at least 6.0% of the property's equity value.

D) 4. If the property produces less than the 6.0% net annual income, it may be excluded if its equity value does not exceed \$6,000 and it is used in a business or nonbusiness income-producing activity, and the following conditions are met:

1) a. Unusual or adverse circumstances, such as a fire, street repair in front of a store, or natural disaster, cause a temporary reduction in the rate of return, and

2) b. The property usually produces net annual income of at least 6.0% of the equity value, and

3) c. The individual expects the property to again produce income at the 6.0% rate of return within 18 months of the end of the calendar year in which the unusual incident caused the reduction in the rate of return.

When the property must be counted because the equity exceeds \$6,000 or because the net annual return to the individual is less than 6.0% of equity, the individual's equity in the property is a countable resource.

§ 201.3. Other real property; ownership of such property generally precludes eligibility.

Exceptions to this provision are: (a) (i) when the equity value of the property, plus all other resources, does not exceed the appropriate resource limitation; (b) (ii) the property is smaller than the county or city zoning ordinances allow for home sites or building purposes, or the property has less than the amount of road frontage required by the county or city for building purposes and adjoining land owners will not buy the property; or (c) (iii) the property has no access, or the only access is through the exempted home site; or (d) (iv) the property is contiguous to the recipient's home site and the survey expenses required for its sale reduce the value of such

property, plus all other resources, below applicable resource limitations; or (e) (v) the property cannot be sold after a reasonable effort to sell it has been made, as defined below. *Ownership of real property other than the home will not effect eligibility when the property cannot be sold after a reasonable effort to sell has been made, as defined in § 3 of Supplement 12 to Attachment 2.6 A.*

§ 201.4. Reasonable effort to sell.

a) For purposes of this section "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

b) A reasonable effort to sell is considered to have been made:

1) As of the date the property becomes subject to a realtor's listing agreement if

i. it is listed at a price at current market value, and

ii. the listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions)

OR

2) When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient.

OR

3) When the applicant has personally advertised his property at or below current market value for 90 day by use of a "Sale By Owner" sign located on the property and by other reasonable efforts such newspaper advertisements, or reasonable inquiries with all adjoining land-owners or other potential interested purchasers.

C. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

1) Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

2) In the case where at least 2 realtors have refused to

# Proposed Regulations

list the property, the recipient must personally try to sell the property by efforts described in b(2) above, for 12 months.

3) In the case of recipient who has personally advertised his property for a year without success (the newspaper advertisements "for sale" sign, etc., do not have to be done continually; these efforts just have to be done for at least 90 days within 12 month period), the recipient must then

i. subject his property to a realtor's listing agreement at price at or below current market value; or

ii. meet the requirements of section b(2) above which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

d) If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.

e) Once the applicant has demonstrated that his property is unsaleable by following the procedures in section "b", the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in section "C" above.

## § 202. Personal property.

### § 202.1. Automobiles.

Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle(s) must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition. In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicle(s) is to be counted in relation to the amount liquidable assets that may be retained.

§ 202.2. Life, retirement, and other related types of insurance policies with face values totaling \$1,500, or less on any one person 21 years old and over are not considered resources. When the face value(s) of such policies of any one person exceeds \$1,500, the cash surrender value of the policy(ies) is counted as a resource.

§ 202.3. § 202.1. Prepaid burial plans are counted as resource since the money is refundable to the individual upon his request. Cemetery plots are not counted as resources. See Supplement 12 to Attachment 2.6 A.

§ 202.4. § 202.2. Liquidable assets Assets which can be liquidated such as cash, bank accounts, stocks, bonds, securities and deeds of trusts are considered resources.

## § 203. Income.

For the purposes of determining eligibility, income is defined as the receipt of any property or services which an individual can apply, either directly or by sale or conversion, to meet the individual's basic needs for food, shelter, and clothing. Income is either earned (payment received by the individual for services performed as an employee, or as a result of being self-employed) or unearned (includes pensions, benefits, prizes, inheritances, gifts, dividends, support and maintenance ; etc .)

## § 204. Deeming of income and resources.

### § 204.1. Responsibility of spouses.

A. If an individual and his/her the spouse apply or are eligible for Medicaid as aged, blind, or disabled, and they cease to live together (separate), their income and resources are considered available (deemed) to each other for the time periods specified below. After the appropriate time period, income or resources actually contributed by the separated spouse to the individual are counted in determining the individual's eligibility.

B. If eligible spouses separate because one is institutionalized, their income is deemed to each other through the month in which they cease to live together. This deeming stops with the month after the month in which separation occurs. Reserved.

C. If spouses separate for any reason other than institutionalization, their income and resources are deemed to each other during the month in which they cease to live together and during the six months following that month. However, if the deeming of their income and/or resources cause causes them to be ineligible as a couple, each spouse's eligibility will be determined individually using the procedure in "D" below.

D. If only one spouse in a couple applies for Medicaid or only one meets the aged, blind, or disabled requirement, or if both spouses apply and are not eligible as a couple ; and they separate, only the income and

# Proposed Regulations

---

resources of the separated spouse that are actually contributed to the individual are counted as available to the individual beginning with the month after the month in which they cease to live together.

§ 204.2. Responsibility of parents for blind or disabled children.

A. If the blind or disabled child is under age 18, or under age 21 and regularly attending a school, college, university or is receiving technical training designed to prepare him for gainful employment, and living in the same household with a parent, the parents' income and resources are deemed available to the child.

B. Only the parent's income and resources which remain, after deducting appropriate disregards and amounts for the maintenance needs of the parents and other dependents in the household, is deemed as resources and unearned income available to the blind or disabled child.

§ 300. Aid to Dependent Children (ADC) Related Individuals.

§ 301. ~~Real property.~~

~~The regulations in §§ 100, and 201.1 through 201.4 above apply. Life rights to real property are not counted as a resource.~~

*Reserved.*

§ 302. Personal property.

§ 302.1. Automobiles.

The policy in § ~~202.1~~ § 4 of Supplement 12 to Attachment 2.6 A applies.

§ 302.2. Life insurance.

The policy in § ~~202.1~~ § 5 of Supplement 12 to Attachment 2.6 A applies.

§ 302.3. Burial plots.

The market value of a burial plots owned by any member of the family unit are not counted toward the medical resource limit for the family.

§ 302.4. Prepaid burial plans are counted as resources, except for the ~~amount(s)~~ amounts of such funeral agreements that are disregarded under the Virginia ADC cash assistance program.

§ 302.5. ~~Liquidable assets~~ Assets which can be liquidated such as cash, bank accounts, stocks, bonds, and securities, are counted as resources.

§ 303. Income.

The income eligibility determination methodology of the Virginia ADC cash assistance program applies.

§ 400. Financial eligibility criteria more restrictive than SSI.

§ 401. SSI recipient who has transferred or given away property to become or remain eligible for SSI or Medicaid and who has not received compensation in return for the property approximating the value of the property is not covered (See Supplement 9 to Attachment 2.6-A).

~~§ 402. SSI recipient who owns real property contiguous to his residence which does not meet the home property definition (above), the income-producing requirement (above), or which is saleable is not covered if the equity value of the contiguous property, when added to the value of all their resources, exceed the resource limit applicable to the Medicaid family unit. Real property.~~

*Real property contiguous to an individual's residence which does not meet the home property definitions in § 201.1, the income-producing requirement in § 201.2, and which is saleable, shall be counted as an available resource. The equity value of the contiguous property shall be added to the value of all other countable resources.*

§ 403. SSI recipient who owns a prepaid burial plan is not covered if the value of the prepaid burial plan plus all other countable resources including real property exceeds the resource limit applicable to the Medicaid family unit. *Undivided estates.*

*An individual's interest in an unprobated estate when the value of the interest plus all other resources exceeds the applicable resource limit. If a partition suit is necessary (because at least one other owner of or heir to the property will not agree to sell the property) in order for the individual to liquidate the interest, estimated partition costs may be deducted from the property's value. (See § 100 E)*

§ 404. Former home of an institutionalized individual.

*An institutionalized individual's former residence is counted as an available resource if the recipient is institutionalized longer than six months after the date he was admitted. The former residence is disregarded if it is occupied by the recipient's spouse or minor dependent child under age 18, or age 19 and is still in school or vocational training, or the former residence is occupied by the recipient's parent or adult child who is disabled according to the Medicaid disability definition, and who was living in the home with the recipient for at least one year prior to the recipient's institutionalization, and who is dependent upon the recipient for his shelter needs.*

§ 405. Joint ownership of real property.

*An applicant or recipient's property owned jointly with another person to whom the applicant or recipient is not*

# Proposed Regulations

married as tenants in common or joint tenants with the right of survivorship at common law. His proportional share of the property's value is counted unless it is exempt property or is unsaleable.

Note: These sections Sections in Supplement 5 contain provisions more liberal than SSI or AFDC cash assistance policy, as allowed under the "moratorium" provisions of the Act.

## VR 460-03-2.6112. More Liberal Methods under Social Security Act § 1902(r)(2).

§ 1. Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets.

In determining eligibility for benefits for medically needy individuals, disregarded from countable resources is an amount not in excess of \$2,500 for the individual and an amount not in excess of \$2,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by :

A. 1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and

B. 2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

### § 2. Life rights.

Life rights to real property are not counted as a resource.

### § 3. Reasonable effort to sell.

A. For purposes of this section "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

B. A reasonable effort to sell is considered to have been made:

1. As of the date the property becomes subject to a realtor's listing agreement if:

a. It is listed at a price at current market value, and

b. The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional

interest; zoning restriction; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

2. When at least two realtors refuse to list he property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient, or

3. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts such as newspaper advertisement, or reasonable inquiries with all adjoining land owners or other potential interested purchasers.

C. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

1. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

2. In the case where two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in subdivision B 3 above, for 12 months.

3. In the case of recipient who has personally advertised his property for a year without success (the newspaper advertisements, "for sale" sign, do not have to be continuous; these efforts must be done for at least 90 days within a 12-month period), the recipient must then:

a. Subject his property to a realtor's listing agreement at price or below current market value; or

b. Meet the requirements of subdivision B 2 above which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

D. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the

# Proposed Regulations

---

best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.

E. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subsection B, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subsection C above.

## § 4. Automobiles.

Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition. In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

§ 5. Life, retirement, and other related types of insurance policies with face values totaling \$1,500, or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person exceed \$1,500, the cash surrender value of the policies is counted as a resource.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS

Title of Regulation: VR 627-02-01. Board for Professional Soil Scientists 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 March 18, 1991.

(See Calendar of Events section for additional information)

### Summary:

The proposed amendments apply directly to six certified soil scientists in Virginia. The only substantive changes in the regulations are proposed increases in all fees to assure the board's compliance with the requirements of § 54.1-113 of the Code of Virginia.

## PART I. GENERAL.

### § 1.1. Definitions.

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

"Board" means the Board for Professional Soil Scientists as established by Chapter 22, Title 54.1 of the Code of Virginia.

"Field study" means the investigation of a site to secure soils information by means of landscape analysis, soil borings, excavations or test pits which are located on a base map or other documents (e.g., aerial photographs, topographic maps, scaled site plans, subdivision plans, or narrative description of the location).

"Practice of soil evaluation" means the evaluation of soil by accepted principles and methods including, but not limited to, observation, investigation, and consultation on measured, observed and inferred soils and their properties; analysis of the effects of these properties on the use and management of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings.

"Soil" means the groups of natural bodies occupying the unconsolidated portion of the earth's surface which are capable of supporting plant life and have properties caused by the combined effects, as modified by topography and time, of climate and living organisms upon parent materials.

"Soil evaluation" means plotting soil boundaries, describing and evaluating the kinds of soil and predicting their suitability for and response to various uses.

"Soil map" means a map showing distribution of soil types or other soil mapping units in relation to the prominent landforms and cultural features of the earth surface.

"Soil science" means the science dealing with the physical, chemical, mineralogical, and biological properties of soils as natural bodies.

"Soil scientist" means a person having special knowledge of soil science and the methods and principals of soil evaluation as acquired by education and experience in the formation, description and mapping of soils.

"Soil survey" means a systematic field investigation of the survey area that provides a soil evaluation and a system of uniform definitions of soil characteristics for all the different kinds of soil found within the study area, all of which are incorporated into a soil report which includes a soil map.

### § 1.2. Procedural requirements.

# Proposed Regulations

A. Each applicant is responsible for obtaining a current application package. All correspondence and requests for applications should be directed to:

Assistant Director  
Board for Professional Soil Scientists  
Department of Commerce  
3600 West Broad Street  
Richmond, Virginia 23230  
(804) 367-8514  
1-800-552-3016

B. Fully documented applications must be submitted with the appropriate fee(s) by applicants seeking consideration for certification no later than 120 days prior to the scheduled examination. The date the completely documented application and fees are received in the board's office shall determine if the application meets the deadline set by the board. Incomplete applications will be returned to the applicant.

C. Applicants who have been found ineligible for any reason, may request further consideration by submitting in writing evidence of additional qualifications, training or experience. No additional fee will be required provided the requirements for certification are met within a period of three years from the date the original application is received by the Department of Commerce.

D. Members of the board may not serve as personal references, but they may be listed as persons who have supervised the work of the applicant.

E. The board may make further inquiries and investigations with respect to the qualifications of the applicant and all references, etc. to confirm or amplify information supplied.

F. Failure of an applicant to comply with a written request from the board for additional evidence or information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.

G. For the purpose of determining eligibility or requirements for examination or qualification for practice, a board may require a personal interview with the applicant.

#### H. Notice of examination.

Each candidate will be sent a written notice of the time and place of any examination for which the candidate is eligible. Each candidate shall promptly notify the board as to whether the candidate intends to appear for the examination and pay the examination fee as instructed. Failure to so notify the board may result in loss of eligibility for that particular examination. Each examination fee shall be applied to the next scheduled examination and shall be forfeited for failure to notify the

board or for failure to appear.

#### § 1.3. Determining qualifications of applicants.

In determining the qualifications of an applicant for certification as a professional soil scientist, a majority vote of the board members who are soil scientists shall be required.

#### § 1.4. Fees.

A. The following nonrefundable fees are required and shall not be prorated:

1. The application fee for certification shall be ~~\$125~~ **\$1,250**.
2. The fee for renewal of certification shall be ~~\$175~~ **\$1,250**.
3. The fee for taking the examination or reexamination for certification shall be ~~\$75~~ **\$100**.
4. The penalty fee for late renewal or reinstatement shall be ~~\$200~~ **shall be \$1,250**.
5. The fee for reinstatement shall be **\$2,500**.

#### B. Deadline for applications and examination fees.

Fully documented, completed applications must be submitted with the proper application fee and received in the board's office no later than 120 days prior to the next scheduled exam. Examination and reexamination fees must be received in the board's office no later than 45 days prior to the next scheduled examination.

#### § 1.5. Applicability of certification program.

The Certification Program for Professional Soil Scientists set forth in Chapter 22 of Title 54.1 of the Code of Virginia and these regulations is voluntary and shall not be construed to prohibit:

1. The practice of soil evaluation by individuals who are not certified soil scientists as defined in this regulation;
2. The work of an employee or a subordinate of a certified soil scientist or of an individual who is practicing soil evaluation without being certified; or
3. The practice of any profession or occupation which is regulated by another regulatory board within the Department of Commerce.

#### PART II. ENTRY.

#### § 2.1. Qualifications for certification.



# Proposed Regulations

---

Applicants for certification shall meet the education, eligibility, experience and examination requirements specified in Chapter 22 of Title 54.1 of the Code of Virginia.

## § 2.2. Qualifications for examination.

An applicant shall satisfy one of the following criteria in order to qualify for the examination:

1. Hold a bachelor's degree from an accredited institution of higher education in a soils curriculum which has been approved by the board and have at least four years of experience in soil evaluation, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist; or
2. Hold a bachelor's degree in one of the natural sciences and have at least five years of experience in soil evaluation, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist; or
3. Have a record of at least eight years of experience in soil evaluation, the quality of which demonstrates to the board that the applicant is competent to practice as a soil scientist; or
4. Have at least four years of experience in soil science research or as a teacher of soils curriculum in an accredited institution of higher education which offers an approved four-year program in soils and at least two years of soil evaluation experience, the quality of which demonstrates to the board that the applicant is competent to practice as a soil scientist.

## § 2.3. Qualifying experience in soil evaluation.

A. An applicant must demonstrate at least one half of the required experience in one or all of the following areas:

1. Soil mapping. Compiling of soil maps as a part of a soil survey with a formal mapping legend under the direct guidance of an experienced party leader. Acceptable maps shall be maps in a published report, a report scheduled to be published or of a publishable quality; or
2. Soil evaluation. Conducting soil evaluation usually from existing soil data for a specific land use, such as septic tank drain fields, sanitary landfill sites, forestry production, or individual farm mapping for agriculture production. The experience shall be supervised by an individual with a minimum of a year's more experience than the applicant. The finished product shall have been submitted to a government agency (e.g., Health Department, Environmental Protection Agency, Environmental Impact Studies, Water Control Board, local planning commission); or

3. Field studies. Conducting detailed field studies which have been done under the supervision of an individual with a minimum of a year's more experience than the applicant. The field study shall have resulted in a soil evaluation report that was accepted by the client or agency.

B. The remaining required experience may be fulfilled in one or more of the following areas:

1. Consulting (public/private). Assembling or compiling soil information either with existing data or field studies, and evaluating data for a specific land use. The work may be either independently done or done under supervision. The written report shall have been submitted to the client or agency.
2. Soil mapping, soil evaluation, or field studies, as described above, which have been done independently or under supervision.
3. Education. Each year of full-time undergraduate study in a soils curriculum or related natural science may count as one-half year of experience up to a maximum of two years. Each year of full-time graduate study in a soils curriculum may count as one year of experience up to a maximum of two years. With a passing grade, 32 semester credit hours or 48 quarter credit hours is considered to be one year. No credit used as education credit may also be used as experience credit.

## § 2.4. Certification by reciprocity.

Any person certified, registered or licensed as a soil scientist in any jurisdiction of the United States may be granted a Virginia certificate without written examination, provided that:

1. The applicant meets all the other requirements for certification in Virginia; and
2. The applicant holds an unexpired certificate or its equivalent issued to him on the basis of equivalent requirements for certification in Virginia, including a comparable examination, by a regulatory body of another state, territory or possession of the United States and is not the subject of any disciplinary proceeding before such regulatory body which could result in the suspension or revocation of his certificate, and such other regulatory body recognizes the certificates issued by this board.

## § 2.5. Examination.

A board-approved examination shall be administered at least once a year, at a time designated by the board.

B. An applicant must meet all eligibility requirements as of the date the application is filed with the board.

C. A candidate who is unable to take the examination at the time scheduled must notify the board in writing prior to the date of the examination; such a candidate will be rescheduled for the next examination without additional fee. Failure to so notify the board will result in forfeiture of the examination or reexamination fee.

D. A candidate who has not appeared for an examination after the first written notice regardless of reasons, will not be sent another examination notice until the candidate submits a written request to be rescheduled.

E. A candidate who does not appear for an examination within two years of approval will be ineligible to sit for an examination. Individuals wishing to sit for an examination will be required to submit a new application with fee in accordance with these regulations.

F. Candidates will be notified of passing or failing the examination. No scores will be reported to candidates. Only the board and its staff shall have access to examination papers, scores and answer sheets.

G. Upon payment of the reexamination fee, a candidate who is unsuccessful in passing an examination will be allowed to retake any examination(s) given within two years of the date of notification of initial unsuccessful examination results. After the two-year period has elapsed, an applicant will be required to submit a new application with fee in accordance with these regulations in order to take an examination.

## PART III. RENEWAL OF CERTIFICATE.

### § 3.1. Expiration.

Certificates issued by the board shall expire on June 30 of each odd-numbered year following the date of issuance. Certificate holders shall be notified by mail of the fee and the procedure for renewal at least 45 days before the date the certificate expires. Certificate holders must submit the renewal notice and appropriate fee before the certificate expires.

### § 3.2. Renewal.

A. If the renewal fee is not received by the board within 30 calendar days following the expiration date noted on the certificate, a penalty fee of \$200 shall be required in addition to the regular renewal fee. No certificate may be renewed more than six months following the date of expiration.

B. Failure to receive written notice from the Department of Commerce does not relieve the certificate holder from the requirement to renew the certificate. If the certificate holder fails to receive the renewal notice, the certificate holder may submit a copy of the certificate with the required fee in lieu of the renewal notice.

C. The date a fee is received by the Department of Commerce or its agent will be used to determine whether a penalty fee or the requirement for reinstatement or reapplication is applicable.

D. Suspended certificates are not renewable until reinstated by the board.

E. A revoked certificate cannot be renewed.

### § 3.3. Reinstatement.

A. If the certificate holder fails to renew the certificate within six months following his expiration date, the certificate holder will be required to apply for certificate reinstatement. The applicant will be required to show the board that he meets the eligibility standards for certification as a professional soil scientist. The board may also require reexamination. The application fee for reinstatement shall be an amount equal to the regular renewal fee plus the ~~\$200~~ \$1,250 penalty fee.

B. After 36 months from the date of expiration, the applicant must apply as a new applicant, meet all current education and experience requirements and pass the current examination.

### § 3.4. Reissuance of certificate.

An individual whose certificate has been revoked must file a new application and obtain approval of the board to regain certification. Reexamination shall be required.

## PART IV. STANDARDS OF PRACTICE AND CONDUCT.

### § 4.1. Professional conduct.

A certified professional soil scientist:

1. Shall not submit any false statements, make any misrepresentations or fail to disclose any facts requested concerning any application for certification.
2. Shall not engage in any fraud or deceit or misrepresentation in advertising, in soliciting or in providing professional services.
3. Shall not knowingly sign, stamp, or seal any plans, drawings, blueprints, surveys, reports, specifications, maps or other documents not prepared or reviewed and approved by the certificate holder.
4. Shall not knowingly represent a client or employer on a project on which he represents or has represented another client or employer without making full disclosure thereof.
5. Shall express a professional opinion only when it is founded on adequate knowledge of established facts at issue and based on a background of technical

# Proposed Regulations

---

competence in the subject matter.

6. Shall not knowingly misrepresent factual information in expressing a professional opinion.

7. Shall immediately notify the client or employer and the appropriate regulatory agency if his professional judgment is overruled and not adhered to in the circumstances of a substantial threat to the public health, safety, or welfare.

8. Shall exercise reasonable care when rendering professional services and shall apply the technical knowledge, skill and terminology ordinarily applied by practicing soil scientists.

§ 4.2. Grounds for suspensions, revocation, denial of application, renewal or other disciplinary action.

A. The board has the power to fine any certificate holder or to revoke or suspend any certificate at any time after a hearing conducted pursuant to the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia, when the person is found to have:

1. Committed fraud or deceit in obtaining or attempting to obtain certification.

2. Committed any violation, or cooperated with others in violating § 4.1. of the Standards of Practice and Conduct, or any other regulations of the board, or governing statutes of the board.

3. Performed any act in the practice of his profession likely to deceive, defraud or harm the public.

4. Committed any act of gross negligence, incompetence, or misconduct in the practice of soil science.

5. Been convicted of a felony under the terms specified in § 54.1-204 of the Code of Virginia.

B. The board may, in its discretion, refuse to grant, renew or reinstate a certificate of any person for any of the reasons specified in subsection A of this section.

# 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.

## 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.

**Effective Date:** December 18, 1990.

### Summary:

The 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 affiliated with or controlled by a for-profit organization or 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

# Final Regulations

---

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 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

# Final Regulations

---

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 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 reservations, (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 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 reassign such applications to such 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);

# Final Regulations

---

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 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

# Final Regulations

---

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 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 and 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.

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,

# Final Regulations

---

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 or an applicant's development 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 service 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 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 allocate, as applicable, such unallocated federal credits to the 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



# Final Regulations

---

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

## DEPARTMENT OF MINORITY BUSINESS ENTERPRISE

Title of Regulation: VR 486-01-01. Public Participation Guidelines.

Statutory Authority: § 2.1-64.35:8 of the Code of Virginia.

Effective Date: February 13, 1991.

### Summary:

The Public Participation Guidelines outline the procedure in which the Department of Minority Business Enterprise will identify and inform interested persons of its intent to develop new regulations or change existing regulations and to provide an opportunity for public input. These guidelines also establish the parameters necessary to promulgate regulations in accordance with the Administrative Process Act and the Virginia Register Act.

VR 486-01-01. Public Participation Guidelines.

### PART I. GENERAL INFORMATION.

#### § 1.1. Definitions.

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

"Department" means the Department of Minority Business Enterprise.

"Director" means the Director of the Department of Minority Business Enterprise.

"Person" means any corporation, partnership, sole proprietorship, association, one or more individuals, or any unit of government or agency thereof.

#### § 1.2. Policy.

The department shall seek public participation from interested parties prior to formation and during the drafting, promulgation and final adoption process of regulations.

#### § 1.3. Application.

These guidelines apply to all regulations adopted by the department except for emergency regulations adopted in accordance with § 9-6.14.9 of the Code of Virginia and such regulations as may be otherwise excluded as identified in the Code of Virginia.

### PART II. INITIATION OF PROCESS.

#### § 2.1. Department review.

The department shall review the effectiveness and need for these regulations on an annual basis.

#### § 2.2. Formal request for action.

Any person may formally request the director to adopt, amend, or delete any regulation. The request shall be in writing and shall state the name and address of the person interested in the proposed action, the recommended addition, deletion or amendment to a specific regulation, and the anticipated impact on persons affected by the regulation. If the director determines not to act upon a formal request, he shall provide a written response not to act within 90 days from the date of the request. The director shall have sole authority to dispose of the formal request.

### PART III. PUBLIC PARTICIPATION.

#### § 3.1. Notice of intended regulatory action.

When the director deems it necessary to develop new regulations or make changes to an existing regulation, a "Notice of Intended Regulatory Action" (form RR01) will be published in the Virginia Register, General Notices section. This notice will invite those interested in providing input to notify the department of their interest. This notice will contain a brief and concise statement of the proposed regulation or change in the regulation and invite interested persons to provide written comment on the subject matter.

#### § 3.2. Identification of interested persons.

The department shall identify persons whom it believes would be interested in or affected by the regulation. To do so, the department will use the following:

1. A directory or listing of minority businesses maintained by the department.
2. A listing of persons who request to be placed on the mailing list.

# Final Regulations

---

3. A listing of persons who previously participated in public proceedings concerning related subjects or issues.

4. The department may also use other mailing lists or publish a notice of a public hearing in a newspaper of general circulation in Virginia.

## § 3.3. Informational proceeding.

The director or any representative designated for such purpose may hold informational proceedings on any new regulation or proposed changes to existing regulations. In notifying the public, the department shall file a "Notice of Meeting" (form RR06) with the Virginia Register of Regulations. Such persons shall be encouraged to provide a written copy of their statement to the department.

## PART IV. ADVISORY PANEL.

### § 4.1. Establishment.

The director may establish an advisory panel to comment or make recommendations on new regulations or changes to existing regulations. The panel shall be at least five and no more than seven members in number.

### § 4.2. Panel membership.

At least one member shall be represented from a minority business enterprise; one member employed by an office responsible for a federal, state, or local small or minority assistance program; one member with race relations, equal opportunity or related experience and interest; and one member employed by government with procurement or purchasing responsibility. The balance of the panel shall be at-large members who have expressed or may have an interest in the regulation.

### § 4.3. Orientation of panel.

Panel members will be oriented to the department, its program, issues, constraints, entities to be affected, options and time limitations. The panel will discuss and make recommendations which will be considered in the drafting and adopting of regulations. Once the regulations have been developed, the panel will review them and continue to participate during the promulgation process.

## PART V. FINAL.

### § 5.1. Adoption.

After proposed regulations have been developed by the department in accordance with these guidelines, they shall be submitted for public comment and adopted in final form in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) of the Code of Virginia.

### § 5.2. Final action.

After proposed action on a regulation has been approved, the final regulation will be printed in the Virginia Register.

Copies of final regulations shall be printed and will be available by writing the Department of Minority Business Enterprise at its office in Richmond, Virginia.

# EMERGENCY REGULATIONS

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

Title of Regulation: VR 394-01-06. Virginia Statewide Fire Prevention Code/1987.

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

Effective Dates: January 1, 1991, through January 1, 1992.

### Preamble:

*The 1987 Edition of the Virginia Statewide Fire Prevention Code, as amended on March 1, 1990 established regulations for obtaining permits for the use, storage and handling of explosive materials and for the certification of persons conducting blasting operations. The State Fire Marshal issues permits for explosives in localities when there is no local enforcement of the code, and the Professional Services Office within the Division of Building Regulatory Services of the Department administers the statewide certification program for blasters. There are currently no fees associated with the Department's permits or certification program.*

*The purpose of the emergency regulation is to establish fees for permits issued by the State Fire Marshal's office to store, handle and use explosives, and to establish a fee for the certification of blasters. The fees are necessary to offset administrative, material and postage costs associated with these programs.*

*The emergency regulation amends § F-104.1.1 of the Statewide Fire Prevention Code to establish annual permits for the use and storage of explosives. Section F-104.9 establishes a permit fee of \$50.00 per year to possess, store or dispose of explosives or blasting agents and a \$75.00 annual permit fee to use explosives or blasting agents. A new § F-2600.2.6 establishes a \$20.00 fee to applicants for certification as a blaster. The Department of Housing and Community Development will initiate action to develop final regulations as required by the Administrative Process Act, § 9-6.14:4.1 of the Code of Virginia.*

Submitted by:

/s/ Neal J. Barber  
Director  
Department of Housing and Community Development  
Date: November 30, 1990

Approved by:

/s/ Lawrence H. Framme, III  
Secretary of Economic Development  
Date: December 1, 1990

Approved by:

/s/ Lawrence Douglas Wilder  
Governor  
Commonwealth of Virginia  
Date: December 12, 1990

Filed:

/s/ Joan W. Smith  
Registrar of Regulations  
Date: December 20, 1990

VR 394-01-06. Virginia Statewide Fire Prevention Code/1987.

## ARTICLE 1. ADMINISTRATION AND ENFORCEMENT.

### SECTION F-100.0. GENERAL.

F-100.1. Title: These regulations shall be known as the Virginia Statewide Fire Prevention Code. Except as otherwise indicated, Fire National Fire Prevention Code as herein amended.

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

F-100.3. Adoption: The Virginia Statewide Fire Prevention Code was adopted by order of the Board of Housing and Community Development on December 14, 1987. This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

F-100.4. Effective date: The Virginia Statewide Fire Prevention Code shall become effective on March 1, 1988.

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

F-100.6. Purpose: The purpose of the Virginia Statewide Fire Prevention Code is to provide statewide standards for optional local enforcement to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention

# Emergency Regulations

---

and protection materials, devices, systems and structures, and the unsafe storage, handling and use of substances, materials and devices, wherever located.

## SECTION F-101.0. REQUIREMENTS.

F-101.1. Adoption of model code: The following model code, as amended by Sections F-101.2 and F-101.3, is hereby adopted and incorporated in the Virginia Statewide Fire Prevention Code.

The BOCA BASIC/National Fire Prevention Code/1987 Edition Published by: Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road Country Club Hills, IL 60477

F-101.2. Administrative and enforcement amendments to the referenced model code: All requirements of the referenced model code and of standards referenced therein that relate to administrative and enforcement matters are deleted and replaced by Article 1 of the Virginia Statewide Fire Prevention Code.

F-101.3. Other amendments to the referenced model code: The amendments noted in Addendum 1 shall be made to the specified articles for use as part of this code.

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

F-101.5. Application to Post-Uniform Statewide Building Code (USBC) Buildings: The maintenance of fire safety in buildings and structures shall be the responsibility of the local fire official or the State Fire Marshal. Egress facilities, fire protection, and built-in fire protection equipment shall be maintained in accordance with the requirements of the USBC in effect at the time the building or structure was constructed.

F-101.6. Application to Pre-Uniform Statewide Building Code (USBC) Buildings: Pre-USBC buildings are those buildings that were not subject to the USBC when constructed. Such buildings shall be maintained in accordance with state fire and public building regulations in effect prior to March 31, 1986 as set forth in Addendum 2 and other applicable requirements of this Code. Subsequent alterations, additions, repairs, or change of occupancy classification of such buildings shall be subject to the then current edition of the USBC.

F-101.7. Special provisions: The fire official shall require that buildings subject to the requirements of Section 111.0 of the Uniform Statewide Building Code, Volume II - Building Maintenance Code, 1987 Edition, Second Amendment (effective date October 1, 1990), shall comply with the provisions of that section.

F-101.8. Exemptions for farm structures: Farm structures not used for residential purposes shall be exempt from the

provisions of the Fire Prevention Code.

## SECTION F-102.0. ENFORCEMENT AUTHORITY.

F-102.1. Enforcement officer: Any local government may enforce the Statewide Fire Prevention Code. The local governing body may assign responsibility for enforcement of the Statewide Fire Prevention Code to a local agency or agencies of its choice. The State Fire Marshal shall have authority to enforce the Statewide Fire Prevention Code in jurisdictions in which the local governments do not enforce the code. Upon appointment of the fire official, the Office of the State Fire Marshal shall be notified. The terms "enforcing agency" and "fire official" are intended to apply to the agency or agencies to which responsibility for enforcement has been assigned. However, the terms "building official" or "building department" apply only to the local building official or building department.

F-102.1.2. Modifications to regulations in Addendum 2: In those localities choosing to enforce the Statewide Fire Prevention Code, the fire official shall have the same authority to grant modifications of the regulations in Addendum 2 as is delegated to the Chief Fire Marshal.

F-102.2. Qualifications of local enforcing agency personnel: The local government shall establish qualifications for the fire official and his assistants, adequate to insure proper enforcement of the Statewide Fire Prevention Code.

Note: It is recommended that the fire official have at least five years of related experience. Consideration should be given for selection and maintenance of enforcing agency personnel by using certification programs offered by the Department of Housing and Community Development, Department of Fire Programs, and ETS/NFPA.

F-102.3. Inspections: The fire official may inspect all buildings, structures and premises except single family dwellings, dwelling units in two family and multi-family dwellings, and farm structures as often as may be necessary for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, contribute to the spread of fire, interfere with fire fighting operations, endanger life or any violations of the provisions or intent of this code or any other ordinance affecting fire safety.

F-102.4. Right of entry: Whenever necessary for the purpose of enforcing the provisions of this code, or whenever the fire official has reasonable cause to believe that there exists in any structure or upon any premises, any condition which makes such structure or premises unsafe, the fire official may enter such structure or premises at all reasonable times to inspect the same or to perform any duty imposed upon the fire official by this code; provided that if such structure or premises be occupied, the fire official shall first present proper credentials and request entry. If such entry is refused, the

# Emergency Regulations

fire official shall have recourse to every remedy provided by law to secure entry.

**F-102.5. Coordinated inspections:** Whenever in the enforcement of the Statewide Fire Prevention Code or another code or ordinance, the responsibility of more than one enforcement official may be involved, it shall be their duty to coordinate their inspections and administrative orders as fully as practicable so that the owners and occupants of the structure shall not be subjected to visits by numerous inspectors nor multiple or conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provision of some law, ordinance or code of the jurisdiction, not within the inspector's authority to enforce, the inspector shall report the findings to the official having jurisdiction in order that such official may institute the necessary corrective measures.

Note: Attention should be directed to Section 36-105, Code of Virginia, which states in part, "The building official shall coordinate all reports with inspections for compliance of the Building Code, from fire and health officials DELEGATED such authority, prior to issuance of an occupancy permit." (Emphasis added)

**F-102.6. Fire records:** The fire official shall keep a record of all fires and all facts concerning the same, including investigation of findings and statistics and information as to the cause, origin and the extent of such fires and the damage caused thereby. The fire official shall also keep records of reports of inspections, notices and orders issued and such other matters as directed by the local government. Records may be disposed of in accordance with the provisions of the Virginia Public Records Act and, (a) after retention for twenty years in the case of arson fires, (b) after retention for five years in non- arson fires, and (c) after retention for three years in the case of all other reports, notices, and orders issued.

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

State Fire Marshal or his subordinates are enforcing this code as part of their official duties under Section F-102.1.

**F-102.8. Rules and regulations:** Local governments may adopt fire prevention regulations that are more restrictive or more extensive in scope than the Statewide Fire Prevention Code provided such regulations are not more restrictive than the Uniform Statewide Building Code and do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure.

**F-102.9. Procedures or requirements:** The local governing body may establish such procedures or requirements as may be necessary for the enforcement of the Statewide Fire Prevention Code.

**F-102.10. Control of conflict of interest:** The minimum standards of conduct for officials and employees of the enforcing agency shall be in accordance with the provisions of the Virginia Comprehensive Conflict of Interest Act.

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

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

Note: Investigation of fires is governed by Section 27-30 et. seq., Code of Virginia.

**F-103.2. Notices and orders:** The fire official may issue all necessary notices or orders to ensure compliance with the requirements of the Statewide Fire Prevention Code for the protection of life and property from the hazards of fire or explosion.

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

## SECTION F-104.0. PERMITS.

**F-104.1. General:** It shall be unlawful to engage in any business activity involving the handling, storage or use of hazardous substances, materials or devices; or to maintain, store or handle materials; to conduct processes which produce conditions hazardous to life or property; or to establish a place of assembly without first notifying the local fire official. Permits may be required, by the local fire official, according to Section F-104.2.

**F-104.1.1. State permits:** The State Fire Marshal will not issue permits under the Statewide Fire Prevention Code except those required that annual permits shall be issued

# Emergency Regulations

under Article 26, Explosives, Ammunition and Blasting Agents.

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

F-104.2. Permits required: Permits shall be obtained, when required, from the local fire official. Inspection or permit fees may be levied by the local governing body in order to defray the cost of enforcement and appeals in accordance with Section 27-98 of the Code of Virginia. Permits shall be available to the fire official upon request.

F-104.3. Application for permit: Application for a permit required by this code shall be made to the local fire official in such form and detail as the local fire official shall prescribe.

F-104.4. Action on application: Before a permit is issued, the local fire official or the fire official's designated representative shall make or cause to be made such inspections or tests as are necessary to assure that the use and activities for which application is made complies with the provisions of this code.

F-104.5. Conditions of permit: A permit shall constitute permission to maintain, store or handle materials, or to conduct processes which produce conditions hazardous to life or property in accordance with the provisions of this code. Such permission shall not be construed as authority to violate, cancel or set aside any of the provisions of this code. Said permit shall remain in effect until revoked, or for such period of time specified on the permit. Permits are not transferable and any change in use, operation or tenancy shall require a new permit.

Note: For rules and regulations governing the disposal of hazardous materials contact the Virginia Department of Waste Management.

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

F-104.7. Revocation of permit: The local fire official may revoke a permit or approval issued under the provisions of this code if upon inspection any violation of the code exists, or if conditions of the permit have been violated, or if there has been any false statement or misrepresentation as to material fact in the application, data or plans on which the permit or approval was based.

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

commencement.

F-104.9. Payment of fees Fees : A permit shall not be issued until the designated fees have been paid, when required Fees may be levied by the enforcing agency in order to defray the cost of enforcement and appeals. The fees listed in Table F-104.9 shall be levied on those permits issued in accordance with F-104.1.1 .

Table F-104.9.  
FEE SCHEDULE FOR EXPLOSIVES PERMITS  
ISSUED BY THE STATE FIRE MARSHAL.

Type of Permit	Fee
<u>To possess, store or dispose of explosives or blasting agents</u>	\$50.00 per year
<u>To use explosives or blasting agents</u>	\$75.00 per year

## SECTION F-105.0. APPEAL TO BOARDS OF APPEALS.

F-105.1. Local appeals: Every locality electing to enforce this code shall establish a local board of appeals as required by Section 27-98, Code of Virginia. Appeals to the local board may be made by the person cited for violation when aggrieved by any decision or interpretation of the local fire official made under the provisions of this code. The local board of appeals shall consist of at least five members who are qualified by experience and training to rule on matters pertaining to building construction and fire prevention. The local board of appeals shall be appointed by the local governing body and shall hold office in accordance with the terms of appointment. The local appeal board shall operate in accordance with the applicable provisions of the Administrative Processes Act, Section 9-6.14, Code of Virginia. All local board hearings shall be open to the public. All resolutions or findings of the local board shall be in writing and made available for public viewing. The local board shall meet within twenty days upon receipt of application. Appeal from the application of the code by the State Fire Marshal shall be made directly to the State Building Code Technical Review Board.

F-105.1.1. Grounds for appeal: The owner or occupant of a building may appeal a decision of the fire official to the local Board of Appeals when it is claimed that:

1. The fire official has refused to grant a modification of the provisions of the Code;

2. The true intent of this Code has been incorrectly interpreted;
3. The provisions of this Code do not fully apply;
4. The use of a form of compliance that is equal to or better than that specified in this Code has been denied.

F-105.2. Application: An application for appeal must be submitted, in writing, to the board of appeals within seven working days upon receipt of notice or order of the fire official.

F-105.3. Decision and notification: Every action of the Board on an appeal shall be by resolution. Certified copies shall be furnished to the appellant and the fire official.

F-105.4. Decision: The fire official shall take immediate action in accordance with the decision of the Board.

F-105.5. Appeal to the State Building Code Technical Review Board: Any person aggrieved by a decision of the Local Board of Appeals who was a party to the appeal, or any officer or member of the governing body of the local jurisdiction, may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 15 days of receipt of the decision of the local appeals board by the aggrieved party.

F-105.6. Enforcement of decision: Upon receipt of the written decision of the State Building Code Technical Review Board, the fire official shall take immediate action in accordance with the decision.

F-105.7. Court review: Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board may be presented to the court of the original jurisdiction in accordance with the provisions of the Administrative Process Act, Article 4, Title 9-6.14:1 of the Code of Virginia.

## SECTION F-106.0. ORDERS TO ELIMINATE DANGEROUS OR HAZARDOUS CONDITIONS.

F-106.1. General: Whenever the fire official or the fire official's designated representative shall find in any building, structure or upon any premises dangerous or hazardous conditions or materials as follows, the fire official shall order such dangerous conditions or materials to be removed or remedied in accordance with the provisions of this code:

1. Dangerous conditions which are liable to cause or contribute to the spread of fire in or on said premises, building or structure or endanger the occupants thereof.
2. Conditions which would interfere with the efficiency

and use of any fire protection equipment.

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

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

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

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

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

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

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

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

F-106.2. Maintenance: The owner shall be responsible for the safe and proper maintenance of the building, structure, premises or lot at all times. In all new and existing buildings and structures, the fire protection equipment, means of egress, alarms, devices and safeguards required by the Uniform Statewide Building Code and other jurisdictional ordinances, shall be maintained in a safe and proper operating condition.

Note: Also see Sections F-502.6 and F-502.6.1 of this code for further information.

F-106.3. Occupant responsibility: If an occupant of a building creates conditions in violation of this code, by virtue of storage, handling and use of substances, materials, devices and appliances, the occupant shall be held responsible for the abatement of said hazardous conditions.

F-106.4. Unsafe buildings: All buildings and structures that are or shall hereafter become unsafe or deficient in adequate exit facilities or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or by reason of illegal or improper use, occupancy or maintenance or which have sustained structural damage by reason of fire, explosion, or natural



# Emergency Regulations

---

disaster shall be deemed unsafe buildings or structures. A vacant building, or portion of a building, unguarded or open at door or window, shall be deemed a fire hazard and unsafe within the meaning of this code. Unsafe buildings shall be reported to the building or maintenance code official who shall take appropriate action deemed necessary under the provisions of the Uniform Statewide Building Code Volume I New Construction Code or Volume II Building Maintenance Code to secure abatement by repair and rehabilitation or by demolition.

F-106.5. Evacuation: When, in the opinion of the fire official, there is actual and potential danger to the occupants or those in the proximity of any building, structure or premises because of unsafe structural conditions, or inadequacy of any means of egress, the presence of explosives, explosive fumes or vapors, or the presence of toxic fumes, gases or materials, the fire official may order the immediate evacuation of said building, structure or premises. All of the occupants so notified shall immediately leave the building, structure or premises and persons shall not enter, or reenter, until authorized to do so by the fire official.

F-106.6. Unlawful continuance: It is deemed a violation of the Statewide Fire Prevention Code for any person to refuse to leave, interfere with the evacuation of the other occupants or continue any operation after having been given an evacuation order except such work as that person is directed to perform to remove a violation or unsafe condition.

F-106.7. Notice of violation: Whenever the fire official observes an apparent or actual violation of a provision of this code or ordinance under the fire official's jurisdiction, the fire official shall prepare a written notice of violation describing the condition deemed unsafe and specifying time limits for the required repairs or improvements to be made to render the building, structure or premises safe and secure. The written notice of violation of this code shall be served upon the owner, a duly authorized agent or upon the occupant or other person responsible for the conditions under violation. Such notice of violation shall be served either by delivering a copy of same to such persons by mail to the last known post office address, delivered in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or in the case such person is not found upon the premises, by affixing a copy thereof, in a conspicuous place at the entrance door or avenue of access; and such procedure shall be deemed the equivalent of personal notice.

F-106.8. Issuing summons for violation: In those localities where the fire official or his designated representative has been certified in accordance with Section 27-34.2, of the Code of Virginia, a summons may be issued in lieu of the above mentioned notice of violation or the provisions of Section F-106.9 may be invoked.

F-106.9. Failure to correct violations: If the notice of violation is not complied with in the time specified by the

fire official, the fire official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation or to require removal or termination of the unlawful use of the building or structure in violation of the provisions of this code or of any order or direction made pursuant thereto. The local law enforcement agency of the jurisdiction shall be requested by the fire official to make arrests for any offense against this code or orders of the fire official affecting the immediate safety of the public when the fire official is not certified in accordance with Section 27-34.2, of the Code of Virginia.

F-106.10. Penalty for violation: Violations are a Class 1 misdemeanor in accordance with Section 27-100 of the Code of Virginia. Each day that a violation continues, after a service of notice as provided for in this code, shall be deemed a separate offense.

F-106.11. Correction of violation required: The imposition of the penalties herein described shall not prevent the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation; or to stop an illegal act, conduct of business or use of a building or structure in or about any premises.

## ADDENDUM 1. AMENDMENTS TO THE BOCA NATIONAL FIRE PREVENTION CODE/1987 EDITION.

As provided in Section F-101.3 of the Virginia Statewide Fire Prevention Code, the amendments noted in this Addendum shall be made to the BOCA National Fire Prevention Code 1987 edition for use as part of the Virginia Statewide Fire Prevention Code.

### ARTICLE 1. ADMINISTRATION AND ENFORCEMENT.

1. Article 1, Administration and Enforcement, is deleted in its entirety and replaced with Article 1 of the Virginia Statewide Fire Prevention Code.

### ARTICLE 2. DEFINITIONS.

1. Change Section F-200.3 to read:

F-200.3. Terms defined in the other codes: Where terms are not defined in this code and are defined in the Uniform Statewide Building Code, they shall have the meanings ascribed to them as in that code.

2. Change the following definitions in Section F-201, General Definitions to read:

"Building code official" means the officer or other designated authority charged with the administration and enforcement of the Uniform Statewide Building Code, Volume I - New Construction Code.

# Emergency Regulations

"Code official" means the officer or other designated authority charged with the administration and enforcement of the Virginia Statewide Building Code, Volume II, Maintenance Code. (Note: when "code official" appears in the BOCA National Fire Prevention Code, it shall mean "fire official.")

"Occupancy classification" means the various use groups as classified in the Uniform Statewide Building Code.

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

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

"Building" means a combination of any materials, whether portable or fixed, that forms a structure for use or occupancy by persons or property; provided, however, that farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from provisions of this code. The word building shall be construed as though followed by the words "or part or parts thereof and fixed equipment" unless the context clearly requires a different meaning. The word building includes the word structure.

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

"Certificate of use and occupancy" means the certificate issued by the code official which permits the use of a building in accordance with the approved plans and specifications and which certifies compliance with the provisions of law for the use and occupancy of the building in its several parts together with any special stipulations or conditions of the building permit. (Note: See Section 115.0 of the USBC.)

"Combustible material" means a material which cannot be classified as noncombustible in accordance with that definition.

"Farm building" means a structure located on a farm utilized for the storage, handling or production of agricultural, horticultural and floricultural products normally intended for sale to domestic or foreign markets and buildings used for maintenance, storage or use of animals or equipment related thereto.

"Fire official" means the officer or other designated authority charged with the administration and enforcement of the Virginia Statewide Fire Prevention Code.

"Local government" means any city, county or town in this Commonwealth, or the governing body thereof.

"Night club" means a place of assembly that provides exhibition, performance or other forms of entertainment; serves food and/or alcoholic beverages; and may or may not provide music and space for dancing.

### ARTICLE 3. GENERAL PRECAUTIONS AGAINST FIRE.

#### 1. Change Section F-301.1 to read:

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

### ARTICLE 4. HAZARD ABATEMENT IN EXISTING BUILDINGS.

#### 1. Change Section F-400.1 to read:

F-400.1. Continued maintenance: All service equipment, means of egress devices and safeguards which were required by a previous statute or another code in a building or structure when erected, altered or repaired shall be maintained in good working order.

2. Delete the balance of ARTICLE 4, HAZARD ABATEMENT IN EXISTING BUILDINGS as it is covered by Volume I and Volume II of the Uniform Statewide Building Code.

### ARTICLE 5. FIRE PROTECTION SYSTEMS.

#### 1. Add Section F-509.4, Smoke detectors for the deaf and hearing-impaired to read:

F-509.4 Smoke detectors for the deaf and hearing-impaired: Audible and visual alarms, meeting the requirements of UL Standard 1638, and installed in accordance with NFPA/ANSI 72G, shall be provided in occupancies housing the hard of hearing, as required by Section 36-99.5, Code of Virginia; however, all visual alarms shall provide a minimum intensity of 100 candela. Portable alarms meeting these requirements shall be acceptable.

### ARTICLE 16. OIL AND GAS PRODUCTION.

1. Delete ARTICLE 16, OIL AND GAS PRODUCTION as it is covered by the VIRGINIA OIL AND GAS ACT, Title 45, Chapter 22 of the Code of Virginia.

# Emergency Regulations

---

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

1. Article 26 Explosives, Ammunition and Blasting Agents, is deleted in its entirety and replaced with Article 26 of the Virginia Statewide Fire Prevention Code, as follows:

### SECTION F-2600.0. GENERAL.

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

F-2600-2. Exceptions: Nothing in this article shall be construed as applying to the following explosive uses:

1. The Armed Forces of the United States or of a state.
2. Explosives in forms prescribed by the official United States Pharmacopoeia.
3. The sale or use of fireworks which are regulated by Article 27.
4. Laboratories engaged in testing explosive materials.
5. The possession, storage and use of not more than 5 pounds (2.27 kg) of smokeless powder, black powder, and 1000 small arms primers for hand loading of small arms ammunition for personal use.
6. The manufacture, possession, storage and use of not more than 5 pounds (2.27 kg) of explosives or blasting agents in education, governmental or industrial laboratories for instructional or research purposes when under the direct supervision of experienced, competent persons.
7. The transportation and use of explosives or blasting agents by the United States Department of Alcohol, Tobacco and Firearms, the United States Bureau of Mines, the Federal Bureau of Investigation, the United States Secret Service, the Virginia Department of State Police, or qualified fire and law enforcement officials acting in their official capacity in the discharge of their duties; nor to the storage, handling, or use of explosives or blasting agents pursuant to the provision of Title 45.1 of the Code of Virginia (Department of

Mines, Minerals and Energy).

F-2600-2.1. Permit required: A permit shall be obtained from the code official for any of the following conditions or operations:

1. To possess, store, or otherwise dispose of explosives or blasting agents.

To use explosives or blasting agents:

- a. A permit shall be issued for each project.
- b. The permit shall specify the type of blasting and any special conditions. To the extent that blasting will occur within any waters of the Commonwealth or in any of the waters under its jurisdiction, evidence of a valid Marine Resources Commission permit, or "no permit necessary" authorization, will be required.
- c. The permit shall specify an expiration date.

3. To operate a terminal for handling explosives or blasting agents.

4. To manufacture explosives or blasting agents (providing the following conditions are met):

- a. Registration with the Department of Housing and Community Development;
- b. Valid license from the Bureau of Alcohol, Tobacco and Firearms; and
- c. Valid license to do business in the Commonwealth of Virginia.

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

- a. Registration with the Department of Housing and Community Development;
- b. Valid license from the Bureau of Alcohol, Tobacco and Firearms; and
- c. Valid license to do business in the Commonwealth of Virginia.

F-2600.2.2. Prohibited permits: Permits as required above shall not be issued for:

1. Liquid nitroglycerin and nitrate esters.
2. Dynamite (except gelatin dynamite) containing over 60 percent of liquid explosive ingredient.
3. Leaking, damaged, or defective packages or containers of high explosives.

# Emergency Regulations

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

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

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

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

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

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

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

10. Explosives containing an ammonium salt and a chlorate.

F-2600.2.3. Certification of blasters: It shall be a violation of this code for any person to load or fire explosive materials unless the person, or his on-site supervisor, is a certified blaster. This certificate (and any other pertinent information) shall be carried on the blaster's person during the use of explosive materials. To become certified, the applicant shall successfully complete the blaster certification program of the Department of Housing and Community Development. An applicant for a blaster's certification shall meet the following criteria:

1. Be at least 21 years of age;
2. Be able to understand and give written and oral instruction in the English language;
3. Have worked at least one year under the direct supervision of a blaster certified by the Commonwealth of Virginia or under the supervision of a blaster certified by another authority recognized by the Department of Housing and Community Development as being equivalent; and
4. Have a working knowledge of Federal, State, and local laws and regulations pertaining to explosive materials.

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

F-2600.2.3.1. Temporary certification: A temporary

certificate may be issued to any person who meets the applicant criteria listed in Section F-2600.2.3, and was employed as a blaster prior to filing the application for the temporary certificate. Any temporary certificate issued before January 1, 1992 shall expire on January 1, 1993. Any temporary certificate issued after January 1, 1992 shall expire 12 months from the date of issuance.

F-2600.2.3.2. Recertification: A blasters certificate shall be renewed every three years.

F-2600.2.4. Revocation or suspension of certification: The Department of Housing and Community Development may revoke or suspend certification issued under the provisions of this code if conditions of the certification have been violated, or if there has been any false statement or misrepresentation as to material fact in the application on which the certification was based. A blaster whose certification has been suspended or revoked may request, in writing, a hearing before a 3 member panel (who are knowledgeable and/or competent in explosives, ammunition and blasting agents, and who are appointed by the Director of the Department of Housing and Community Development) for reinstatement of certification.

F-2600.2.5. Appeal: A blaster whose certification has been suspended or revoked may request, in writing, a hearing before a 3 member panel (who are knowledgeable and/or competent in explosives, ammunition and blasting agents, and who are appointed by the Director of the Department of Housing and Community Development for reinstatement of certification within 90 days of notification of the suspension or revocation.

F-2600.2.6. Certification Fee: The Department of Housing and Community Development shall charge a \$20.00 fee to applicants for certification as a blaster.

F-2600.3 Liability insurance: The company or individual applying for a permit to blast, manufacture, or sell explosives shall provide proof of insurance in an amount determined by the fire official but in no case less than \$500,000.00.

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

F-2600.4. Definitions: For the purposes of this article and as used in this code, the following words and terms shall have the meaning shown:

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

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

# Emergency Regulations

---

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

*"Carrier"* means any person who engages in the transportation of articles or materials by rail, highway, water or air.

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

*"Explosive-actuated device"* means any tool or special mechanized device which is actuated by explosives, but not to include propellant-actuated power devices. Examples of explosive-actuated power devices are jet tappers and jet perforators. (Note: See Special industrial explosive device.)

*"Highway"* means any public street, alley or road.

*"Magazine"* means any building or structure approved for the storage of explosives. Magazines shall be of two classes as follows:

1. Class I. Class I magazines shall be used for the storage of explosives when quantities are in excess of 50 pounds (22.70 kg) of explosive material.
2. Class II. Class II magazines shall be used for the storage of explosives in quantities of 50 pounds (22.70 kg) or less of explosive materials except that a Class II magazine is permitted to be used for temporary storage of a larger quantity of explosives at the site of blasting operations where such amount constitutes not more than one day's supply for use in the current operation.

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

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

*"Public conveyance"* means any railway car, streetcar, bus, airplane or other vehicle transporting passengers for hire.

*"Railway"* means any steam, electric or other railroad

or railway which carries passengers for hire.

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

*"Small arms ammunition"* means any shotgun, rifle, pistol or revolver cartridge.

*"Special industrial explosive device"* means any explosive power pack containing an explosive charge in the form of a cartridge or construction device. The term includes, but is not limited to, explosive rivets, explosive bolts, explosive charges for driving pins or studs, cartridges for explosive actuated power tools and charges of explosives used in jet tapping of open hearth furnaces and jet perforation of oil well casings.

*"Special industrial high explosive materials"* means sheets, extrusions, pellets and packages of high explosives containing dynamite, trinitrotoluol, pentaerythritoltetranitrate, cyclotrimethylenetrinitramine, or other similar compounds used for high energy rate forming, expanding and shaping in metal fabrication, and for dismemberment and quick reduction of scrap metal.

*"Terminal"* means those facilities used by carriers for the receipt, transfer, temporary storage or delivery of articles or materials.

*"Test blasting cap No.8"* means one containing two grams of a mixture of 80 percent mercury fulminate and 20 percent potassium chlorate, or a cap of equivalent strength.

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

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

*"Vehicle"* means a conveyance of any type operated upon the highways.

## SECTION F-2601.0. GENERAL REQUIREMENTS.

F-2601.1. Manufacturing: The manufacture of explosives or blasting agents shall be prohibited unless such manufacture is approved. This shall not apply to hand loading of small arms ammunition for personal use when not for resale.

F-2601.2. Storage: The storage of explosives and blasting agents is prohibited within the legal geographic boundaries of any district where such storage is prohibited by the authority having jurisdiction.

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

F-2601.3 Quantity Control: The code official shall limit the quantity of explosives or blasting agents to be permitted at any location.

F-2601.4. Sale and display: Explosives shall not be sold, given delivered, or transferred to any person or company not in possession of a valid license or permit. A holder of a permit to sell explosives shall make a record of all transactions involving explosives. Such record shall be made available to the fire official upon request, and shall be retained for five years. An accumulation of invoices, sales slips, delivery tickets, receipts, or similar papers representing individual transactions will satisfy the requirements for records provided they include the signature of any receiver of the explosives. A person shall not sell or display explosives or blasting agents on highways, sidewalks, public property or in places of public assembly or education.

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

F-2602.2. General: Explosives, including special industrial high explosive materials, shall be stored in magazines which meet the requirements of this article. This shall not be construed as applying to wholesale and retail stocks of small arms ammunition, explosive bolts, explosive rivets or cartridges for explosive-actuated power tools in quantities involving less than 500 pounds (227 kg) of explosive material. Magazines shall be in the custody of a competent person at all times who shall be at least 21 years of age, and who shall be held responsible for compliance with all safety precautions.

# Emergency Regulations

Table F-2602  
TABLE OF DISTANCES FOR STORAGE OF EXPLOSIVES

DISTANCES IN FEET									
QUANTITY OF EXPLOSIVE MATERIALS (Notes 1,2,3,4)		Inhabited Buildings and Property Lines(9)		Public Highways Class A to D(11)		Passenger Railways- Public Highways with Traffic Volume of more than 3,000 Vehicles/Day(10,11)		Separation of Magazines(12)	
Pounds Over	Pounds Not Over	Barri-caded (6,7,8)	Unbarri-caded	Barri-caded (6,7,8)	Unbarri-caded	Barri-caded (6,7,8)	Unbarri-caded	Barri-caded (6,7,8)	Unbarri-caded
2	5	70	140	30	60	51	102	6	12
5	10	90	180	35	70	64	128	8	16
10	20	110	220	45	90	81	162	10	20
20	30	125	250	50	100	93	186	11	22
30	40	140	280	55	110	103	206	12	24
40	50	150	300	60	120	110	220	14	28
50	75	170	340	70	140	127	254	15	30
75	100	190	380	75	150	139	278	16	32
100	125	200	400	80	160	150	300	18	36
125	150	215	430	85	170	159	318	19	38
150	200	235	470	95	190	175	350	21	42
200	250	255	510	105	210	189	378	23	46
250	300	270	540	110	220	201	402	24	48
300	400	295	590	120	240	221	442	27	54
400	500	320	640	130	260	238	476	29	58
500	600	340	680	135	270	253	506	31	62
600	700	355	710	145	290	266	532	32	64
700	800	375	750	150	300	278	556	33	66
800	900	390	780	155	310	289	578	35	70
900	1,000	400	800	160	320	300	600	36	72
1,000	1,200	425	850	165	330	318	636	39	78
1,200	1,400	450	900	170	340	336	672	41	82
1,400	1,600	470	940	175	350	351	702	43	86
1,600	1,800	490	980	180	360	366	732	44	90
1,800	2,000	505	1,010	185	370	378	756	45	90
2,000	2,500	545	1,090	190	380	408	816	49	98
2,500	3,000	580	1,160	195	390	432	864	52	104
3,000	4,000	635	1,270	210	420	474	948	58	116
4,000	5,000	685	1,370	225	450	513	1,026	61	122
5,000	6,000	730	1,460	235	470	546	1,092	65	130
6,000	7,000	770	1,540	245	490	573	1,146	68	136
7,000	8,000	800	1,600	250	500	600	1,200	72	144
8,000	9,000	835	1,670	255	510	624	1,248	75	150
9,000	10,000	865	1,730	260	520	645	1,290	78	156
10,000	12,000	875	1,750	270	540	687	1,374	82	164
12,000	14,000	885	1,770	275	550	723	1,446	87	174
14,000	16,000	900	1,800	280	560	756	1,512	90	180
16,000	18,000	940	1,800	285	570	786	1,572	94	188
18,000	20,000	975	1,950	290	580	813	1,626	98	196
20,000	25,000	1,055	2,000	315	630	876	1,752	105	210
25,000	30,000	1,130	2,000	340	680	933	1,866	112	224
30,000	35,000	1,205	2,000	360	720	981	1,962	119	238
35,000	40,000	1,275	2,000	380	760	1,026	2,000	124	248
40,000	45,000	1,340	2,000	400	800	1,068	2,000	129	258
45,000	50,000	1,400	2,000	420	840	1,104	2,000	135	270
50,000	55,000	1,460	2,000	440	880	1,140	2,000	140	280
55,000	60,000	1,515	2,000	455	910	1,173	2,000	145	290
60,000	65,000	1,565	2,000	470	940	1,206	2,000	150	300
65,000	70,000	1,610	2,000	485	970	1,236	2,000	155	310
70,000	75,000	1,655	2,000	500	1,000	1,263	2,000	160	320
75,000	80,000	1,695	2,000	510	1,020	1,293	2,000	165	330
80,000	85,000	1,730	2,000	520	1,040	1,317	2,000	170	340

# Emergency Regulations

85,000	90,000	1,760	2,000	530	1,060	1,344	2,000	175	350
90,000	95,000	1,790	2,000	540	1,080	1,368	2,000	180	360
95,000	100,000	1,815	2,000	545	1,090	1,392	2,000	185	370
100,000	110,000	1,835	2,000	550	1,100	1,437	2,000	195	390
110,000	120,000	1,855	2,000	555	1,110	1,479	2,000	205	410
120,000	130,000	1,875	2,000	560	1,120	1,521	2,000	215	430
130,000	140,000	1,890	2,000	565	1,130	1,557	2,000	225	450
140,000	150,000	1,900	2,000	570	1,140	1,593	2,000	235	470
150,000	160,000	1,935	2,000	580	1,160	1,629	2,000	245	490
160,000	170,000	1,965	2,000	590	1,180	1,662	2,000	255	510
170,000	180,000	1,990	2,000	600	1,200	1,695	2,000	265	530
180,000	190,000	2,010	2,000	605	1,210	1,725	2,000	275	550
190,000	200,000	2,030	2,000	610	1,220	1,755	2,000	285	570
200,000	210,000	2,055	2,000	620	1,240	1,782	2,000	295	590
210,000	230,000	2,100	2,100	635	1,270	1,836	2,000	315	630
230,000	250,000	2,155	2,155	650	1,300	1,890	2,000	335	670
250,000	275,000	2,215	2,215	670	1,340	1,950	2,000	360	720
275,000	300,000	2,275	2,275	690	1,380	2,000	2,000	385	770

Numbers in ( ) refer to explanatory notes

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

NOTE 2 - "Explosives" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. A list of explosives determined to be within the coverage of "18 U.S.C. Chapter 40, Importation, Manufacturer, Distribution and Storage of Explosive Materials" is issued at least annually by the Director of the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury. For quantity and distance purposes, detonating cord of 50 grains per foot should be calculated as equivalent to 8 lbs. of high explosives per 1,000 feet. Heavier or lighter core loads should be rated proportionately.

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

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

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

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

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

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

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

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

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

NOTE 12 - When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways, and highways, and, in addition, they should be separated from each other by not less than the distances shown for "Separation of Magazines," except that the quantity of explosive materials contained in detonator magazines shall govern in regard to the spacing of said detonator magazines from magazines containing other explosive materials. If any two or more magazines are separated from each other by less than the specified "Separation of Magazines" distances, then such two or more magazines, as a group, must be considered as one magazine, and the total quantity of explosive materials stored in such group must be treated as if stored in a single magazine located on the site of any magazine of the group, and must comply with the minimum of distances specified from other magazines, inhabited buildings, railways, and highways.

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

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



# Emergency Regulations

---

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

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

F-2602.4. Magazine construction: Magazines shall be constructed and maintained in accordance with IME publication #1.

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

F-2602.4.1. Weather resistance: Magazines for the storage of explosives shall be weather resistant and properly ventilated. When used for storage of Class A explosives other than black powder, blasting caps and electric blasting caps, these magazines shall also be bullet resistant.

F-2602.4.2. Magazine heat and light: Magazines shall not be provided with artificial heat or light, except that if artificial light is necessary, an approved electric safety flashlight or safety lantern shall be used.

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

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

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

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

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

F-2602.5.5. Explosive unpacking: Packages of explosives shall not be unpacked or repacked in a magazine nor within 50 feet (15.24m) of a magazine.

F-2602.5.6. Magazine contents: Magazines shall not be used for the storage of any metal tools or of any commodity except explosives, but this restriction shall not apply to the

storage of blasting agents, blasting supplies and oxidizers used in compound blasting agents.

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

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

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

## SECTION F-2603.0. TRANSPORTATION OF EXPLOSIVES.

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

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

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

F-2604.1. General: Blasting agents or oxidizers, when stored in conjunction with explosives, shall be stored in the manner set forth in Section F-2602.0 for explosives. The quantity of blasting agents or oxidizers shall be included when computing the total quantity of explosives for determining distance requirements.

F-2604.2. Storage location: Buildings used for storage of blasting agents separate from explosives shall be located away from inhabited buildings, passenger railways and

public highways in accordance with Table F-2602.

F-2604.3. Storage housekeeping: The interior of buildings used for the storage of blasting agents shall be kept clean and free from debris and empty containers. Spilled materials shall be cleaned up promptly and safely removed. Combustible materials, flammable liquids, corrosive acids, chlorates, nitrates other than ammonium nitrate or similar materials shall not be stored in any building containing blasting agents unless separated therefrom by construction having a fire-resistance rating of not less than 1 hour. The provisions of this section shall not prohibit the storage of blasting agents together with nonexplosive blasting supplies.

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

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

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

## SECTION F-2605.0. HANDLING OF EXPLOSIVES.

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

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

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

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

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

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

materials).

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

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

## SECTION F-2606.0. BLASTING.

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

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

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

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

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

F-2606.3. Clearance at site: At the site of blasting operations, a distance of at least 150 feet (45.72 m) shall be maintained between Class II magazines and the blast area when the quantity of explosives temporarily kept therein is in excess of 25 pounds (11.35 kg), and at least 50 feet (15.24m) when the quantity of explosives is 25 pounds (11.35 kg) or less.

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

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

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

# Emergency Regulations

1. The suspension of all blasting operations and removal of persons from the blasting area during the approach and progress of an electrical storm;
2. The posting of signs warning against the use of mobile radio transmitters on all roads within 350 feet (106.75m) of the blasting operations; and
3. Compliance with NFPA 495 listed in Appendix A when blasting within 1-1/2 miles (2.41 km) of broadcast or highpower short wave radio transmitters.
4. Misfires shall be handled as directed by equipment manufacturers with no one entering the blasting site, except the blaster, until the loaded charges have been made to function or have been removed.

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

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

1. Name of contractor.
2. Location and time of blast.
3. Name of certified blaster in charge.
4. Type of material blasted.
5. Number of holes bored and spacing.
6. Diameter and depth of holes.
7. Type and amount of explosives.
8. Amount of explosives per delay of 8 milliseconds or greater.
9. Method of firing and type of circuit.
10. Direction and distance in feet to nearest dwelling, public building, school, church, commercial or institutional building.
11. Weather conditions.
12. Whether or not mats or other precautions were used.
13. Type of detonators and delay periods.
14. Type and height of stemming.

15. Seismograph records where indicated.

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

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

Table 2607 A<sup>B</sup>  
CHARGE WEIGHT PER DELAY DEPENDENT ON DISTANCE

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

Note a. Over 60 feet this table is based upon the formula:  $W = D^{1.5}/90$   
Note b. One tenth of a pound of explosive per foot of distance to a building.

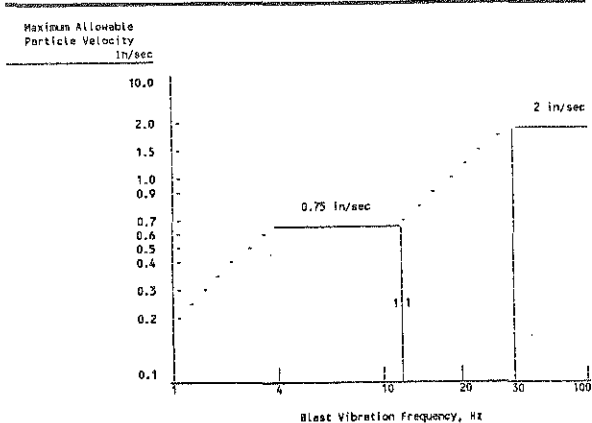
F-2607.1.1. Maximum airblast: The maximum airblast at any inhabited building, resulting from blasting operations, shall not exceed 130 decibels peak, or 140 decibels peak at any uninhabited building, when measured by an instrument having a flat frequency response (+3 decibels) over a range of at least 6 to 200 Hertz.

Table 2607 B  
PEAK PARTICLE VELOCITY DEPENDENT ON DISTANCE

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

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

Table 2607 C  
PARTICLE VELOCITY CRITERIA DEPENDENT ON FREQUENCY CONTENT



Note: This criteria is derived from the U.S. Bureau of Mines - RI 5307 (Appendix B) and provides a continuously variable particle velocity criteria dependent on the frequency content of the ground motion. The method of analysis shall be approved by the Fire Official and shall provide an analysis showing all the frequencies present over the 1 - 50 Hertz range.

**F-2607.2. Ground vibration:** This section shall provide for limiting ground vibrations at structures that are neither owned nor leased by the person conducting or contracting for the blasting operation. Engineered structures may safely withstand higher vibration levels based on an approved engineering study upon which the fire official may then allow higher levels for such engineered structures. When blasting operations are to be conducted within 200 feet of a pipe line or high voltage transmission line, the contractor shall notify the owner of the line, or his agent, that such blasting operations are intended.

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

**F-2607.2.1. Blasting without instrumentation:** Where no seismograph is used to record vibration effects, the explosive charge weight per delay (8 milliseconds or greater) shall not exceed the limits shown in Table F-2607A. When charge weights per delay on any single delay period exceed 520 lbs., then ground vibration limits for structures shall comply with Tables F-2607B, F-2607C, or Section F-2607.3.

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

Note: From this point on the explosive charge weight per delay may be increased, but the vibration levels detailed in Tables F-2607B, F-2607C, or Section

F-2607.3 shall not be exceeded.

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

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

1. Each seismograph shall have a frequency response from 2 to 150 Hertz or greater; a velocity range from 0.0 to 2.0 inches per second or greater; and shall adhere to design criteria for portable seismographs outlined in U.S. Bureau of Mines RI 5708, RI 6487, and RI 8506.

2. All field seismographs shall be capable of internal dynamic calibration and shall be calibrated according to the manufacturers' specifications at least once per year.

3. All seismographs shall be operated by competent people trained in their correct use and seismograph records shall be analyzed and interpreted as may be required by the fire official.

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

1. Name of company or contractor.
2. Location, date and time of blast.
3. Name, signature and social security number of blaster in charge.
4. Type of material blasted.
5. Number of holes bored and spacing.
6. Diameter and depth of holes.
7. Type of explosives used.
8. Total amount of explosives used.
9. Maximum amount of explosives per delay period of 8 milliseconds or greater.
10. Method of firing and type of circuit.
11. Direction and distance in feet to nearest dwelling house, public building, school, church, commercial or

# Emergency Regulations

---

institutional building neither owned nor leased by the person conducting the blasting.

12. Weather conditions including such factors as wind direction, etc.

13. Height or length of stemming.

14. Type of protection, such as mats, that were used to prevent flyrock.

15. Type of detonators used and delay period used.

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

17. Seismograph readings, where required, shall contain:

a. Name and signature of person operating the seismograph.

b. Name of person analyzing the seismograph records.

c. Seismograph reading.

18. The maximum number of holes per delay period of 8 milliseconds or greater.

## SECTION F-2608.0. THEFT OR DISAPPEARANCE OF EXPLOSIVES.

F-2608.1. Reports of stolen explosives: Pursuant to § 27-91.1 of the Code of Virginia, any person holding a permit for the manufacture, storage, handling, use or sale of explosives issued in accordance with this code shall report to the State Police and the local law enforcement agency any theft or other disappearance of any explosives or blasting devices from their inventory. In addition, notification shall be made to the fire official having issued the permit.

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

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

## ARTICLE 27. FIREWORKS.

1. Change Section 2700.1 to read:

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

Virginia.

2. Change Section F-2700.4 to read:

F-2700.4. Definition: Fireworks shall mean and include any item known as firecracker, torpedo, skyrocket, or other substance or thing, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known, as fireworks and which explodes, rises into the air or travels laterally; or fires projectiles into the air. The term "fireworks" does not include auto flares, caps for pistols, pinwheels, sparklers, fountains or Pharaoh's Serpents provided, however, these permissible items may only be used, ignited or exploded on private property with the consent of the owner of such property.

3. Delete SECTION F-2701.1, GENERAL.

4. Delete SECTION F-2701.3, EXCEPTIONS.

## ARTICLE 30. LIQUEFIED PETROLEUM GASES.

1. Change Section F-3000.1 to read:

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

2. Delete Section F-3000.3, Record of installation:

3. Delete Section F-3000.4, Definitions:

4. Delete Section F-3001.0, TANK CONTAINER SYSTEMS.

5. Delete Section F-3002.0, CONTAINER STORAGE.

6. Delete Section F-3003.0, USE INSIDE BUILDINGS.

7. Delete Section F-3004.0, FIRE SAFETY REQUIREMENTS.

8. Delete Section F-3005.0, ABANDONMENT OF EQUIPMENT.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-04-8.3. Client Medical Management Program.

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

Effective Dates: January 1, 1991, through December 31, 1991.

# Emergency Regulations

## Summary:

1. **REQUEST:** The Governor's approval is hereby requested to adopt the emergency regulation entitled the Expansion of the Client Medical Management Program. These changes will ensure the provision of essential medical care and care coordination for clients who overuse or abuse medical services.

2. **RECOMMENDATION:** Recommend approval of the Department's request to take an emergency adoption action regarding the Expansion of the Client Medical Management Program. 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. Kozłowski, Director  
Date: December 5, 1990

## 3. CONCURRENCES:

Concur:

/s/ Howard M. Cullum  
Secretary of Health and Human Resources  
Date: December 11, 1990

## 4. GOVERNOR'S ACTION:

Approve:

/s/ Lawrence Douglas Wilder  
Governor  
Date: December 19, 1990

## 5. FILED WITH:

/s/ Joan W. Smith  
Registrar of Regulations  
Date: December 20, 1990

## DISCUSSION

6. **BACKGROUND:** Under the Virginia Client Medical Management Program, the Department of Medical Assistance Services (DMAS) assigns clients who abuse or overuse services to primary care physicians for case management. The program also prohibits providers who abuse or provide unnecessary services from being designated as primary care providers for recipients in the program.

Experience with the program has demonstrated that assigning clients who abuse or overuse services to primary care physicians for case management can change utilization practices. Based on the Department's December, 1989 Client Medical Management Cost Avoidance Study, the current program is cost effective and operates at an administrative cost of \$270,000 annually, with a net cost avoidance of approximately \$1,080,000 per year.

The Department expects to increase the Client Medical Management Program caseload from its current 370 to 900 recipients in fiscal year 1991 and to 1500 recipients in fiscal year 1992. The increase will provide projected additional General Fund savings of \$900,000 in FY 91 and \$1,500,000 in FY 92.

Revisions to the Client Medical Management regulations are necessary to expedite the utilization review process to increase the caseload to the targeted levels. New criteria that specify utilization levels which are considered excessive will allow DMAS staff to more efficiently determine the client's need for coordination of medical care. More recipients of medical assistance will be evaluated for care coordination. These regulatory revisions are also necessary to support the Department in its administrative appeals process by defining the amount, duration and scope of certain medically unnecessary services under the program. Appropriateness of placement in care coordination will be ensured by the combined use of numeric thresholds and DMAS medical staff's reviews.

7. **AUTHORITY TO ACT:** The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, 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.

The Department of Medical Assistance Services (DMAS) is required by 42 CFR 456.3 Subpart A to implement a statewide surveillance and utilization control program. Federal regulations at 42 431.54 (e-f) set forth the rules for the Client Medical Management Program.

This emergency regulation separates policies applying to recipients from those applying to providers. Without an emergency regulation, this revision cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the January 1, 1991, effective date established by the Department's cost management proposal.

8. **FISCAL/BUDGETARY IMPACT:** The proposal to increase the number of Medicaid clients in the Client Medical Management program is expected to result in increased savings of \$900,000 in General Funds for FY 91 and \$1,500,000 in General Funds for FY 92.

9. **RECOMMENDATION:** Recommend approval of this request to take an emergency adoption action to become effective January 1, 1991. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the

# Emergency Regulations

---

APA. Without an effective emergency regulation, the Department would lack the authority to modify in a timely manner program requirements and standards.

## 10. Approval Sought for VR 460-04-8.3.

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 460-04-8.3. Client Medical Management Program.

#### § 1. Definitions.

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

“APA” means the Administrative Process Act established by Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

“Abuse by recipients” means a pattern of practice by a provider or a pattern of health care utilization by a recipient recipients which is inconsistent with sound fiscal, business, or medical practices and results in unnecessary costs to the Virginia Medicaid program, or in reimbursement for a level of utilization or pattern of services that are is not medically necessary or that fail to meet professionally recognized standards for health care .

“Abuse by providers” means practices which are inconsistent with sound fiscal, business, or medical practices and result in unnecessary costs to the Virginia Medicaid Program or in reimbursement for a level of utilization or pattern of services that is not medically necessary.

“Card-sharing” means the intentional sharing of a recipient eligibility card for use by someone other than the recipient for whom it was issued, or a pattern of repeated unauthorized use of a recipient eligibility card by one or more persons other than the recipient for whom it was issued due to the failure of the recipient to safeguard the card.

“Client Medical Management Program for recipients” means the recipients’ utilization control program designed to promote improved and cost efficient medical management of essential health care for non-institutionalized recipients through restriction to one primary care provider and one pharmacy. Referrals may not be made to providers restricted through the Client Medical Management Program, nor may restricted providers serve as covering providers.

“Client Medical Management Program for providers” means the providers’ utilization control program designed to complement the recipient utilization control program in promoting improved and cost efficient medical

management of essential health care. Restricted providers may not serve as designated providers for restricted recipients. Restricted providers may not serve as referral or covering providers for restricted recipients.

“Code of Federal Regulations” or “CFR” means that codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

“Contraindicated medical care” means treatment which is medically improper or undesirable and which results in duplicative or excessive utilization of services.

“Contraindicated use of drugs” means the concomitant use of two or more drugs whose combined pharmacologic action produces an undesirable therapeutic effect or induces an adverse effect by the extended use of a drug with a known potential to produce this effect.

“Covering provider” means a provider designated by the primary provider to render health care services in the temporary absence of the primary provider.

“DMAS” means the Department of Medical Assistance Services.

“Designated provider” means the provider who agrees to be the primary health care provider or designated pharmacy from whom the restricted recipient must first attempt to seek health care services.

“Diagnostic category” means the broad classification of diseases and injuries found in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) which is commonly used by providers in billing for medical services.

“Drug” means a substance or medication intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease as defined by the Virginia Drug Control Act § 54.1-524.2, et seq.

“Duplicative medical care” means two or more practitioners concurrently treat the same or similar medical problems or conditions falling into the same diagnostic category, excluding confirmation for diagnosis, evaluation, or assessment.

“Duplicative medications” means more than one prescription of the same drug or more than one drug in the same therapeutic class or with similar pharmacologic actions.

“Emergency hospital services” means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

“Excessive medical care” means obtaining greater than

# Emergency Regulations

necessary services such that health risks to the recipient and/or unnecessary costs to the Virginia Medicaid Program may ensue from the accumulation of services, or obtaining duplicative services.

"Excessive medications" means obtaining medication in excess of generally acceptable maximum therapeutic dosage regimens, or obtaining duplicative medication from more than one practitioner.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.

"Health care" means any covered services, including equipment or supplies, provided by any individual, organization, or entity that participates in the Virginia Medical Assistance Program.

"Health Care Financing Administration (HCFA)" means that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Client Medical Management Program" for recipients means the recipients' utilization control program designed to promote improved and cost-efficient medical management of essential health care for noninstitutionalized recipients through restriction to one primary care provider and one pharmacy.

"Client Medical Management Program" for providers means the providers' utilization control program designed to complement the recipient utilization control program in promoting improved and cost-efficient medical management of essential health care. Restricted providers may not serve as designated providers for restricted recipients.

"Medical emergency" means a situation in which a delay in obtaining treatment may cause death or lasting injury or harm to serious impairment of the health of the recipient.

"Medical management of essential health care" means a case management approach to health care in which the designated primary physician has responsibility for assessing the needs of the patient and making referrals to other physicians and clinics as needed. The designated pharmacy has responsibility for monitoring the drug regimen of the patient. Coordination of medical services promotes continuity of care and cost efficiency.

"Medically necessary" means necessary for the maintenance, improvement, or protection of health, or lessening of illness, disability, or pain.

"Medicare" means the Health Insurance for the Aged

and Disabled enacted by Congress in 1965 as Title XVIII of the Social Security Act.

"Not medically necessary" means an item or service which is not consistent with the diagnosis or treatment of the patient's condition and/or an item or service which is duplicative, contraindicated, or excessive, or results in a pattern of abuse.

"Pattern" means an identifiable series of events or activities resulting in abuse.

"Practitioner" means a health care provider licensed, registered, or otherwise permitted by law to distribute, dispense, prescribe and administer drugs or otherwise treat medical conditions.

"Provider" means the individual or facility registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Psychotropic drugs" means drugs which affect the mental state, such as drugs prescribed for anxiety, sleep disorders, psychoses, affective disorders, and other mental disorders.

"Recipient" means the individual who is eligible, under Title XIX of the Social Security Act, to receive Medicaid covered services.

"Recipient eligibility card" means the document issued to each Medicaid family unit, listing names and Medicaid numbers of all eligible individuals within the family unit.

"Restriction" means an administrative action imposed on a recipient which limits access to specific types of medical care and health care services through a designated primary provider(s) provider or an administrative action imposed on a provider to prohibit participation as a designated primary provider, referral, or covering provider for restricted recipients.

"Social Security Act" means the the Act, enacted by the 74th Congress on August 14, 1935, which provides for the general welfare by establishing a system of federal old age benefits, and by enabling the several states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws.

"State Plan for Medical Assistance" or "the Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Surveillance and Utilization Review Subsystem (SURS)" means a computer subsystem of the Medicaid Management Information System (MMIS) which collects claims data and



# Emergency Regulations

---

computes statistical profiles of recipient and provider activity and compares them with that of their particular peer group.

*"Therapeutic class" means a group of drugs with similar pharmacologic actions and uses.*

*"Utilization control" means the control of covered services to assure the use of cost efficient, medically necessary and /or appropriate services.*

## § 2. Authority. Client Medical Management Program for Recipients.

A. Federal regulations at 42 CFR 456.3 require the Medicaid agency to implement a statewide surveillance and utilization control program.

### A. Purpose.

*The Client Medical Management Program is a utilization control program designed to promote improved and cost efficient medical management of essential health care.*

### B. Authority.

1. Federal regulations, at 42 CFR § 456.3, require the Medicaid agency to implement a statewide surveillance and utilization control program.

2. Federal regulations at 42 CFR § 431.54 (e) allow states to restrict recipients to designated providers when the recipients have utilized services at a frequency or amount that is not medically necessary in accordance with utilization guidelines established by the state.

C. Federal regulations at 42 CFR 431.54 (f) allow states to restrict providers from participating in the Medicaid program if the agency finds that the provider of items or services under the State Plan has provided items or services at a frequency or amount not medically necessary in accordance with utilization guidelines established by the state, or has provided items or services of a quality that do not meet professionally recognized standards of health care.

D. DMAS shall not impose restrictions which would result in denying recipients reasonable access to Medicaid services of adequate quality, including emergency services (42 CFR 431.54 (f)(4)).

3. Federal regulations, at 42 CFR § 455.15 -16, require the Medicaid agency to conduct investigations of abuse by recipients and allow sanctions to be applied.

### 3. C. Identification of Client Medical Management Program participants.

A. DMAS identifies shall identify recipients for review from computerized exception reports such as Recipient

SURS or by referrals from agencies, health care professionals, or other individuals for suspected utilization of unnecessary or inappropriate medical services .

B. DMAS identifies providers for review through computerized exception reports (Provider SURS) or by referrals from agencies, health care professionals, or other individuals for suspected provision of unnecessary or inappropriate medical services.

## § 4. D. Participant Recipient evaluation for restriction.

A. 1. DMAS shall review recipients and providers to determine if services are being utilized or provided at a frequency or amount that is results in a level of utilization or a pattern of services which is not medically necessary. Evaluation of utilization patterns for both recipients and providers can include but is not limited to review by the Department staff of diagnoses, medical records and/or computerized reports generated by the Department reflecting claims submitted for physician visits, drugs/prescriptions, outpatient and emergency room visits, lab and diagnostic procedures, hospital admissions, and referrals ; and procedures not usually performed by primary health care providers .

2. Recipients demonstrating unreasonable patterns of utilization and/or exceeding reasonable levels of utilization shall be reviewed for restriction.

B. 3. DMAS shall recommend restrict recipients for restriction if a pattern of one or more of the following conditions patterns or levels of utilization, including but not limited to the following, is identified:

a. Exceeding 200% of the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class for a period exceeding four weeks.

b. Two occurrences of having prescriptions for the same drugs filled two or more times on the same or the subsequent day.

c. Utilizing services from three or more prescribers and three or more dispensing pharmacies in a three month period.

d. Receiving more than 24 prescriptions in a three month period.

e. Receiving more than 12 psychotropic prescriptions or more than 12 analgesic prescriptions or more than 12 prescriptions for controlled drugs with potential for abuse in a three month period.

f. Exceeding the maximum therapeutic dosage of the same drug or multiple drugs in the same therapeutic class for a period exceeding four weeks and being prescribed by two or more practitioners.

# Emergency Regulations

g. Receiving two or more drugs, duplicative in nature or potentially addictive (even within accepted therapeutic levels), dispensed by more than one pharmacy and/or prescribed by more than one practitioner for a period exceeding four weeks.

h. Utilizing more than four different physicians of the same type or specialty in a calendar quarter for treatment of the same or similar conditions.

i. Two or more occurrences of seeing two or more physicians of the same type or specialty on the same or subsequent day for the same or similar diagnosis.

~~1.~~ j. Duplicative, or excessive, or contraindicated utilization of medications, medical supplies, or appliances dispensed by more than one pharmacy or prescribed by more than one practitioner for the time period specified.

~~2.~~ k. Duplicative, or excessive, or contraindicated utilization of medical visits, procedures, or diagnostic tests from more than one practitioner for the time period specified.

~~3.~~ l. Use of emergency hospital services Emergency room use for non-emergency care - characterized by but not limited to:

(1) Six or more emergency room visits for non-emergency care during a three month period.

(2) More than three emergency room visits for non-emergency care during a three month period in which there were no physician office of clinic visits and such providers are enrolled in the area or in which there are two more emergency room visits per month for two or more months or in which more than two different outpatient hospital facilities are used for the same or similar diagnoses.

4. m. Use of preauthorized transportation services with no corresponding medical services.

5. n. One or more documented occurrences of recipient use of recipient eligibility card to purchase or attempt to purchase drugs on a forged or altered prescription.

6. o. One or more documented occurrences of card-sharing.

7. p. One or more documented occurrences of alteration of the recipient eligibility card.

q. One or more documented occurrences of obtaining drugs under false pretenses.

G. DMAS shall recommend providers for restriction if a pattern for one or more of the following conditions is

identified:

1. Visits billed at a frequency or level exceeding that which is medically necessary;

2. Diagnostic tests billed in excess of what is medically necessary;

3. Billed diagnostic tests which are unrelated to the diagnosis;

4. Medications and prescriptions in excess of recommended dosages;

5. Medications and prescriptions unrelated to the diagnosis;

DMAS shall recommend providers for restriction if the provider's license to practice has been revoked or suspended in Virginia by the appropriate licensing board.

E. 4. The Director of the Medical Support Section DMAS Division of Program Compliance or his designee shall review and approve or disapprove the recommendations for recipient or provider restriction.

F. DMAS shall implement restriction without medical review when:

1. Recipients have misused their recipient eligibility cards by alteration or card sharing, or both, or

2. Recipients have obtained drugs under false pretenses.

§ 5. E. Recipient restriction procedures.

A. 1. DMAS shall advise affected recipients by written notice of the proposed restriction under the Client Medical Management Program. Written notice shall include an explanation of restriction procedures and the recipient's right to appeal the proposed action.

B. 2. The recipient shall have 30 calendar days the opportunity to select designated providers. If a recipient fails to respond by the date specified in the restriction notice, DMAS shall select designated providers.

C. 3. The recipient shall have 30 calendar days from the date of the notification to appeal the proposed restriction. DMAS shall not implement restriction if a timely valid appeal is noted. (See § 13 2 K ).

D. 4. DMAS shall restrict recipients to their designated providers for 18 months.

§ 6. F. Eligible providers.

A. 1. A designated health care provider must be a physician enrolled as an individual practitioner

# Emergency Regulations

---

unrestricted by the Department of Medical Assistance Services DMAS .

~~B. 2. A designated pharmacy provider must be a pharmacy enrolled as a community pharmacy unrestricted by the Department of Medical Assistance Services DMAS .~~

~~C. 3. Providers restricted through the Client Medical Management Program may not serve as designated providers, may not provide services through referral, and may not serve as covering providers for restricted recipients. Restricted recipients shall have reasonable access to all essential medical services. Other provider types such as clinics or ambulatory care centers may be established as designated providers as needed but only with the approval of DMAS.~~

~~4. Physicians with practices limited to the delivery of emergency room services may not serve as designated primary providers.~~

~~5. Restricted recipients shall have reasonable access to all essential medical services. Other provider types such as clinics or ambulatory care centers may be established as designated providers as needed but only with the approval of DMAS.~~

## ~~§ 7. G. Provider reimbursement for covered services.~~

~~A. 1. DMAS shall reimburse for covered outpatient medical, pharmaceutical, and physician services only when they are provided by the designated providers, or by physicians seen on referral from the primary health care provider, or in a medical emergency. Prescriptions may be filled by a nondesignated pharmacy only in emergency situations when the designated pharmacy is closed, or when the designated pharmacy does not stock or is unable to obtain the drug in a timely manner .~~

~~B. 2. DMAS shall require a written referral from the primary health care provider for payment of covered outpatient services by nondesignated practitioners unless there is a medical emergency requiring immediate treatment.~~

## ~~§ 8. H. Recipient eligibility cards.~~

~~DMAS shall provide an individual recipient eligibility card listing the recipient's designated primary care providers for each restricted recipient .~~

## ~~§ 9. I. Changes in designated providers.~~

~~A. 1. DMAS must give prior authorization to all changes of designated providers.~~

~~B. 2. The recipient or the designated provider may initiate requests for change for the following reasons:~~

~~1. a. Relocation of the recipient or provider.~~

~~2. b. Inability of the provider to meet the routine health needs of the recipient.~~

~~3. c. Breakdown of the recipient/provider relationship.~~

~~C. 3. If the designated provider initiates the request and the recipient does not select a new provider by established deadlines, DMAS shall select a provider, subject to concurrence from the provider.~~

~~D. 4. If DMAS denies the recipient's request, the recipient is shall be notified in writing and given the right to appeal the decision. (See § 13 2 K )~~

## ~~§ 10. J. Review of recipient restriction status.~~

~~A. 1. DMAS shall review a recipient's utilization prior to the end of the restriction period to determine restriction termination or continuation. (See § 4 2 D ). DMAS shall extend utilization control restrictions for 18 months if a pattern for one or more of the following conditions is identified:~~

~~1. a. The recipient's utilization patterns include one or more conditions listed in § 4 B 2 D 3 .~~

~~2. b. The recipient has not complied with Client Medical Management Program procedures resulting in services or medications received from one or more nondesignated providers without a written referral or in the absence of a medical emergency.~~

~~3. c. One or more of the designated providers recommends continued restriction status because the recipient has demonstrated noncompliant behavior which is being controlled by Client Medical Management Program restrictions.~~

~~B. 2. DMAS shall notify the recipient and designated provider(s) provider in writing of the review decision. If restrictions are continued, written notice shall include the recipient's right to appeal the proposed action. (See § 13 2 K .)~~

~~C. 3. DMAS shall not implement the continued recipient restriction if a timely valid appeal is noted.~~

## ~~§ 11. Provider restriction procedures.~~

~~A. DMAS shall advise affected providers by written notice of the proposed restriction under the Client Medical Management Program. Written notice shall include an explanation of the basis for the decision; request for additional documentation, if any, and notification of the provider's right to appeal the proposed action.~~

~~B. The provider shall have 30 calendar days from the date of notification to appeal the proposed restriction .~~

# Emergency Regulations

Appeals shall be held in accordance with § 9-6-14:11 et seq. of the Code of Virginia (Virginia Administrative Process Act).

C. DMAS shall restrict providers from being the designated provider for recipients in the Client Medical Management Program for 18 months.

D. DMAS shall not implement provider restriction if a timely appeal is noted.

## § 12. Review of Provider Restriction status.

A. DMAS shall review a restricted provider's claims history record prior to the end of the restriction period to determine restriction termination or continuation (see § 4). DMAS shall extend provider restriction for 18 months in one or more of the following situations:

1. Where new abusive practices are identified.
2. Where the practices which led to restriction continue.

B. In cases where the provider has submitted an insufficient number of claims during the restriction period to enable DMAS to conduct a claims history review, DMAS shall continue restriction until a reviewable six-months claims history is available for evaluation.

C. If DMAS renews restriction following the review, the provider shall be notified of the agency's proposed action, the basis for the action, and appeal rights. (See § 13.)

D. If the provider continues a pattern of medically unnecessary services, DMAS may make a referral to the appropriate peer review group or regulatory agency for recommendation or action, or both.

## § 13. K. Recipient Appeals.

A. 1. Restricted providers and Recipients shall have the right to appeal the application of the utilization control criteria used to determine their restriction any adverse action taken by DMAS under these regulations.

B. Provider appeals shall be held pursuant to the provisions of § 9-6-14:11 et seq. of the Code of Virginia (Administrative Process Act).

C. 2. Recipient appeals shall be held pursuant to the provisions of 42 CFR 431.200ff and the State Plan for Medical Assistance VR 460-04-8.7, Client Appeals.

## § 3. Client Medical Management Program for Providers.

### A. Purpose.

The Client Medical Management Program is a utilization control program designed to promote improved and cost

efficient medical management of essential health care.

### B. Authority.

1. Federal regulations, at 42 CFR § 456.3, require the Medicaid agency to implement a statewide surveillance and utilization control program.

2. Federal regulations, at 42 CFR § 431.54 (f), allow states to restrict providers' participation in the Medicaid program if the agency finds that the provider of items or services under the State Plan has provided items or services at a frequency or amount not medically necessary in accordance with utilization guidelines established by the state, or has provided items or services of a quality that do not meet professionally recognized standards of health care.

### C. Identification of Client Medical Management Program Participants.

DMAS shall identify providers for review through computerized reports such as Provider SURS or by referrals from agencies, health care professionals, or other individuals.

### D. Provider Evaluation for Restriction.

1. DMAS shall review providers to determine if health care services are being provided at a frequency or amount that is not medically necessary or that are not of a quality to meet professionally recognized standards of health care. Evaluation of utilization patterns can include but is not limited to review by the Department staff of medical records and/or computerized reports generated by the Department reflecting claims submitted for physician visits, drugs/prescriptions, outpatient and emergency room visits, lab and/or diagnostic procedures, hospital admissions, and referrals.

2. DMAS shall restrict providers if one or more of the following conditions is identified:

- a. Visits billed at a frequency or level exceeding that which is medically necessary;
- b. Diagnostic tests billed in excess of what is medically necessary;
- c. Diagnostic tests billed which are unrelated to the diagnosis;
- d. Medications prescribed or prescriptions dispensed in excess of recommended dosages;
- e. Medications prescribed or prescriptions dispensed unrelated to the diagnosis.

3. DMAS may restrict providers if the provider's license to practice in any state has been revoked or

# Emergency Regulations

---

suspended.

4. The Director of the DMAS Division of Program Compliance or his designee shall approve provider restriction.

## E. Provider Restriction Procedures.

1. DMAS shall advise affected providers by written notice of the proposed restriction under the Client Medical Management Program. Written notice shall include an explanation of the basis for the decision, request for additional documentation, if any, and notification of the provider's right to appeal the proposed action.

2. DMAS shall restrict providers from being the designated provider, a referral provider, or a covering provider, for recipients in the Client Medical Management Program for 18 months.

3. DMAS shall not implement provider restriction if a valid appeal is noted.

## F. Review of a Provider Restriction Status.

1. DMAS shall review a restricted provider's claims history record prior to the end of the restriction period to determine restriction termination or continuation (See § 3 D). DMAS shall extend provider restriction for 18 months in one or more of the following situations:

- a. Where abuse by the provider is identified.
  - b. Where the practice which led to restriction continue.
2. In cases where the provider has submitted an insufficient number of claims during the restriction period to enable DMAS to conduct a claims history review, DMAS shall continue restriction until a reviewable six-months claims history is available for evaluation.

3. If DMAS renews restriction following the review, the provider shall be notified of the agency's proposed action, the basis for the action, and appeal rights. (See § 3 E).

4. If the provider continues a pattern of inappropriate health care services, DMAS may make a referral to the appropriate peer review group or regulatory agency for recommendation and/or action.

## G. Provider Appeals.

1. Providers shall have the right to appeal any adverse action taken by the Department under these regulations.

\* \* \* \* \*

Title of Regulation: VR 460-04-8.12. Home and Community Based Care Services for Individuals with Mental Retardation.

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

Effective Dates: January 1, 1991 through December 31, 1991.

### Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Home and Community-Based Services for Persons with Mental Retardation. This policy will allow the Department to reimburse for community-based services as an alternative to more costly institutional care.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Home and Community-Based Services for Persons with Mental Retardation. 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: December 6, 1990

### 3 CONCURRENCES:

Concur:  
/s/ Howard M. Cullum  
Secretary of Health and Human Resources  
Date: December 19, 1990

### 4. GOVERNOR'S ACTION:

Approve:  
/s/ Lawrence Douglas Wilder  
Governor  
Date: December 19, 1990

### 5. FILED WITH:

/s/ Joan W. Smith  
Registrar of Regulations  
Date: December 20, 1990

### DISCUSSION

6. BACKGROUND: The 1990 Appropriations Act (Item 466) directed the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the Department of Medical Assistance Services (DMAS) to provide Medicaid coverage for community mental health, mental retardation, and substance abuse services in Virginia. As a part of this initiative, DMAS was instructed to seek a waiver to offer community-based services to deinstitutionalize and divert mentally retarded

# Emergency Regulations

individuals from more costly institutional care into community care. This action enables the Commonwealth to realize cost savings and provide services in less restrictive environments which promote more individual growth and development.

Virginia has received approval from the Health Care Financing Administration (HCFA) for two waivers under § 1915(c) of the Social Security Act. Once the waivers receive federal approval, Virginia will provide home and community-based services to mentally retarded and developmentally disabled individuals who require the level of care provided in nursing facilities (NF) for mentally retarded individuals, the cost of which would be reimbursed under the State Plan for Medical Assistance.

DMHMRSAS has identified 1,770 persons who either currently reside in intermediate care facilities for mentally retarded persons or in the community receiving state-funded community services, or are expected to require such services over the three year period of the requested waiver. In addition, a waiver has been requested to provide community-based services to approximately 200 persons currently residing in NFs who have been identified through an annual resident review process, mandated by the Omnibus Reconciliation Act of 1987, as requiring care in intermediate care facilities for the mentally retarded (ICF/MR). These individuals, in the absence of a community based care waiver alternative, would be transferred to an ICF/MR facility.

The services to be provided by these waivers are residential support, day support, habilitation, and therapeutic consultation services. All individuals served through these waivers must also receive case management services as a supportive service which enables the efficient and effective delivery of waiver services. Case management services are not included in the waiver but will be reimbursed as State Plan optional targeted case management services.

All Medicaid eligible individuals must be assessed according to a standardized assessment instrument and determined to meet the criteria for nursing facilities for mentally retarded persons (ICF/MR level of care criteria, VR 460-04-8.2) prior to development of a plan of care for waiver services.

Case managers employed by the Community Services Boards are responsible for completing assessments and developing plans of care for those individuals found to meet ICF/MR criteria. The case manager may then recommend approval of the plan of care for waiver services to a care coordinator employed by DMHMRSAS. The Care Coordinator must give authorization for waiver services prior to implementation of waiver services and DMAS reimbursement.

DMAS is the single state authority responsible for supervision of the administration of the waiver services. DMAS will contract with those providers of services which

meet all licensing and certification criteria required in these regulations and which are willing to adhere to DMAS' policies and procedures. Both DMHMRSAS and DMAS are responsible for periodically reevaluating all individuals authorized for waiver services to assure they continue to meet the ICF/MR criteria and that the community services are sufficient to promote their continued health and well-being.

The service definitions, provider requirements and qualifications, and utilization review requirements included in this emergency regulation were developed by a task force of DMAS, DMHMRSAS, and local Community Services Board representatives.

**7. AUTHORITY TO ACT:** The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, 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.

Chapter 972 of the Code of Virginia directs DMHMRSAS and DMAS to provide Medicaid coverage for community mental health, mental retardation, and substance abuse services in Virginia.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Due to the substantial program development and coordination activities and the complicated review process imposed by HCFA on waiver services, it was not possible to meet the time schedule of the APA public comment requirements. Therefore, an emergency regulation is needed to meet the January 1, 1991 effective date established by the General Assembly.

**8. FISCAL/BUDGETARY IMPACT:** This initiative is required by Chapter 972 of the Acts of Assembly and is funded in the current appropriations. Home and Community Based Care services are expected to be a cost-effective alternative to NF care for persons with mental retardation. In addition, cost savings to the Commonwealth will be generated by obtaining federal match for state funds transferred from DMHMRSAS to DMAS for Medicaid waiver reimbursement for services previously reimbursed through General Funds.

**9. RECOMMENDATION:** Recommend approval of this request to take an emergency adoption action to become effective once filed with the Registrar of Regulations on January 1, 1991. 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

# Emergency Regulations

---

an effective emergency regulation, the Department would lack the authority to provide home and community based alternatives to institutional care for persons with mental retardation.

## 10. Approval Sought for VR 460-04-8.12.

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 460-04-8.12. Home and Community Based Care Services for Individuals with Mental Retardation.

### § 1. Definitions.

“Care coordinators” means persons employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to perform utilization review, recommendation of pre-authorization for service type and intensity, and review of individual level of care criteria.

“Case management” means the assessment, planning, linking and monitoring for individuals referred for mental retardation Community Based Care waiver services which ensures the development, coordination, implementation, monitoring, and modification of the individual service plan and linkage of the individual with appropriate community resources and supports, coordination of service providers, and monitoring of quality of care.

“Case managers” means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills and abilities, as established by DMHMRSAS, necessary to perform case management services.

“Community Based Care waiver services” or “waiver services” means the range of community support services approved by the Health Care Financing Administration pursuant to § 1915(c) of the Social Security Act to be offered to mentally retarded and developmentally disabled individuals who would otherwise require the level of care provided in a nursing facility for the mentally retarded.

“Community Services Board” or “CSB” means the public organization authorized by the Code of Virginia to provide services to individuals with mental illness or retardation, operating autonomously but in partnership with the DMHMRSAS.

“Consumer Service Plan” or “CSP” means that document addressing the needs of the recipient of Home and Community Based Care mental retardation services, in all life areas. The Individual Service Plans developed by service providers are to be incorporated in the CSP by the case manager. Factors to be considered when this plan is developed may include, but are not limited to, the recipient's age, primary disability, and level of functioning.

“DMAS” means the Department of Medical Assistance Services.

“DMHMRSAS” means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

“DRS” means the Department of Rehabilitative Services.

“DSS” means the Department of Social Services.

“Day support” means training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self care, physical development, and transportation to and from training sites, services and support activities.

“Developmental disability” means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that individual attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and (v) results in the individual's need for special care, treatment or services that are individually planned and coordinated, and that are of lifelong or extended duration.

“Developmental risk” means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through diagnostic and evaluative criteria.

“Habilitation” means prevocational and supported employment for mentally retarded individuals who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally retarded, aimed at preparing an individual for paid or unpaid employment.

“HCFA” means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

“Individual Service Plan” or “ISP” means the service plan developed by the individual service provider related solely to the specific tasks required of that service provider. ISPs help to comprise the overall Consumer Service Plan of care for the individual. The ISP is defined in DMHMRSAS licensing regulations VR 470-02-09.

“Inventory for client and agency planning” or “ICAP” means the assesment instrument used by case managers and care coordinators to record the mentally retarded

# Emergency Regulations

individual's needs and document that the individual meets the ICF/MR level of care.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Prevocational Services" means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job or task oriented but focus on goals such as attention span and motor skills. Compensation, if provided, would be for persons whose productivity is less than 50% of the minimum wage.

"Related Conditions" means those conditions defined in 42 CFR 435.1009 as severe, chronic disabilities attributable to cerebral palsy or epilepsy or other conditions found to be closely related to Mental Retardation due to the impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, which requires treatment or services similar to those required for these persons. A related condition must manifest itself before the person reaches age twenty-two, be likely to continue indefinitely and result in substantial functional limitations in three or more areas of major life activity: self-care, understanding and use of language, learning, mobility, self direction and capacity for independent living.

"Residential support services" means support provided in the mentally retarded individual's home or in a licensed residence which includes training, assistance, and supervision in enabling the individual to maintain or improve his health, assistance in performing individual care tasks, training in activities of daily living, training and use of community resources, and adapting behavior to community and home like environments. Reimbursement for residential support shall not include the cost of room and board.

"Therapeutic consultation" means consultation provided by members of psychology, social work, behavioral analysis, speech therapy, occupational therapy or physical therapy disciplines to assist the individual, parents/family members, residential support and day support providers in implementing an individual service plan.

"State Plan for Medical Assistance" or "Plan" means the regulations identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

## § 2. General coverage and requirements for Home and Community-Based Care services.

A. Waiver Service Populations: Home and Community Based Services shall be available through two waiver services programs. The services, eligibility determination,

authorization process and provider requirements set forth in these regulations apply equally to both waiver programs. DMAS shall assign individuals to a waiver program based on the individual's diagnosis or condition.

1. Coverage shall be provided under a waiver program specifically for the following individuals currently residing in nursing facilities who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded:

a. Individuals with mental retardation.

b. Individuals with related conditions.

2. Coverage shall be provided under a separate waiver program for the following individuals who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded:

a. Individuals with mental retardation.

b. Individuals under the age of six at developmental risk who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded. At age six, these individuals must be determined to be mentally retarded to continue to receive Home and Community Based Care services.

## B. Covered Services:

1. Covered services shall include: residential support, habilitation, day support and therapeutic consultation.

2. These services shall be clinically appropriate and necessary to maintain these individuals in the community. Federal waiver requirements provide that the average per capita fiscal year expenditure under the waiver must not exceed the average per capita expenditures for the level of care provided in an intermediate care facility for the mentally retarded under the State Plan that would have been made had the waiver not been granted.

## C. Patient eligibility requirements.

1. Virginia shall apply the financial eligibility criteria contained in the State Plan for the categorically needy and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

2. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the



# Emergency Regulations

---

financial and non-financial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

3. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915 (c) (3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community based waiver services by the amount that remains after deducting the following amounts in the following order from the individual's income:

a. For individuals to whom 1924(d) applies, Virginia intends to waive the requirement for comparability pursuant to § 1902 (a)(10)(B), to allow for the following:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a non-institutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or pre-vocational or vocational training shall be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.

b. For all other individuals:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a non-institutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or pre-vocational or vocational training will be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

## D. Assessment and authorization of Home and Community-Based Care services

1. The individual's need for Home and Community-Based Care services shall be determined by the CSB case manager after completion of a comprehensive assessment of the individual's needs and available support. The case manager shall complete the Inventory for Client and Agency Planning (ICAP), determine whether the individual meets the intermediate care facility for the mentally retarded (ICF/MR) criteria and develop the Consumer Service Plan (CSP) with input from the recipient, family members, service providers and any other individuals involved in the individual's maintenance in the community.

2. An essential part of the case manager's assessment process shall be determining the level of care required by applying the existing DMAS ICF/MR criteria (VR 460-04-8.2).

3. The case manager shall gather relevant medical, social, and psychological data and identify all services received by the individual. Medical examinations shall be completed no earlier than 60 days prior to beginning waiver services. Social assessments must have been completed within one year of beginning waiver services. Psychological evaluations or reviews must be completed within a year prior to the start of waiver services. In no case shall a psychological review be based on a full psychological evaluation that

# Emergency Regulations

precedes admission to waiver services by more than 3 years.

4. The case manager shall explore alternative settings to provide the care needed by the individual. Based on the individual's preference, or preference of parents for minors or guardian or authorized representative for adults, and the assessment of needs, a plan of care shall be developed for the individual. For the case manager to make a recommendation for waiver services, Community Based Care services must be determined to be an appropriate service alternative to delay, avoid, or exit from nursing facility placement.

5. Community-Based Care waiver services may be recommended by the case manager only if:

a. the individual is Medicaid eligible as determined by the local office of the Department of Social Services,

b. the individual is either mentally retarded as defined in the Code of Virginia, Chapter 37.1-1, has a related condition or is a child under the age of six at developmental risk who would, in the absence of waiver services, require the level of care provided in an ICF/MR facility, the cost of which would be reimbursed under the Plan,

c. the individual requesting waiver services shall not receive such services while an inpatient of a nursing facility or hospital.

6. The case manager must submit the results of the comprehensive assessment and a recommendation to the care coordinator for final determination of ICF/MR level of care and authorization for Community-Based Care services. DMHMRSAS authorization must be obtained prior to referral for service initiation and Medicaid reimbursement for waiver services. DMHMRSAS will communicate in writing to the case manager whether the recommended service plan has been approved or denied and, if approved, the amounts and type of services authorized.

7. All Consumer Service Plans are subject to approval by DMAS. DMAS is the single state authority responsible for the supervision of the administration of the Community Based Care waiver. DMAS has contracted with DMHMRSAS for recommendation of preauthorization of waiver services and utilization review of those services.

§ 3. General conditions and requirements for all Home and Community-Based Care participating providers.

A. General requirements. Providers approved for participation shall, at a minimum, perform the following:

1. Immediately notify DMAS in writing of any change in the information which the provider previously submitted to DMAS.

2. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the services required and participating in the Medicaid Program at the time the service was performed.

3. Assure the recipient's freedom to refuse medical care and treatment.

4. Accept referrals for services only when staff is available to initiate services.

5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin and of Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of a handicap.

6. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.

8. Accept Medicaid payment from the first day of the recipient's eligibility.

9. Accept as payment in full the amount established by DMAS.

10. Use Program-designated billing forms for submission of charges.

11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the health care provided.

a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the agency discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

# Emergency Regulations

---

12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.

13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.

14. Hold confidential and use for authorized DMAS or DMHMRSAS purposes only all medical assistance information regarding recipients.

15. Change of Ownership. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days of such change.

B. Requests for participation. DMAS will screen requests to determine whether the provider applicant meets the following basic requirements for participation.

C. Provider participation standards. For DMAS to approve contracts with Home and Community Based Care providers the following standards shall be met:

1. The provider must have the ability to serve all individuals in need of waiver services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement.

2. The provider must have the administrative and financial management capacity to meet state and federal requirements.

3. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements.

4. The provider of residential and day support services must meet the licensing requirements of DMHMRSAS that address standards for personnel, residential and day program environments, and program and service content. Residential support services may also be provided in programs licensed by DSS (Homes for Adults) or in adult foster care homes approved by local DSS offices pursuant to state DSS' regulations. In addition to licensing requirements, persons providing residential support services are required to pass an objective, standardized test of skills, knowledge and abilities developed by DMHMRSAS and administered by employees of the CSB according to DMHMRSAS policies.

5. Habilitation services shall be provided by agencies that are either licensed by DMHMRSAS or are vendors of prevocational, vocational or supported employment services for DRS.

6. Services provided by members of professional disciplines shall meet all applicable state licensure requirements. Persons providing consultation in behavioral analysis shall be certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities.

7. All facilities covered by § 1616(e) of the Social Security Act in which Home and Community Based Care services will be provided shall be in compliance with applicable standards that meet the requirements of 45 CFR Part 1397 for board and care facilities. Health and safety standards shall be monitored through the DMHMRSAS's licensure standards, VR 470-02-08, VR 470-02-10 and VR 470-02-11 or through DSS licensure standards VR 615-22-05 and VR 615-50-1.

D. Adherence to provider contract and DMAS' provider service manual. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider contracts and in the DMAS' provider service manual.

E. Recipient choice of provider agencies. If there is more than one approved provider agency in the community, the waiver recipient shall have the option of selecting the provider agency of his choice.

F. Termination of provider participation. DMAS may administratively terminate a provider from participation upon 60 days' written notification. DMAS may also cancel a contract immediately or may give such notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided recipients subsequent to the date specified in the termination notice.

G. Reconsideration of adverse actions. Adverse actions may include, but are not limited to: disallowed payment of claims for services rendered which are not in accordance with DMAS policies and procedures, contract limitation or termination. The following procedures shall be available to all providers when DMAS takes adverse action which includes termination or suspension of the provider agreement.

1. The reconsideration process shall consist of three phases:

a. A written response and reconsideration of the preliminary findings.

b. The informal conference.

c. The formal evidentiary hearing.

2. The provider shall have 30 days to submit information for written reconsideration, 15 days from the date of the notice to request the informal conference, and 15 days from the date of the notice

# Emergency Regulations

to request the formal evidentiary hearing.

3. An appeal of adverse actions shall be heard in accordance with the Administrative Process Act (Code of Virginia § 9-6.14:1 et seq.) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia. Court review of the final agency determination shall be made in accordance with the Administrative Process Act.

H. Responsibility for sharing recipient information. It shall be the responsibility of the case management provider to notify DMAS, and DSS, in writing, when any of the following circumstances occur:

1. Home and Community-Based Care services are implemented.
2. A recipient dies.
3. A recipient is discharged or terminated from services.
4. Any other circumstances (including hospitalization) which cause Home and Community-Based Care services to cease or be interrupted for more than 30 days.

I. Changes or termination of care. It is the care coordinator's responsibility to authorize any changes to a recipient's CSP based on the recommendation of the case management provider.

1. Agencies providing direct service are responsible for modifying their individual service plan and submitting it to the case manager any time there is a change in the recipient's condition or circumstances which may warrant a change in the amount or type of service rendered.
2. The case manager will review the need for a change and may recommend a change to the plan of care to the care coordinator.
3. The care coordinator will approve or deny the requested change to the recipient's plan of care and communicate this authorization to the case manager within 72 hours of receipt of the request for change.
4. The case manager will communicate in writing the authorized change in the recipient's plan of care to the individual service provider and the recipient, in writing, providing the recipient with the right to appeal the decision pursuant to DMAS Client Appeals regulations (VR 460-04-8.7).
5. Non-emergency termination of Home and Community-Based Care Services by the individual service provider. The individual service provider shall give the recipient and/or family and case manager 10 days written notification of the intent to terminate

services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least ten days from the date of the termination notification letter.

6. Emergency termination of Home and Community-Based Care Services by the individual services provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, the case manager and Care Coordinator must be notified prior to termination. The ten day written notification period shall not be required.

7. Termination of Home and Community-Based Care Services for a recipient by the care coordinator. The effective date of termination shall be at least 10 days from the date of the termination notification letter. The case manager has the responsibility to identify those recipients who no longer meet the criteria for care or for whom Home and Community-Based Services are no longer an appropriate alternative. The care coordinator has the authority to terminate Home and Community-Based Care Services.

J. Suspected abuse or neglect. Pursuant to § 63.1-55.3, Code of Virginia, if a participating provider agency knows or suspects that a Home and Community-Based Care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation shall report this to the local DSS.

K. DMAS monitoring. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's non-compliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider will take and the length of time required to achieve full compliance with deficiencies which have been cited.

## § 4. Covered services and limitations.

A. Residential support services shall be provided in the recipient's home or in a licensed residence in the amount and type dictated by the training, supervision, and personal care available from the recipient's place of residence. Service providers are reimbursed only for the amount and type of residential support services included in the individual's approved plan of care based on an hourly fee for service. Residential support services shall not be authorized in the plan of care unless the individual requires these services and they exceed the care included in the individual's room and board arrangement.

B. Day support services include a variety of training,

# Emergency Regulations

---

support, and supervision offered in a setting which allows peer interactions and community integration. Service providers are reimbursed only for the amount and type of day support services included in the individual's approved plan of care based on a daily fee for service established according to the intensity and duration of the service to be delivered.

C. Habilitation services shall include prevocational and supported employment services for former institutional residents. Each plan of care must contain documentation regarding whether prevocational or supported employment services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Education of the Handicapped Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Service providers are reimbursed only for the amount and type of habilitation services included in the individual's approved plan of care based on a daily fee for service established according to the intensity and duration of the service delivered.

D. Therapeutic consultation is available under the waiver for Virginia licensed or certified practitioners in psychology, social work, occupational therapy, physical therapy and speech therapy. Behavioral analysis performed by persons certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities may also be a covered waiver service. These services may be provided, based on the individual plan of care, for those individuals for whom specialized consultation is clinically necessary to enable their utilization of waiver services. Therapeutic Consultation services may be provided in residential or day support settings or in office settings. Service providers are reimbursed according to the amount and type of service authorized in the plan of care based on an hourly fee for service.

## § 5. Reevaluation of service need and utilization review.

### A. The Consumer Service Plan.

1. The Consumer Service Plan shall be developed by the case manager mutually with other service providers, the recipient, consultants, and other interested parties based on relevant, current assessment data. The plan of care process determines the services to be rendered to recipients, the frequency of services, the type of service provider, and a description of the services to be offered. Only services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.

The case manager is responsible for continuous monitoring of the appropriateness of the recipient's plan of care and revisions to the CSP as indicated by the changing needs of the recipient. At a minimum,

the case manager shall review the plan of care every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

3. The care coordinator shall review the plan of care every six months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the CSP must be authorized by the care coordinator, another employee of DMHMRSAS or DMAS.

### B. Review of level of care.

1. The care coordinator shall review the recipient's level of care and continued need for waiver services every six months or more frequently as required to assure proper utilization of services.

2. The case manager shall coordinate a comprehensive reassessment, including a medical examination and a psychological evaluation or review, for every waiver recipient at least once a year. This reassessment shall include an update of the ICAP instrument, or other appropriate instrument for children under six years of age, and any other appropriate assessment data based on the recipient's characteristics.

### C. Documentation required.

1. The case management agency must maintain the following documentation for review by the DMHMRSAS care coordinator and DMAS utilization review staff for each waiver recipient:

a. All ICAP and other assessment summaries and CSP's completed for the recipient maintained for a period not less than 5 years from the recipient's start of care.

b. All ISP's from any provider rendering waiver services to the recipient.

c. All supporting documentation related to any change in the plan of care.

d. All related communication with the providers, recipient, consultants, DMHMRSAS, DMAS, DSS, DRS or other related parties.

e. An ongoing log which documents all contacts made by the case manager related to the waiver recipient.

2. The individual service providers must maintain the following documentation for review by the DMHMRSAS care coordinator and DMAS utilization review staff for each waiver recipient:

a. All ISP's developed for that recipient maintained for a period not less than 5 years from the date of the recipient's entry to waiver services.

*b. An attendance log which documents the date services were rendered and the amount and type of service rendered.*

*c. Appropriate progress notes reflecting recipients' progress toward the goals on the ISP.*

---

# STATE CORPORATION COMMISSION

---

## STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 17, 1990

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE900044

Ex Parte, In re: Investigation into  
the promulgation of filing requirements  
for independent power producers

### FINAL ORDER

On July 25, 1990, the Virginia State Corporation Commission ("Commission") initiated an investigation into the promulgation of filing requirements for independent power producers. An independent power producer ("IPP") is subject to regulation as a public utility since it does not qualify for the exemptions currently available to cogeneration and small power production facilities pursuant to the Public Utility Regulatory Policies Act of 1978, 16 USC § 824a-3. An IPP's rates are currently subject to regulation by the Federal Energy Regulatory Commission ("FERC"), but certification of an IPP power plant is a matter of state regulation. In our order initiating this investigation, we noted that electric utilities in Virginia subject to our certificate jurisdiction must receive a certificate of public convenience and necessity authorizing construction of any facilities to be used in public utility service. The sole exception to that requirement is an ordinary extension made in the usual course of business within the territory in which a utility is lawfully authorized to operate. Virginia Code § 56-265.2. We also have required IPP developers to receive approval pursuant to Virginia Code § 56-234.3 if the proposed project is 100 megawatts or greater. Opinion and Final Order, Application of Doswell Limited Partnership for a certificate of public convenience and necessity and, if applicable for approval of expenditures for new generating facilities, Case No. PUE890068, February 13, 1990.

At our direction, Staff identified information necessary to support an IPP application for that required certification and approval of expenditures pursuant to Virginia Code § 56-234.3. Staff caused notice of the proposed filing requirements to be published in newspapers of general circulation throughout the Commonwealth. That publication was made by August 31, 1990 in most newspapers. The second publication in three weekly newspapers was completed by September 6, 1990. Accordingly, we find that Staff was in substantial compliance with the requirement in the initial order that notice be published on or before August 31, 1990 and further, that no one was prejudiced by the slight delay in the second publication in the three weekly papers.

Written comments on the proposed filing requirements were filed by seven parties by September 28, 1990. Those

parties included Virginia Electric and Power Company, Appalachian Power Company, Potomac Edison Company, Virginia Turbo Power Systems - I, L.P. and Virginia Turbo Power Systems - II, L.P., The Virginia Department of Game and Inland Fisheries, George A. Beadles, Jr., Charles R. Foster and Victoria A. Lipnec. On October 23, 1990, comments were also filed by the Virginia Department of Air Pollution Control and the Virginia Department of Waste Management. On October 26, 1990, Staff filed comments suggesting several revisions to the proposed filing requirements to incorporate many of the suggestions offered by the commentators.

The proposed filing requirements as amended by Staff's October 26 report have two separate sections. The first section requires certain information from the IPP applicant. That information includes identification of the applicant and its organizational structure; information about the site of the proposed facility including location, status of site acquisition and a description of applicable local zoning or land use approvals needed; a description of the proposed project including relevant design features, estimated costs, schedule for engineering, construction, testing and commercialization and decommissioning plans; preliminary construction plans; fuel procurement strategy; expected financing; financial information about the applicant; and information related to other regulatory approvals.

The second section of the filing requirements requires additional information which would be provided primarily by the purchasing utility. That information would relate primarily to need; cost/benefit analyses of all supply and demand side alternatives; sensitivity and risk analyses for major assumptions on demand and supply side analyses; a demonstration that with the proposed generation facility, the utility's resource plans are reasonably calculated to promote the maximum effective conservation and use of energy and capital; and a description of all utility procedures which will be followed to assure the financial and technical viability of the proposed project.

NOW THE COMMISSION, having considered the comments and the Staff report is of the opinion and finds that the revised filing requirements proposed by Staff in its October 26, 1990 report should be adopted. Accordingly,

### IT IS ORDERED:

(1) That the filing requirements set forth as Appendix A be and hereby are adopted; and

(2) That there being nothing further to come before the Commission in this proceeding, this case shall be removed from the docket and the papers placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Virginia electric companies as set out in Appendix B and Virginia electric cooperatives as set out in Appendix C; John E. Cunningham, Esquire, Virginia

Power, P.O. Box 26666, Richmond, Virginia 23261; Robert B. Murdock, Potomac Edison Company, Downsville Pike, Hagerstown, Maryland 21740; Laurence M. Hamric, Esquire, Williams, Mullen & Christian, P.O. Box 1320, Richmond, Virginia 23210; Harrison Welford, Esquire, and John L. Sacks, Esquire, Olwine, Connelly & Chase, 1701 Pennsylvania Avenue, N.W., Suite 1000, Washington, D.C. 20006; Charles R. Foster, Route 3, Box 139D, Warrenton, Virginia 22186; Victoria A. Lipnic, 4710 S. 30th Street, #21, Arlington, Virginia 22206; James R. Bacha, One Riverside Plaza, Columbus, Ohio 43215; George A. Beadles, Jr., 9401 Deer Range Road, Moseley, Virginia 23120; William E. Neal, Department of Game and Inland Fisheries, Box 11104, Richmond, Virginia 23230; Harry E. Gregori, Jr, Department of Waste Management, 101 N. 14th Street, 11th Floor, Richmond, Virginia 23219; Wallace N. Davis, Executive Director, Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240; and the Commission's Division of Energy Regulation.

## Appendix A

### COMMONWEALTH OF VIRGINIA

### STATE CORPORATION COMMISSION

#### INFORMATION REQUIREMENTS IN SUPPORT OF PETITIONS FOR INDEPENDENT POWER FACILITIES

Independent Power Producers (IPPs) planning to construct generating facilities in the Commonwealth of Virginia must apply for a Certificate of Public Convenience and Necessity from the State Corporation Commission, pursuant to Section 56-265.2 of the Code of Virginia and for approval pursuant to Section 56-234.3. The petition must set forth the nature of the proposed facility and its necessity in relation to the purchasing utility's projected programs of operation. An applicant must notify the Commission of its intent to file a petition at least 30 days prior to filing.

Some of the information described in the following Sections and necessary to support an IPP's application for approval may be considered to be confidential or proprietary by the developer, the purchasing utility, or both. The Commission recognizes the need for confidential treatment of some, although certainly not all, data required herein. Therefore, the need for confidential treatment of data should first be carefully scrutinized before submitting an application and supporting information. That data deemed to be confidential may be temporarily withheld from the initial filing while a Confidentiality Agreement is being negotiated with the Staff. Upon execution of a Confidentiality Agreement that information should then be provided directly to Staff. The application, however, will not be processed as complete until the Confidentiality Agreement is executed and the confidential information and data are provided to the Staff.

The petition shall present the information specified in the following Sections:

#### SECTION I - GENERAL INFORMATION, GENERATING FACILITY INFORMATION AND DOCUMENTS TO BE INCLUDED IN THE PETITION

The information in Section I should be provided primarily by the IPP applicant.

#### Section II - Demonstration of the Need, Viability, and Cost Effectiveness of the Project

The information in Section II should be provided primarily by the purchasing utility.

Any modifications to these information requirements will be determined by the Commission on a case by case basis. Applicants should update the materials filed during the course of their proceedings.

#### SECTION I - GENERAL INFORMATION, GENERATING FACILITY INFORMATION AND DOCUMENTS TO BE INCLUDED IN THE PETITION

The information in this section should be provided primarily by the IPP applicant.

A. Applicant's name and address.

B. Name, title and address of the person authorized to receive communications regarding the petition.

C. Prefiled testimony in support of application.

D. A discussion of the Applicant's qualifications, including:

1. A summary of other projects developed and managed by the applicant. Include location, status, and operational history.

2. A detailed description of the organizational structure of the applicant. Include the division of ownership, if applicable.

3. A description of any affiliation(s) with the purchasing utility.

E. Specific information about the site for the proposed facility, including:

1. The location and city or county in which the facility will be constructed.

2. A description of the site, and a depiction on topographic maps of the applicable information.

3. The status of site acquisition (i.e., purchase option, ownership, etc.).



# State Corporation Commission

---

4. A description of any applicable local zoning or land use approvals needed and the status of these approvals.

F. A summary of the proposed project, including relevant design features, estimated costs, the schedule for engineering, construction, testing and commercialization, and decommissioning plans.

G. Specific information about the proposed facility, including:

1. Description of all major systems and expected suppliers of major components.

2. Nameplate capacity, gross dependable capacity and net dependable capacity for generating unit.

3. Projected plant life, heat rates, equivalent availability and capacity factors.

H. Preliminary construction plans including:

1. The names and addresses of the architects, engineers, contractors, subcontractors, when known, proposed to do such work.

2. A description of how the project will be managed including:

a. Organization plan,

b. Designation of responsibilities for management of all project functions,

c. Identification of the relationship between the petitioner and contractors,

d. The plan by which the applicant will monitor the construction.

3. A description of any vendor guarantees or penalties for non-performance included in equipment supplier or construction contracts.

I. A description of the fuel procurement strategy including fuel type, quality, source(s), and transportation for fuel delivery. Describe fuel storage arrangements.

J. The estimated cost of the project. Cost estimates should be detailed, including:

1. Annual capacity costs.

2. Annual production costs (operation and maintenance costs, less fuel costs).

3. Projected unit fuel costs by primary, alternate and ignition fuel categories on an annual basis over the life of the facility. Costs should be provided on both a cents/KWH and cents/MBTU basis.

4. Annual total cost in Mills per KWH.

K. Expected financing for the project (development phase, construction and permanent financing) including sources, amounts, terms, conditions, and expected financial closing date.

L. Financial information for the applicant, or principal participant(s) in the project if the applicant is a special purpose entity with no history, including:

1. Analysis of financial condition.

2. Financial statements for the two most recent fiscal years.

M. A discussion of economic impacts, including tax and employment implications, and environmental impacts of the project.

N. Copies of project-related filings with the Federal Energy Regulatory Commission, and a copy of the contract between the IPP and the purchasing utility.

O. A list of other local, state or federal government agencies having requirements which must be met in connection with the construction or operation of the project and a statement of the status of the approval procedure for each of these agencies. Include a discussion of the following, if applicable:

1. Air permit type, restriction, emissions, and offsets.

2. Wetlands protection.

3. Threatened and endangered species.

4. Source and discharge of cooling water.

5. Solid and Hazardous Wastes.

6. Erosion and sediment control

7. Archaeological, historic, or architectural resources in the area.

## SECTION II - DEMONSTRATION OF THE NEED, VIABILITY, AND COST EFFECTIVENESS OF THE PROJECT

The information in this section should be provided primarily by the purchasing utility. In some instances, the utility may have already submitted the requested information in filings with the Commission. If so, the utility may reference these filings rather than provide duplicates.

A. Provide a thorough discussion of the need for the facility as it relates to the purchasing utility's projected peak load and energy requirements. Provide a copy of the Company's peak load and energy forecast at the time the

project was selected. Provide a copy of the current peak load and energy forecast, if different. Include all assumptions.

B. Provide cost/benefit analyses or studies of the proposed facility and all supply alternatives considered to meet projected load. All major factors should be addressed, including, but not limited to:

1. System load characteristics, and operating characteristics of existing and planned utility plants.
2. System reliability criteria and adequacy of projected capacity.
3. Transmission system, interconnection capability and pooling agreements.
4. Power interchange with other systems and feasibility of selling and purchasing power (including cogeneration/small power production).

C. Provide cost/benefit analyses or studies of all demand side alternatives considered to modify projected load in order to postpone or avoid the proposed facility. This should include, but not be limited to, discussions of existing and potential demand modification programs for each customer sector.

D. Provide sensitivity and risk analyses for major assumptions in the demand and supply side analyses presented above.

E. Demonstrate that with the proposed generation facility, the utility's resource plans are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources in providing energy services.

F. Provide a description of all utility procedures to assure the financial and technical viability of the proposed project.

Consumer's Guide to Long-Term Care Insurance" that was prepared by the Bureau of Insurance and previously adopted by the Virginia State Corporation Commission. Companies are required to provide a copy of the consumer's guide at the time of delivery of a long-term care policy or certificate in Virginia. Consumers must receive this guide as a separate document and it may not be combined with any other information.

The NAIC Long-Term Care Shopper's Guide may be obtained directly from the NAIC by contacting Curtis M. Arnold, Publications and Marketing Manager, NAIC, 120 West Twelfth Street, Suite 1100, Kansas City, MO 64105. The NAIC's current schedule of volume discount prices is attached. The NAIC has also indicated that companies may purchase a custom print run of the Shopper's Guide which incorporates a company's logo and name.

Use of this guide is to be implemented by your company by no later than January 1, 1991.

/s/ Steven T. Foster  
Commissioner of Insurance

## BUREAU OF INSURANCE

December 7, 1990

Administrative Letter 1990-23

TO: All Companies Licensed in Virginia to Provide Life Insurance and Accident and Sickness Insurance, All Licensed Health Services Plans, and All Licensed Health Maintenance Organizations

RE: Long-Term Care Insurance Consumer's Guide

The Virginia State Corporation Commission has adopted the NAIC Shopper's Guide to Long-Term Care Insurance pursuant to § 38.2-5207 of the Code of Virginia, as amended. Companies are to discontinue use of "A

---

# MARINE RESOURCES COMMISSION

---

## FINAL REGULATIONS

**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 450-01-0059. Pertaining to the Taking of Bluefish.

Statutory Authority: § 28.1-23 of the Code of Virginia.

Effective Date: December 1, 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).*

VR 450-01-0059. Pertaining to the Taking of Bluefish.

§ 1. Authority, effective date; prior regulation.

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.~~ *The effective date of this regulation is December 1, 1990.*

C. ~~The effective date of this regulation is July 1, 1990.~~ *This regulation replaces emergency regulation VR 450-01-0059 which was promulgated and made effective October 23, 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 to possess more than 10 bluefish per day. Any bluefish taken after the daily limit has been reached shall be returned to the water immediately. 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 Possession~~ 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: § 28.1-23 of the Code of Virginia.

Effective Date: December 1, 1990.

Preamble:

*This regulation establishes procedures for the setting, fishing and marking of eel pots.*

VR 450-01-0066. Pertaining to the Setting of Eel Pots.

§ 1. Authority, effective date, prior regulation.

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 December 1, 1990.~~

C. ~~This regulation replaces emergency regulation VR 450-01-0066 which was promulgated and made effective October 23, 1990.~~

§ 2. Purpose.

*The purpose of this regulation is to establish a maximum length for eel pot lines and thereby to reduce the excessive harvesting efficiency of eel pots and the possibility of overfishing of Virginia's eel populations. The marking requirements are provided to reduce conflict with boat traffic and to aid in the enforcement of eel pot regulations.*

§ 3. Maximum length of eel pot line.

*It shall be unlawful for any person to place, set, or fish any eel pot line greater than 1,200 feet in total length.*

§ 4. Marking requirements.

# Marine Resources Commission

---

*It shall be unlawful to place, set or fish any eel pot not marked according to the following provisions:*

- 1. Each eel pot placed or set singly on its individual line shall be marked with a buoy.*
- 2. When multiple eel pots are attached to the same line, such line shall be marked at each end with a floating buoy measuring at least four inches in diameter.*

**§ 5. 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

*Commonwealth between December 25, 1990, and January 31, 1991.*

**§ 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

## EMERGENCY REGULATIONS

**Title of Regulation:** VR 450-01-0067. Pertaining to the Setting of Crab Pots.

**Statutory Authority:** §§ 28.1-25 and 28.1-173.1:1 of the Code of Virginia.

**Effective Dates:** November 27, 1990 to December 25, 1990.

**Preamble:**

*This emergency regulation extends the crab pot season from December 15, 1990 through December 24, 1990.*

VR 450-01-0067. Pertaining to the Setting of Crab Pots.

**§ 1. Authority, effective date, termination date.**

*A. This emergency regulation is promulgated pursuant to the authority contained in §§ 28.1-25 and 28.1-173.1:1 of the Code of Virginia.*

*B. The effective date of this regulation is November 27, 1990.*

*C. This regulation shall terminate on December 25, 1990.*

**§ 2. Purpose.**

*The purpose of this regulation is to change the time period during which it shall be unlawful to knowingly place a crab pot in the tidal tributaries of the Commonwealth.*

**§ 3. Crab pot season.**

*It shall be unlawful to knowingly place, set or leave any crab pot in any of the tidal tributaries of the*

---

# GOVERNOR

---

## EXECUTIVE ORDER NUMBER TWENTY-EIGHT (90)

### COMMONWEALTH'S OFFENSIVE MOBILIZATION AGAINST NARCOTIC DISTRIBUTION (C.O.M.A.N.D.)

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and Chapter 5 of Title 2.1 of the Code of Virginia, and subject to my continuing authority and responsibility to act in such matters, I hereby create the Commonwealth's Offensive Mobilization Against Narcotic Distribution (C.O.M.A.N.D.).

C.O.M.A.N.D. shall consist of the following agencies and named individuals from the agencies:

**Department of State Police**

Colonel W. F. Corvello, Superintendent, who shall serve as chairman of C.O.M.A.N.D.;

**Department of Military Affairs**

Major General John G. Castles, The Adjutant General of Virginia;

**Department of Alcoholic Beverage Control**

John M. Wright, Director, Regulatory Division;

**Department of Game and Inland Fisheries**

Colonel Gerald P. Simmons, Chief, Law Enforcement Division;

**Department of Forestry**

James W. Garner, State Forester;

**Department of Aviation**

Major Kenneth A. Rowe, Director; and

**Marine Resources Commission**

Robert J. Markland, Chief, Law Enforcement Division.

There exists within this Commonwealth, as in every other state in the nation, an ongoing and continuing traffic in illicit drugs. While valiant efforts have been made, and continue to be made, by federal, state, and local law enforcement agencies to overcome this pernicious trade and usage, a coordinated effort has not been fully realized, and breakdowns in communications and duplication of efforts continue to exist. By creating C.O.M.A.N.D., I want to not only remedy these problems, but to create a coordinating team that makes the Commonwealth's efforts against illicit drugs second to none.

In order to carry out this mission, C.O.M.A.N.D. shall establish procedures to facilitate and assure coordination and cooperation among the various member agencies. Such procedures shall be directed toward:

1. Reducing the supply of illegal drugs entering and being transported within the Commonwealth by interdicting illegal drug shipments via land, air, and water as the primary goal of C.O.M.A.N.D.;

2. Eradicating domestically cultivated marijuana and domestically manufactured illicit drugs;

3. Creating procedures that eliminate duplication and breakdown in communication among the various state agencies and law enforcement agencies; and

4. Utilizing the resources of county and city law enforcement agencies to the maximum extent possible.

C.O.M.A.N.D. shall meet at the call of the Chairman; however, regular meetings will be established for the purpose of ensuring that any operational difficulties may be remedied on an ongoing basis.

All other agencies of the Commonwealth not specifically named herein will cooperate with and provide assistance to C.O.M.A.N.D. to the fullest extent allowed by law and to the extent that such cooperation does not conflict with the mission of the various agencies.

This Executive Order shall become effective upon its signing and shall remain in full force and effect until January 14, 1994, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 12th day of December, 1990.

/s/ Lawrence Douglas Wilder  
Governor

### GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

#### ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulation: VR 125-01-2. Advertising.

VR 125-01-3. Tied House.

VR 125-01-5. Retail Operations.

VR 125-01-6. Manufacturers and Wholesalers Operations.

Governor's Comment:

At this time, I have no substantive objection to the proposed changes in regulations and recommend approval as submitted.

/s/ Lawrence Douglas Wilder  
Governor

Date: December 20, 1990

**COMMISSION ON VIRGINIA ALCOHOL SAFETY  
ACTION PROGRAM**

**Title of Regulation: VR 647-01-02. Virginia Alcohol Safety  
Action Program Policy and Procedure Manual.**

Governor's Comment:

These regulations establish standards and criteria for the operation of local Alcohol Safety Action Programs. Pending public comment, I recommend approval of the regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: December 17, 1990

\* \* \* \* \*

**Title of Regulation: VR 647-01-03. Case Management  
Policy and Procedure Manual.**

Governor's Comment:

These regulations establish standards and criteria for the operation of local Alcohol Safety Action Programs. Pending public comment, I recommend approval of the regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: December 17, 1990

\* \* \* \* \*

**Title of Regulation: VR 647-01-04. Certification  
Requirements Manual.**

Governor's Comment:

These regulations establish standards and criteria for the operation of local Alcohol Safety Action Programs. Pending public comment, I recommend approval of the regulations.

/s/ Lawrence Douglas Wilder  
Governor  
Date: December 17, 1990

---

# GENERAL NOTICES/ERRATA

---

<b>Symbol Key †</b>
---------------------

† Indicates entries since last publication of the Virginia Register
---

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

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Architects, Professional Engineers, Land Surveyors, and Landscape Architects intends to consider amending regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed action is to change the contents of the regulations to accommodate reporting requirements and other changes as needed.

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

Written comments may be submitted until February 8, 1991.

**Contact:** Bonnie S. Salzman, Assistant Director, 3600 W. Broad St., Department of Commerce, Richmond, VA 23230, telephone (804) 367-8514.

## AUCTIONEERS BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Auctioneers Board intends to consider amending regulations entitled: **VR 150-01-2. Auctioneers Board.** The purpose of the proposed action is to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with its Public Participation Guidelines.

Statutory Authority: §§ 54.1-100, 54.1-201 and 54.1-602 of the Code of Virginia.

Written comments may be submitted until January 31, 1991.

**Contact:** Geralde W. Morgan, Administrator, 3600 W. Broad St., Department of Commerce, Richmond, VA 23230-4917, telephone (804) 367-8534.

## 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.

## BOARD OF DENTISTRY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Dentistry intends to consider amending regulations entitled: **VR 255-01-1. Board of Dentistry Regulations.** The purpose of the proposed action is to amend the regulations to require the name of the dental assistant providing service. Currently, the only names required for providing service are the dentist and the dental hygienist in § 4.1(B) (7) of the existing regulation.

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

Written comments may be submitted until March 4, 1991.

**Contact:** Nancy Taylor Feldman, Executive Director, Virginia Board of Dentistry, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9906.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Funeral Directors and Embalmers intends to consider promulgating regulations entitled: **Curriculum for Resident Trainee**

**Program.** The purpose of the proposed action is to provide consistency and accountability in the resident trainee program of the funeral profession.

Statutory Authority: §§ 54.1-2803 of the Code of Virginia.

Written comments may be submitted until February 15, 1991.

**Contact:** Meredyth P. Partridge, Board Administrator, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-7390 or toll-free 1-800-533-1560.

## DEPARTMENT OF GENERAL SERVICES

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of General Services intends to consider promulgating regulations entitled: **Aggressive Air Sampling Standards to be Utilized in Final Clearance Inspections for Asbestos Projects in Local Education Agencies, Public Colleges and Universities and State-owned Buildings in the Commonwealth of Virginia.** The purpose of the proposed regulation is to establish aggressive air sampling standards.

Statutory Authority: § 2.1-526.14:1 of the Code of Virginia.

Written comments may be submitted until January 18, 1991.

**Contact:** Sharon D. Gay, State Asbestos Coordinator, 9th Floor, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-4446.

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed action is to clarify that health care institutions as defined by § 9-156 of the Code of Virginia that are part of continuing care retirement centers must segregate the patient care activities provided in its nursing home component from its nonpatient care activities when completing the report forms required by council.

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

Written comments may be submitted until January 21, 1991.

**Contact:** G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed action is to amend and update the regulations which deal with the Annual Charge Survey conducted by the council. The anticipated charges will reflect more accurately what information will be collected from nursing homes and hospitals.

Statutory Authority: §§ 9-160 and 9-164 of the Code of Virginia.

Written comments may be submitted until February 15, 1991.

**Contact:** G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

## BOARD FOR HEARING AID SPECIALISTS

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Hearing Aid Specialists intends to consider amending regulations entitled: **VR 375-01-02. Board for Hearing Aid Specialists.** The purpose of the proposed action is to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with its Public Participation Guidelines.

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

Written comments may be submitted until February 14, 1991.

**Contact:** Gerald W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

## 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.**



## General Notices/Errata

---

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 2/219, 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.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Amount, Duration, and Scope of Services: Psychologists Clinical.** The purpose of the proposed action is to provide reimbursement for services

rendered by psychologists clinical who are licensed by the Board of Psychology.

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

Written comments may be submitted until February 1, 1991, to C. Mack Brankley, Director, Division of Client Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

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 NURSING HOME ADMINISTRATORS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing Home Administrators intends to consider amending regulations entitled: **VR 500-91-2.1. Regulations of the Board of Nursing Home Administrators.** The purpose of the proposed action is to amend existing regulations to establish standards for the practice of nursing home administration including training programs and examination for licensure.

Statutory Authority: § 54.1-3101 of the Code of Virginia.

Written comments may be submitted until February 1, 1991.

Contact: Meredyth P. Partridge, Board Administrator, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-7390 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 - Appeal Hearings.** The purpose of the proposed action is to establish the procedures to be followed by the commission and appellants in appealing rulings made by the stewards.

Statutory Authority: §§ 59.1-364 and 59.1-369 of the Code of Virginia.

Written comments may be submitted until January 16, 1991, to Donald R. 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 - Commission Veterinarian.** The purpose of the proposed action is to establish qualifications, duties and responsibilities of the Commission Veterinarian.

Statutory Authority: §§ 59.1-364 and 59.1-369 of the Code of Virginia.

Written comments may be submitted until January 16, 1991, to Donald R. 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 - Stewards.** The purpose of the proposed action is to establish qualifications and duties of stewards.

Statutory Authority: §§ 59.1-364 and 59.1-369 of the Code of Virginia.

Written comments may be submitted until January 16, 1991, to Donald R. 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 - 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, 1991, to Donald Price, Virginia Racing Commission, P.O.

# General Notices/Errata

---

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.

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

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider promulgating regulations entitled: **Yard Waste Composting Regulations**. The purpose of the proposed action is to provide for certain exemptions from the permitting requirements contained in Part VII of the Virginia Solid Waste Management Regulations (VR 672-20-10) and certain substantive facility standards contained in § 6.1 of VR 672-20-10, in order to encourage the development of yard waste composting facilities as required by § 10.1-1408.1 K of the Code of Virginia.

These proposed regulations would make permanent the emergency regulations entitled **Yard Waste Compost Regulations (VR 672-20-31)** adopted on September 10, 1990.

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

Written comments may be submitted until March 4, 1991.

**Contact:** S. T. Ashton IV, Environmental Program Analyst, Department of Waste Management, 101 N. 14th St., 11th Fl., Monroe Bldg., Richmond, VA 23219, telephone (804) 225-2867.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider promulgating regulations entitled: **Regulations for the Certification of Recycling Machinery or Equipment for Tax Credit Purposes**. The purpose of the proposed action is to establish the procedure by which the purchaser of "recycling" machinery or equipment would apply to the Department of Waste Management for certification of such machinery or equipment. Such certification would allow the purchaser to then apply for any available local government tax exemptions appropriate to the use of such machinery or equipment.

A public meeting will be held on Monday, February 11, 1991, 1 p.m., in Conference Room C, Monroe Building, 101 N. 14th St., Richmond, Virginia. (Informational purposes only)

Statutory Authority: §§ 10.1-1400, 10.1-1411 and 58.1-3661 of the Code of Virginia.

Written comments may be submitted until February 15, 1991.

**Contact:** G. Stephen Coe, Program Analyst, Department of Waste Management, 101 N. 14th St., 11th Fl., Monroe Bldg., Richmond, VA 23219, telephone (804) 786-8679, SCATS 371-0044, toll-free 1-800-533-7488 or (804) 371-8737/TDD ☐

## STATE WATER CONTROL BOARD

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider amending regulations entitled: **VR 680-16-02. Roanoke River Basin Water Quality Management Plan**. The purpose of the proposed action is to amend the Roanoke River Basin Water Quality Management Plan to delete the out-of-date Upper Roanoke River Sub-area material that is to be covered by adoption of the new Upper Roanoke River Sub-area Plan.

Federal and state laws require that Virginia Pollutant Discharge Elimination System (VPDES) permits be in compliance with appropriate area and basin wide water quality management plans. There are approximately 332,612 persons residing in the Upper Roanoke River Sub-area and 105 issued VPDES permits. No financial impact to the regulated community is anticipated. A public meeting will be held at 7 p.m. on Wednesday, February 20, 1991, at the Roanoke County Administration Center Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia, to receive comments from the public. (See Calendar of Events Section) The proposed action is authorized by the statutes cited below and is governed by the State Water Control Law; Permit Regulation (VR

680-14-01); Water Quality Standards; the Clean Water Act, 33 USCA Sections 1251 et seq; and 40 CFR, Parts 35 and 130. A copy of these documents may be reviewed or obtained by contacting Mr. Wellford S. Estes at the address below.

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

Written comments may be submitted until February 22, 1991.

**Contact:** Wellford S. Estes, State Water Control Board, West Central Regional Office, P.O. Box 7017, Roanoke, VA 24019, telephone (804) 857-7432.

### † 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 680-16-02.1. Upper Roanoke River Sub-area Water Quality Management Plan.** The purpose of the proposed action is to update the Upper Roanoke River Sub-area portion of the Roanoke River Basin Water Quality Management Plan to reflect current data and scientific studies; new or revised legislation, procedures, policy and regulations; and the results of facilities planning.

Federal and state laws require that Virginia Pollutant Discharge Elimination System (VPDES) permits be in compliance with appropriate area and/or basin wide water quality management plans. There are approximately 332,612 persons residing in the Upper Roanoke River Sub-area and 105 issued VPDES permits. No financial impact to the regulated community is anticipated. A public meeting will be held at 7:00 p.m. on Wednesday, February 20, 1991, at the Roanoke County Administration Center Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia, to receive comments from the public. (See Calendar of Events Section) The Proposed action is authorized by the statutes cited below and is governed by the State Water Control Law; Permit Regulation (VR 680-14-01); Water Quality Standards; the Clean Water Act, 33 USCA Sections 1251 et seq; and 40 CFR, Parts 35 and 130. A copy of these documents may be reviewed or obtained by contacting Mr. Wellford S. Estes at the address below.

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

Written comments may be submitted until February 22, 1991.

**Contact:** Wellford S. Estes, State Water Control Board, West Central Regional Office, P.O. Box 7017, Roanoke, VA 24019, telephone (804) 857-7432.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control

Board intends to consider amending regulations entitled: **VR 680-16-05. York River Basin Water Quality Management Plan.** The purpose of the proposed action is to amend the York River Basin Water Quality Management Plan by removing American Oil from the listing of wasteload allocations in Table 3.

Water quality management plans set forth measures for the board to implement in order to reach and maintain applicable water quality goals in general terms and also by establishing waste load allocations for industrial and municipal dischargers in critical water quality segments. Since American Oil does not discharge to a critical (water quality limited) segment, inclusion of American Oil in the original table was inappropriate and unnecessary.

Federal and state laws require that Virginia Pollutant Discharge Elimination System permits comply with appropriate area or basin wide water quality management plans. The proposed removal of American Oil will have no adverse impact on the company or water quality. The quality and quantity of American Oil's discharge will continue to be regulated by federal and state laws and the board's Permit Regulation (VR 680-14-01).

The proposed action is authorized by the statutes cited and is governed by the State Water Control Law; Permit Regulation (VR 680-14-01); Water Quality Standards (VR 680-21-00); the Clean Water Act, 33 USCA Sections 1251 et seq; and 40 CFR Parts 35 and 130. A copy of these documents may be reviewed or obtained by contacting Mr. Robert F. Jackson, Jr., at the address below.

Statutory Authority: § 62.1-344.15 of the Code of Virginia.

Written comments may be submitted until January 17, 1991.

**Contact:** Mr. Robert F. Jackson, Jr., State Water Control Board, Tidewater Regional Office, 287 Pembroke Office Park, Pembroke Two, Suite 310, Virginia Beach, VA 23462, telephone (804) 552-1840.

## GENERAL NOTICES

### DEPARTMENT OF LABOR AND INDUSTRY

#### Notice to the Public

Notice is hereby given in accordance with this agency's Public Participation Guidelines that the Department of Labor and Industry and the Apprenticeship Council intend to study the need for requesting elimination of the requirement that apprenticeship related instruction funds be prioritized to construction and basic industry before being distributed to other industries.

# General Notices/Errata

---

Written comments may be submitted until February 1, 1991.

**Contact:** Tom Butler, Assistant Commissioner, Training and Public Services, Department of Labor and Industry, P. O., Box 12064, Richmond, VA 23241, telephone: (804) 786-4300.

Oral comments will be accepted at the Open Meetings listed below:

January 15, 1991 - 7 p.m. - Open Meeting State Capitol Building, House Room 1, Richmond, Virginia

January 17, 1991 - 7 p.m. - Open Meeting Department of Motor Vehicles, Military Circle Branch Office, 5745 Poplar Hall Drive, Norfolk, Virginia

\* \* \* \* \*

## Notice to the Public

Notice is hereby given in accordance with this agency's Public Participation Guidelines that the Department of Labor and Industry and the Apprenticeship Council intend to study the adoption of policy regarding the evaluation and selection of related instruction administrative agents.

Written comments on the proposed policy may be submitted until April 1, 1991.

Oral comments will be accepted at the Open Meetings listed below:

January 15, 1991 - 7 p.m. - Open Meeting State Capitol Building, House Room 1, Richmond, Virginia

January 17, 1991 - 7 p.m. - Open Meeting Department of Motor Vehicles, Military Circle Branch Office, 5745 Poplar Hall Drive, Norfolk, Virginia

**Contact:** Tom Butler, Assistant Commissioner, Training and Public Services, Department of Labor and Industry, P. O. Box 12064, Richmond, VA 23241, telephone: (804) 786-4300.

The proposed policy reads as follows:

### POLICY FOR THE SELECTION AND EVALUATION OF ADMINISTRATIVE AGENTS OF APPRENTICESHIP RELATED INSTRUCTION FUNDS

Revised November 30, 1990

#### I. Definitions

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

Ad hoc selection team

A group of sponsors representing both labor and management who are charged with review and recommendation on a one time basis without consideration of wider application.

Administrative agent

A public education agency approved and under contract with the Department of Labor and Industry to act on behalf of the Commonwealth to provide for the administration and supervision of related instruction for registered apprentices, the coordination of instruction with job experiences, the selection and training of teachers, and the management of state and federal funds for such services within a region of the state prescribed by the Department of Labor and Industry.

Apprenticeship related instruction (ARI)

Classes that provide specific information and knowledge essential to the apprentice for the full trade mastery. Related instruction often includes training in reading blueprints, trade science, trade math, some trade physics, safe work habits, and human relations.

Apprenticeship sponsor An employer, an association of employers, a joint apprenticeship committee or an organization of employees that has an approved apprenticeship program registered with the Virginia Apprenticeship Council.

ARI coordinator

An individual employed by the Apprenticeship Related Instruction Agent to organize, administer, and supervise the provision of related instruction for apprentices in a specific region of the state as prescribed by the Department of Labor and Industry.

Curriculum

A set of courses offered by an educational institution or one of its branches, constituting an area of specialization.

Evaluation team

A group of sponsors comprising the regional advisory committee which is responsible for the annual review of existing ARI agents.

Labor

Any organization or person representing groups of workers.

Management

The collective body of those who manage or direct an enterprise.

Public education agency

A local public school system or community college approved by the Commonwealth of Virginia to provide secondary and/or post secondary education, respectively, within prescribed boundaries.

## Special Populations

Individuals who:

1. Are Handicapped
2. Are Economically Disadvantaged
3. Have limited English proficiency
4. Are Adults in need of training or retraining
5. Are Single parents and homemakers
6. Are Criminal offenders who are in correctional institutions.

## Virginia Apprenticeship Council

A regulatory body appointed by the Governor for the purpose of formulating policies for the effective administration of the Voluntary Apprenticeship Act.

### POLICY FOR THE SELECTION AND EVALUATION OF ADMINISTRATIVE AGENTS OF APPRENTICESHIP RELATED INSTRUCTION FUNDS

Revised November 30, 1990

#### I. Purpose

The purpose of this policy is to provide a process for the selection of apprenticeship related instruction (ARI) administrative agents within the Commonwealth of Virginia.

#### II. Background

On July 1, 1990, monies provided by the General Assembly of the Commonwealth of Virginia to offset a portion of the apprenticeship related instruction costs were allocated to the Department of Labor and Industry for the purpose of administration. Prior to July 1, 1990, these funds were administered by the Virginia Department of Education.

As the new administrative agency, the Department of Labor and Industry has developed procedures designed to ensure a fair and equitable process for selecting ARI administrative agents regionally, and for continued funding of them.

The position of the Department of Labor and Industry is that there must be procedures that can be applied universally when determining if a public education agency is qualified to administer ARI funds on a regional basis.

#### III. Statement of Policy

There is currently an established related instruction delivery system in the Commonwealth. This system is comprised of secondary and post secondary public education administrative agents that administer the delivery of apprenticeship related instruction on a regional basis under contract with the Department of Labor and Industry. Alternate systems for delivering related instruction may be approved by the Apprenticeship Council. Continued funding of ARI administrative agents is contingent on the availability of funding and will be based on the administrative agents' demonstrated ability to perform satisfactorily in accordance with pre-established program evaluation criteria. Selection of new ARI administrative agents will be through an open and competitive process, also using the same program evaluation criteria.

#### A. Evaluating Apprenticeship Related Instruction Administrative Agents

1. Related instruction administrative agents will be required to demonstrate to the satisfaction of apprenticeship sponsors and the Department of Labor and Industry that each ARI agent can meet the standards outlined in Section III B. of this policy as measured by an evaluation instrument approved by the Department of Labor and Industry.

2. Those administrative agents meeting the standards will receive funding annually and on a continuing basis subject to budget availability and satisfactory biennial program evaluations. The Apprenticeship Council will determine the number of agents to be funded and the locations to be served.

3. Program evaluations will be conducted by regional advisory committees using data gathered from all appropriate sources which may include craft committees, the ARI coordinator, sponsors or Department of Labor and Industry staff. To ensure impartiality all committees will use an evaluation instrument approved by the Department of Labor and Industry. The committees will be evaluation teams when acting in this capacity.

4. Regional advisory committees will be comprised of apprenticeship sponsors representing both labor and management. The existing ARI administrative agent will issue invitations to all sponsors in the region to participate on the ARI advisory committee. Those sponsors who indicate a willingness to serve on the committee will become part of a pool from which names will be randomly drawn and in such a manner that ensures labor and management representation. The committee will maintain a membership of not fewer than 7 individuals who will serve staggered 3 year terms. (Craft advisory committees may also be formed by the ARI administrative agent for the purpose of assisting the ARI agent in determining

## General Notices/Errata

---

curriculum relevance and appropriateness for the trade, and also for providing the regional advisory committee with an assessment of the effectiveness of their craft's program.)

5. The findings of the regional advisory committees and their recommendations will be forwarded to the Commissioner of Labor and Industry. A committee may recommend that funding be continued, or that corrections need to be made, or that funding be discontinued. The Commissioner of Labor and Industry, using the committee's recommendations and any other evidence available, will decide the course of action to be taken and will notify the ARI agent of the decision in writing.

6. Those agencies recommended for continuance subject to corrective action will be advised by the Commissioner of Labor and Industry of the deficiencies identified by the evaluation committee and by the Department and given a specific time frame in which to correct the deficiencies. As deficiencies are corrected, a brief written account of what these corrections entail and the date the corrections were completed will be forwarded by the ARI agent to the committee chairperson. When all corrections have been made, the committee may choose to revisit the agent or accept the written account and recommend the agent or funding.

7. In the event an administrative agent does not receive funding, that agent will be so advised in writing by the Commissioner. The Department of Labor and Industry will open negotiations with all other local public education agencies interested in becoming the regional ARI Administrative Agent. Within 30 days of being notified the administrative agent may appeal the decision of the Commissioner in writing to the Apprenticeship Council. The decision of the Council will be final.

8. In the event that more than one public education agency applies to be the ARI administrative agent in a region where the existing provider does not meet the standards, an ad hoc selection team will be formed to review each applicant's plan and visit each site, using the standards outlined in this policy and an evaluation instrument approved by the Department of Labor and Industry. This team will forward its findings and its recommendation of an ARI administrative agent to the Commissioner of Labor and Industry. The Commissioner, using the committee's recommendation and any other evidence available, will select an ARI administrative agent, advising the applicant agencies in writing of the agent selected.

9. The team will be co-chaired by the Director of Apprenticeship and the Director of Related Instruction of the Department of Labor and Industry and comprised of an ARI coordinator and sponsors representing labor and management. All sponsors will

be from the region in question. The ARI coordinator will be from outside the region. Invitations to serve on this team will be issued By the Commissioner of Labor and Industry. Selection will be made on a random basis from those willing to serve.

10. Should there be no acceptable ARI administrative agent after all have been invited to open negotiations, the geographical area will be reapportioned among the surrounding regions. This eapportionment will be made by the Director of Related Instruction with the approval of the Commissioner after consultation with the affected regions.

11. In cases where local education agencies other than the current ARI administrative agent express an interest in becoming the replacement ARI administrative agent for a region, the Commissioner of Labor and Industry will evaluate he request and, if judged to have merit, will Form an ad hoc selection team as in Part III. A. 8-9. of this policy. The team will evaluate all interested parties using the same standards as stated in Part III. B. of this policy and using an evaluation instrument approved by the Department of Labor and Industry. The team's evaluation will occur in place of the regular biennial program evaluation.

The findings of the evaluation team and their recommendations will be forwarded to the Commissioner of the Department of Labor and Industry who will make the final selection. Any new ARI administrative agent selected through the application of this policy will assume the ARI responsibilities at the beginning of the next fiscal year.

The applicant not selected will be notified in writing and may appeal the decision in writing to the Apprenticeship Council within 30 days of being notified. The decision of Council will be final.

### B. Evaluation Standards

1. Evaluation or selection of ARI administrative agents will be based on the performance of the ARI administrative agent in the following areas:

- a. program and records management
- b. program promotion
- c. sponsor involvement and input
- d. curriculum and instructional planning
- e. quality of instruction and courses
- f. facilities and equipment
- g. services provided to special populations

2. Using a process which solicits sponsor input, an evaluation instrument will be adopted by the Department of Labor and Industry which assesses an RI administrative agent's capabilities in each of the areas above.

### C. Establishing Regions for the Purpose of Delivering Apprenticeship Related Instruction

1. For the purpose of administering and delivering related instruction, the Apprenticeship Council will designate geographic regions to be served by an ARI administrative agent. As the Council determines to be feasible, each region will have a full-time ARI coordinator.

2. Regions will be established by the Council based on the following considerations:

- highways and road systems for commuting
- concentration of apprentices
- accessibility of training sites
- population concentration (industrial base)
- willingness of local public education agencies to network with each other
- existing ARI providers' geographic locations (not more than one administrative entity to a region)
- natural barriers
- territory of the Department of Labor and Industry apprenticeship representatives
- community college service regions

### D. Related Instruction funds

1. The Apprenticeship Council will set policy regarding the expenditure of related instruction funds.

2. The Apprenticeship Council will be provided annually a copy of the audit of the department's funds.

### IV. Recision

None

## DEPARTMENT OF SOCIAL SERVICES

### Notice of Demonstration Project

The Department of Social Services as the single state agency is inviting comments on an Aid to Dependent Children - Emergency Assistance (ADC-EA) Demonstration

Project that is being developed by the Department of Housing and Community Development (HCD) for submission to the Department of Health and Human Services for approval. The ADC-EA Demonstration Project is for a Comprehensive Homeless Intervention Program (CHIP) that will be administered by HCD in 10 demonstration sites throughout the Commonwealth during fiscal year 1992.

The objectives of CHIP are to prevent homelessness and the necessity of receiving ADC, to help those who are homeless secure permanent housing, and to help those who are eligible for CHIP, including ADC families, to become economically self-sufficient. These objectives will be accomplished by providing a comprehensive array of services and financial assistance including rental, mortgage, and security deposit assistance, financial and budget counseling, employment counseling and training, housing counseling and mediation training, and other services necessary to enable the family to become self-sufficient and permanently housed. CHIP will be provided to eligible families experiencing a temporary crisis resulting from circumstances beyond their control.

Written comments may be submitted until January 17, 1991, to: Alice Fascitelli, Division of Housing, Department of Housing and Community Development, 205 N. 4th St., Richmond, VA 23219, telephone (804) 786-7891.

## DEPARTMENT OF WASTE MANAGEMENT

### Notice of Tentative Decision to Grant a Variance from Regulation, Notice of Availability of Draft Amended Solid Waste Permit, Scheduled Public Hearing on the Draft Amended Permit (No. 314) for the Hanover County Landfill, Hanover, Virginia.

Pursuant to the requirements of Part VII of the Solid Waste Management Regulations (Sec 7.14, VR 672-20-10), the draft amendment for the Hanover County Landfill Permit (No. 314), proposed by Hanover County, is available for public review and comment.

The Department of Waste Management will hold a public hearing on the draft permit amendment on Thursday, January 17, 1991, at 7:00 p.m. in Hanover County Board Room, Wickham Building, Hanover, Virginia. The public comment period shall extend until 5:00 p.m. on Monday, January 28, 1991. During this period, the Department of Waste Management is soliciting comments on the technical merits of the draft permit amendment as it pertains to installation of a lined disposal unit and modification of final disposal contours as contained in the amendment. Comments on this draft should be in writing and addressed to Hassan Vakili, Director Field Operations, Department of Waste Management, Division of Regulation, Eleventh Floor, Monroe Building, 101 N. Fourteenth St., Richmond VA 23219. For more information, call Scott B. Alexander at (804) 371-0516.



# General Notices/Errata

---

Pursuant to the requirements of Part IX of the Solid Waste Management Regulations (Sec. 9.4.B, VR 672-20-10), the director tentatively proposes to grant a variance to Hanover County for installation of a liner on a section of Hanover County Landfill (Permit No. 314). Specifically the County desires to install a clay liner with leachate collection for that portion of the landfill between currently permitted disposal cells. Comments on the tentative decision will be accepted until 5:00 p.m. on Friday, January 18, 1991. After evaluating the comments, the department will make its final decision on the tentative proposal to grant the requested variance within 15 days of the close of the comment period. All comments should be in writing and directed to William F. Gilley, Department of Waste Management, Division of Regulation, Eleventh Floor, Monroe Building, 101 N. Fourteenth St., Richmond, VA 23219, telephone (804) 225-2667.

\* \* \* \* \*

## Notice to the Public

### Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of Section 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Department of Waste Management intends to designate a solid waste management region for the local governments of the City of Fredericksburg and the County of Stafford. The Rappahannock Regional Solid Waste Management Board will be designated legal entity for development and/or implementation of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region.

A petition has been received by the Department of Waste Management for the designation on behalf of the local governments and the Rappahannock Regional Solid Waste Management Board.

Anyone wishing to comment on the designation of this region should respond in writing by 5:00 p.m. on Thursday, January 31, 1991 to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, VA 23219. FAX 804-225-3573. TDD 804-371-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Any questions concerning this notice should be directed to Ms. Cheryl Cashman, Legislative Liaison, at 1-800-552-2075 or (804) 225-2667.

\* \* \* \* \*

## Notice to the Public

### Designation of Regional Solid Waste Management Planning Area

In accordance with the provision of Section 10.1-1411 of the Code of Virginia, and Part V, Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Department of Waste Management intends to designate a solid waste management region for the local governments of the Cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk and Virginia Beach, the Counties of Isle of Wight and Southampton, and the Towns of Boykins, Branchville, Capron, Courtland, Ivor, Newsoms, Smithfield, and Windsor. The Hampton Roads PDC will be designated legal entity for development of a regional solid waste management plan and programs for the recycling of solid waste generated within the designated region and the Southeastern Public Services Authority of Virginia will implement the plan.

A petition has been received by the Department of Waste Management for the designation on behalf of the local governments, the Hampton Roads PDC and the Southeastern Public Service Authority of Virginia.

Anyone wishing to comment on the designation of this region should respond in writing by 5:00 p.m. on Thursday, January 31, 1991 to Ms. Cheryl Cashman, Legislative Liaison, Department of Waste Management, 11th Floor, Monroe Building, 101 North 14th Street, Richmond, VA 23219. FAX 804-225-3573. TDD 804-371-8737.

Immediately following the closing date for comments, the Director of the Department of Waste Management will notify the affected local governments of its approval as a region or of the need to hold a public hearing on the designation.

Any questions concerning this notice should be directed to Ms. Cheryl Cashman, Legislative Liaison, at 1-800-552-2075 or (804) 225-2667.

## NOTICES TO STATE AGENCIES

**CHANGE OF ADDRESS:** Our new mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed in copy. Our FAX number is: 371-0169.

**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.

---

# 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

January 28, 1991 - 10 a.m. - Open Meeting  
January 29, 1991 - 8 a.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A meeting to (i) review applications; (ii) review correspondence; (iii) review enforcement cases; (iv) conduct regulatory review; and (v) conduct routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

### DEPARTMENT FOR THE AGING

#### Long-Term Care Ombudsman Program Advisory Council

† March 28, 1991 - 9:30 a.m. - Open Meeting  
8007 Discovery Drive, Blair Building, 2nd Floor, Conference Room A and B, Richmond, Virginia. ☒

Business will include review of goals and objective. Meeting attendees will include representatives of legislative groups concerned with aging issues.

Contact: Virginia Dize, State Ombudsman, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA

23219-2327, telephone (804) 225-3141, toll-free 1-800-552-3402 or 225-2271/TDD ☎

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

Title of Regulation: 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 VA.R. 321-322 October 22, 1990, for details.

### DEPARTMENT OF AIR POLLUTION CONTROL

† January 18, 1991 - 2 p.m. - Public Hearing  
Chesterfield Central Library, 9501 Lori Road, Chesterfield, Virginia. ☒ (Interpreter for deaf provided if requested)

A public hearing to consider a permit application from Core Electric, Inc., to construct and operate seven biogas fired engines to produce electricity at 11800 Lewis Road, Chesterfield, Virginia.

Contact: Mark Williams, Department of Air Pollution Control, Region 5 Office, 8205 Hermitage Rd., Richmond, VA 23228, telephone (804) 371-3067.

### STATE AIR POLLUTION CONTROL BOARD

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 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.

# Calendar of Events

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.

† **January 25, 1991 - 9 a.m.** – Open Meeting  
Department of Information Technology, 4th Floor Auditorium, 110 South 7th Street, Richmond, Virginia. ☒

Business will include report on VOC Emission Standards, report on SO<sub>2</sub> and NO<sub>x</sub> Control Strategies, and discussion on construction without a permit. Agenda will be available two weeks before meeting.

**Contact:** Lisa Atkins, Receptionist, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-2378, (804) 786-1454 or (804) 371-8471/TDD ☎

## ALCOHOLIC BEVERAGE CONTROL BOARD

† **January 23, 1991 - 9:30 a.m.** – Open Meeting  
† **February 4, 1991 - 9:30 a.m.** – Open Meeting  
† **February 20, 1991 - 9:30 a.m.** – Open Meeting  
† **March 4, 1991 - 9:30 a.m.** – Open Meeting  
† **March 18, 1991 - 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 Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

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

**March 14, 1991 - 10 a.m.** – Public Hearing  
Department of Commerce, 3600 West Broad Street, Room 395, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to amend regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The proposed amendment will adjust fees contained in current regulations.

Statutory Authority: §§ 54.1-113 and 54.1-404 of the Code of Virginia.

Written comments may be submitted until March 4, 1991.

**Contact:** Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

## ASAP POLICY BOARD - VALLEY

**January 14, 1991 - 8:30 a.m.** – Open Meeting  
Augusta County School Board Office, Fishersville, Virginia. ☒

A regular meeting of the local policy board which conducts business pertaining to (i) court referrals (ii) financial report; (iii) director's report; and (iv) statistical reports.

**Contact:** Rhoda G. York, Executive Director, 2 Holiday Court, Staunton, VA 24401, telephone (703) 886-5616 or 943-4405 (Waynesboro).

## AUCTIONEERS BOARD

**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 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 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

## BOARD FOR BARBERS

**February 11, 1991 - 11 a.m.** – Public Hearing  
Department of Commerce, 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 Board for Barbers intends to repeal regulations entitled: **VR 170-01-1. Board for Barbers Regulations,** and promulgate new

# Calendar of Events

---

regulations entitled: **VR 170-01-1:1. Board for Barbers Regulations.** The Board for Barbers proposes to repeal existing regulations and promulgate new regulations to establish the requirements for licensure of barbers, barber instructors and barber shops and barber schools.

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

Written comments may be submitted until March 4, 1991.

**Contact:** Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

## CHILD DAY-CARE COUNCIL

**January 18, 1991 - 9 a.m. – Open Meeting**  
**January 25, 1991 - 9 a.m. – Open Meeting**  
**February 1, 1991 - 9 a.m. – Open Meeting**  
**February 8, 1991 - 9 a.m. – Open Meeting**  
Memorial Guidance Clinic, 5001 West Broad Street, Suite 217, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

Officers of the Child Day-Care Council will meet during the 1991 General Assembly Session to discuss proposed legislation.

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

## DEPARTMENT OF COMMERCE

**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 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.

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.

## COMPENSATION BOARD

**January 25, 1991 - 5 p.m. – Open Meeting**  
**March 14, 1991 - 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 meeting to conduct business of the board.

**Contact:** Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, VA 23206-0686, telephone (804) 786-3886 or (804) 786-3886/TDD ☎

## STATE BOARD FOR COMMUNITY COLLEGES

**January 22, 1991 - 1 p.m. – Open Meeting**  
Monroe Building, Board Room, 15th Floor, 101 North 14th Street, Richmond, Virginia.

The board meeting will convene at 1 p.m. Committee meetings will be held prior to the State Board meeting. The agenda will be available by January 7, 1991.

**Contact:** Joy Graham, Monroe Building, 101 North 14th St., Richmond, VA 23219, telephone (804) 225-2126.

## DEPARTMENT OF CONSERVATION AND RECREATION

### Advisory Board

† **January 16, 1991 - 10:30 a.m. – Open Meeting**  
Charlottesville Downtown Recreation Center, Market and Avon Streets, Charlottesville, Virginia.

A meeting to review and advise on progress of project concerning recreation in the juvenile justice system.

**Contact:** Patricia Helms, Recreation Specialist, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, telephone (804) 371-0348 or (804) 786-2121/TDD ☎

### Goose Creek Scenic River Advisory Board

† **January 23, 1991 - 2 p.m. – Open Meeting**  
The Law Offices of Shaw-Pittman, 201 Liberty Street, Leesburg, Virginia.

A meeting to review river issues and programs.

**Contact:** Richard G. Gibbons, Environmental Programs Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☎

## Virginia Cave Board

**January 26, 1991 - 1 p.m. - Open Meeting**  
Radford University, Porterfield Building, Room 180,  
Radford, Virginia. ☒

A regularly scheduled meeting. The board will discuss matters relating to cave and karst protection, cave inventory, cave management, and cave ecology.

**Contact:** Larry Smith, Natural Area Program, Division of Natural Heritage, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 371-6205

## Division of Planning and Recreation Resources

† **January 23, 1991 - noon - Open Meeting**  
Jefferson-Sheraton Hotel, Adams and Franklin Streets,  
Richmond, Virginia. ☒

A business meeting of the Advisory Board to review statewide recreation matters.

**Contact:** Art Buehler, Director, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-5046 or (804) 786-2121/TDD ☒

## Virginia Soil and Water Conservation Board

**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

**January 16, 1991 - 9 a.m. - Open Meeting**  
3600 West Broad Street, Conference Room 5, Richmond,  
Virginia. ☒

A regular quarterly meeting of the board to address policy and procedural issues as well as other routine business matters. The meeting is open to the public; however, a portion of the board's discussions may be conducted in executive session.

**Contact:** Kelly G. Ragsdale, Assistant Director, 3600 W. Broad St., Richmond, VA 23230 telephone (804) 367-8557.

## BOARD OF CORRECTIONS

**January 16, 1991 - 10 a.m. - Open Meeting**  
**February 13, 1991 - 10 a.m. - Open Meeting**  
**March 13, 1991 - 10 a.m. - Open Meeting**  
6900 Atmore Drive, Board of Corrections Board Room,  
Richmond, Virginia. ☒

A regular monthly meeting to consider such matters as may be presented.

**Contact:** Ms. Vivian Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

## BOARD FOR COSMETOLOGY

**January 14, 1991 - 9 a.m. - Open Meeting**  
Holiday Inn-Midtown, 3200 West Broad Street, Suite 240,  
Richmond, Virginia. ☒

A meeting to (i) review applications; (ii) review correspondence; (iii) review enforcement cases; (iv) conduct regulatory review; and (v) conduct routine board business.

**Contact:** Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

\*\*\*\*\*

**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 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 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only).

## COURT APPOINTED SPECIAL ADVOCATE PROGRAM ADVISORY COMMITTEE

**January 30, 1991 - 10 a.m. - Open Meeting**  
Virginia Housing Development Authority Building, 601  
South Belvidere Street, Richmond, Virginia. ☒

# Calendar of Events

---

A business meeting.

**Contact:** Paula J. Scott, Staff Executive, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

## BOARD OF EDUCATION

**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.

## STATE BOARD OF ELECTIONS

† **January 16, 1991 - 10 a.m. - Open Meeting**  
Ninth Street Office Building, 7th Floor Conference Room, Room 729, Richmond, Virginia. ☒

A meeting to ascertain and certify the results of the January 8, 1991, Special Election for the 49th House District.

**Contact:** Lisa M. Strickler, Executive Secretary, Sr., 200 N. 9th St., Room 101, Richmond, VA 23219 telephone (804) 786-6551 or toll-free 1-800-552-9745/TDD ☎

## LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

**February 7, 1991 - 5:30 p.m. - Open Meeting**  
**March 7, 1991 - 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 Coordinator, 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 - COUNTY OF PRINCE WILLIAM, CITY OF MANASSAS, AND CITY OF MANASSAS PARK

**January 21, 1991 - 1:30 p.m. - Open Meeting**  
**February 18, 1991 - 1:30 p.m. - Open Meeting**  
**March 18, 1991 - 1:30 p.m. - Open Meeting**  
1 County Complex Court, Prince William, Virginia. ☒

Local Emergency Planning Committee 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 - ROANOKE VALLEY

† **January 16, 1991 - 9 a.m. - Open Meeting**  
Salem Civic Center, Room C, 1001 Roanoke Boulevard, Salem, Virginia. ☒

A meeting to discharge the provisions of SARA Title III.

**Contact:** Danny W. Hall, Fire Chief/Emergency Services Coordinator, Salem Fire Department, 105 S. Market St., Salem, VA 24153, telephone (703) 375-3080.

## FAMILY AND CHILDREN'S TRUST FUND OF VIRGINIA

### Board of Trustees

† **January 25, 1991 - 10 a.m. - Open Meeting**  
8007 Discovery Drive, 2nd Floor, Conference Room C, Blair Building, Richmond, Virginia.

The board will plan and evaluate its fund raising

# Calendar of Events

campaign. It will carry out all the activities necessary for implementation of this project.

**Contact:** Molly Moncure Jennings, Executive Director, Family and Childrens Trust Fund, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

## BOARD OF GAME AND INLAND FISHERIES

**January 17, 1991 - 10 a.m. – Open Meeting**  
4010 West Broad Street, Richmond, Virginia. ☐

The Planning Committee will meet to discuss the agency's long-range strategic planning, followed by the Finance Committee, then Wildlife and Boat Committee, Law and Education Committee and Legislative Committee. These committees will discuss and prepare recommendations for board action at the January 18, 1991, meeting. Legislation resulting from the HJR 76 subcommittee will be discussed, as well as other general and administrative matters, as necessary.

**January 18, 1991 - 9:30 a.m. – Open Meeting**  
4010 West Broad Street, Richmond, Virginia. ☐

A meeting to discuss possible legislation resulting from the HJR 76 subcommittee studying the Game Protection Fund. In addition the William Dixon Morgan Memorial Award will be presented to the outstanding volunteer hunter education instructor for the year 1989-90.

Other administrative matters, as necessary, will be discussed and acted on.

**Contact:** Belle Harding, Secretary to the Director, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000, toll-free 1-800-252-7717 or (804) 367-1000/TDD ☐

## BOARD FOR GEOLOGY

**January 18, 1991 - 10 a.m. – Open Meeting**  
Department of Commerce, Conference Room 1, 3600 West Broad Street, Richmond, Virginia. ☐

A meeting to discuss the adjustment of fees.

**January 18, 1991 - 11 a.m. – Open Meeting**  
Department of Commerce, Conference Room 1, 3600 West Broad Street, Richmond, Virginia. ☐

A meeting to (i) approve minutes of the November 16, 1990, meeting, (ii) review applications, and (iii) discuss examination and fees.

**Contact:** Nelle P. Hotchkiss, Acting Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

\* \* \* \* \*

**January 18, 1991 - 10 a.m. – Public Hearing**  
Conference Room 1, 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 Board for Geology intends to amend regulations entitled: **VR 335-01-2. Board for Geology Regulations.** The proposed amendments will amend fees in order to assure the board's compliance with § 54.1-113 of the Code of Virginia.

Written comments may be submitted until February 15, 1991.

**Contact:** Nelle P. Hotchkiss, Acting Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

## HAZARDOUS MATERIALS TRAINING COMMITTEE

**January 29, 1991 - 10 a.m. – Open Meeting**  
Richmond Airport Hilton, 5501 Eubank Road, Sandston, Virginia.

The purpose of this meeting will be to discuss curriculum, course development, and review existing hazardous materials courses.

**Contact:** Larry L. Logan, Fire and Emergency Services, 3568 Peters Creek Rd., N.W., Roanoke, VA 24019.

## BOARD OF HEALTH

† **January 28, 1991 - 11 a.m. – Open Meeting**  
Monroe Building, Conference Room D, Richmond, Virginia.

A regular business meeting at 11 a.m. and an informal dinner meeting at 7:30 p.m. with the Medical Assistance Services Board.

† **January 29, 1991 - 8 a.m. – Open Meeting**  
Marriott, Richmond, Virginia.

Legislative Day Breakfast at Marriott and subsequent meetings with legislators to continue at State Capitol.

**Contact:** Susan R. Rowland, Assistant to Commissioner, Main Street Station, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-3561.



# Calendar of Events

---

## BOARD OF HEALTH PROFESSIONS

† **January 15, 1991 - 10:30 a.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,  
Conference Room 1, Richmond, Virginia. ☒

A regular quarterly meeting of the board.

### Compliance and Discipline Committee

† **January 14, 1991 - 7 p.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,  
Room 2, Richmond, Virginia. ☒

A meeting to review implementation of recommendations from enforcement study.

### Executive/Legislative Committee

† **January 15, 1991 - 9 a.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,  
Room 2, Richmond, Virginia. ☒

A meeting to review 1991 legislature agenda and agenda for Board of Health Professions.

### Committee on Professional Education and Public Affairs

† **January 15, 1991 - 9 a.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,  
Room 3, Richmond, Virginia. ☒

A meeting to review the work plan for public information activities.

### Regulatory Research Committee

† **January 14, 1991 - 4 p.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,  
Room 2, Richmond, Virginia. ☒

A meeting to review board regulations.

**Contact:** Richard D. Morrison, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9918.

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

**January 22, 1991 - 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.

† **February 26, 1991 - 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 ☎

## BOARD FOR HEARING AID SPECIALISTS

**January 14, 1991 - 8:30 a.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street,  
Richmond, Virginia. ☒

An open meeting to (i) administer examinations to eligible candidates; (ii) review enforcement cases; (iii) conduct regulatory review; (iv) sign certificates; and (v) consider other matters which require board action.

**Contact:** Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

\* \* \* \* \*

**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.

Statutory Authority: §§ 54.1-113 and 54.1-201 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.

## DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

† **February 20, 1991 - 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 Board of Historic Resources intends to amend regulations entitled: **VR 390-01-02. Regulations Governing Permits for the Archaeological Excavation of Human Remains.** The purpose of the proposed action is to implement the

Virginia Antiquities Act, § 10.1-2305 of the Code of Virginia, governing the issuance of permits for the archaeological excavation of unmarked human burials. This permitting process will affect any persons or entities who conduct any type of archaeological field investigation involving the removal of human remains or associated artifacts from any unmarked human burial. It will also affect any such removal involving archaeological investigation as part of a court-approved removal of a cemetery. This permitting process serves as an alternative to the legal requirement for a court order to remove human burials from unmarked graves and as a supplementary process when the court orders such removal in cases of marked graves and cemeteries. The proposed regulations include technical criteria, and administrative procedures governing the issuance of said permits including such issues as: professional qualifications of applicant, research goals and methodology, interim curation, and final disposition and public comment.

Statutory Authority: § 10.1-2300 et seq. of the Code of Virginia.

Written comments may be submitted until March 15, 1991.

Contact: Dr. M. Catherine Slusser, State Archaeologist, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

February 5, 1991 - 9 a.m. - Open Meeting

March 5, 1991 - 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.

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

### Regulatory Effectiveness Advisory Committee

† February 14, 1991 - 9 a.m. - Open Meeting

Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☒

A meeting to develop committee positions relative to the 1991 proposed changes to the BOCA National Codes. REAC Committee positions thus developed are forwarded to the Board of Housing and Community

Development.

Positions approved by the board will be presented at the BOCA 1991 Code Change Hearings in Oklahoma City, Oklahoma, April 8-12, 1991.

Contact: Carolyn R. Williams, CPCA, Building Code Supervisor, 205 N. Fourth St., Richmond, VA 23219, telephone (804) 371-7772 or (804) 786-5405/TDD ☒

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

January 15, 1991 - 10 a.m. - Open Meeting

601 South Belvidere Street, Richmond, Virginia. ☒

A regular meeting to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; (iv) consider and, if appropriate, approve proposed amendments to the Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income; 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) 782-1986.

## LIBRARY BOARD

January 16, 1991 - 9:30 a.m. - Open Meeting

Virginia State Library and Archives, 3rd Floor, Supreme Court Room, 11th Street at Capitol Square, Richmond, Virginia. ☒

A meeting to discuss administrative matters.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

## COMMISSION ON LOCAL GOVERNMENT

January 14, 1991 - 10 a.m. - Open Meeting

Department of Agriculture and Consumer Services, Washington Building, 2nd Floor, Board Room, 1100 Bank Street, Richmond, Virginia.

A regular meeting to consider such matters as may be

# Calendar of Events

---

presented.

Persons desiring to participate in the commission's regular meeting and requiring special accommodations or interpreter services should contact the commission's offices at (804) 786-6508 (804-786-1860 TDD) by January 7, 1991.

**Contact:** Barbara W. Bingham, Administrative Assistant, 702 Eighth Street Office Bldg., Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

## LONG-TERM CARE COUNCIL

† **February 1, 1991 - 9 a.m.** – Open Meeting  
Ninth Street Office Building, Room 729, Richmond, Virginia. ☎ (Interpreter for deaf provided upon request)

A meeting to discuss the development of the Long-Term Care Demonstration Projects.

**Contact:** Janet Lynch, Director, Long-Term Care Council, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 371-0552, toll-free 1-800-552-4464 or (804) 225-2271/TDD ☎

## LONGWOOD COLLEGE

### Board of Visitors

† **February 8, 1991 - 1 p.m.** – Open Meeting  
Ruffner Building, Virginia Room, Farmville, Virginia. ☎

A routine business meeting.

**Contact:** William F. Dorrill, President, Office of the President, Longwood College, Farmville, VA 23901, telephone (804) 395-2001.

## STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

**January 23, 1991 - 10 a.m.** – Open Meeting  
**February 27, 1991 - 10 a.m.** – Open Meeting  
**March 27, 1991 - 10 a.m.** – Open Meeting  
State Lottery Department, Conference Room, 2201 West Broad Street, Richmond, Virginia. ☎

A regular monthly meeting of the board. Business will be conducted according to items listed on agenda which has not yet been determined. Two periods for public comment are scheduled.

**Contact:** Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

\*\*\*\*\*

**February 27, 1991 - 10 a.m.** – Public Hearing  
State Lottery Department, 2201 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.

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, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

\*\*\*\*\*

**February 27, 1991 - 10 a.m.** – Public Hearing  
State Lottery Department, 2201 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.

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, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

\*\*\*\*\*

**February 27, 1991 - 10 a.m.** – Public Hearing  
State Lottery Department, 2201 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.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

NOTE: CORRECTION TO WRITTEN COMMENT DATE

Written comments may be submitted until February 1, 1991.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

## MARINE RESOURCES COMMISSION

† January 22, 1991 - 9:30 a.m. - Open Meeting  
Marine Resources Commission, 4th Floor, 2600 Washington Avenue, Newport News, Virginia. ☒ (Interpreter for deaf provided if requested)

The commission will hear and decide marine environmental matters regarding permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; and policy and regulatory issues.

At approximately 2 p.m. the commission will hear and decide fishery management items concerning regulatory proposals; fishery management plans; fishery conservation issues; licensing; and shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues, and items scheduled for public hearing.

The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Cathy W. Everett, Secretary to the Commission, P.O. Box 756, Room 1006, Newport News, VA 23607, telephone (804) 247-8088.

\*\*\*\*\*

† January 14, 1991 - 7 p.m. - Public Hearing  
Eastern Shore Community College, Melfa, Virginia.

† January 22, 1991 - 2 p.m. - Public Hearing  
Marine Resources Commission, 4th Floor, 2600 Washington Avenue, Newport News, Virginia.

A public meeting to receive comments from the public on proposed regulations establishing certain restrictions on the harvesting of American Shad from Virginia waters, and for marking drift gill nets in certain areas

and other proposals.

Written comments may be submitted until January 21, 1991.

Contact: Virginia Marine Resources Commission, Fisheries Management Division, P.O. Box 756, Newport News, VA 23607-0756.

## BOARD OF MEDICAL ASSISTANCE SERVICES

† January 28, 1991 - 1 p.m. - Open Meeting  
Board Room, Suite 1300, 600 East Broad Street, Richmond, Virginia. ☒

A meeting to discuss medical assistance services and issues pertinent to the board.

7:30 p.m.: The Board of Medical Assistance Services will have an informal joint dinner meeting with the Board of Health at the Marriott Hotel.

Contact: Patricia A. Sykes, Legislative Analyst, Suite 1300, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-7958, toll-free 1-800-552-8627 or 1-800-343-0634/TDD ☎

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

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.

\*\*\*\*\*

† March 15, 1991 - Written comments may be submitted

# Calendar of Events

---

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 460-02-2.2100, VR 460-02-2.6100, VR 460-03-2.6105, and VR 460-03-2.6112. Restoration of Income and Resource Methodologies.** This action proposes to restore Medicaid's income and resource methodologies which were overturned by court order.

## STATEMENT

**Basis and Authority:** Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance in lieu of board action pursuant to its requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:9, for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews. Subsequent to an emergency adoption action 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.

Section 1902(f) of the Social Security Act gives to states the option to impose more restrictive eligibility criteria on the aged, blind and disabled than those imposed by the Supplemental Security Income (SSI) Program.

**Purpose:** The purpose of this proposal is to promulgate permanent regulations concerning more restrictive income and resource methodologies.

**Summary and Analysis:** The sections of the plan affected by this action are Attachment 2.2-A, Groups Covered and Agencies Responsible for Eligibility Determination, Attachment 2.6-A, Eligibility Conditions and Requirements, and Supplements 5 (Methodologies for Treatment of Income and Resources that Differ from Those of the SSI Program) and 12 (More Liberal Methods under Social Security Act § 1902(r)(2)). The differences between this regulation and the existing emergency regulation resulted from recommendations from the department's staff following a policy review and the Health Care Financing Administration.

The authority to impose more restrictive eligibility requirements was originally given to states in 1972, in § 209(b) of P.L. 92-603. The intent was to help states whose eligibility criteria for Aid to the Aged, Aid to the Blind, and Aid to the Permanently and Totally Disabled had been lower than the national eligibility standards for the new SSI Program. Mandating Medicaid eligibility for all SSI eligibles would have resulted in additional expenditures of state funds for the cost of Medicaid.

The § 209(b) option allows the state the flexibility to set eligibility criteria more restrictive than SSI but no more

restrictive than those set by the State Medicaid Program on January 1, 1972.

In Virginia the § 209(b) option has been used to contain Medicaid expenditures in selected areas of eligibility criteria when changes in the criteria for SSI would have caused large additional expenditures for Medicaid. The more restrictive criteria have concentrated on the way resources are handled. The more restrictive requirement most often discussed is the limit on the ownership of property contiguous to the home site. Other more restrictive criteria include:

Prohibiting presumptive eligibility and disability;

Prohibiting conditional eligibility;

Counting the value of interests in undivided estates;

Limiting the time a home is exempt for individuals in nursing homes to six months from admission;

Counting the value of jointly owned property.

Section 303(e) of the Medicare Catastrophic Coverage Act created a new section of the Social Security Act, § 1902(r)(2)(A) which reads "The methodology to be employed in determining income and resource eligibility for individuals under subsection (a)(10)(A)(i)(III), (A)(10)(A)(i)(IV), (a)(10)(A)(ii), (a)(10)(C)(i)(III), or under subsection (f) may be less restrictive, and shall be no more restrictive, than the methodology:

(i) in the case of groups consisting of aged, blind, or disabled individuals, under the Supplemental Security Income Program under Title XVI, or

(ii) in the case of other groups, under the state plan most closely categorically related."

Because the provision referenced § 209(b) ("subsection f"), the Department of Medical Assistance Services (DMAS) sought clarification from the Health Care Financing Administration (HCFA) as to whether this language prohibited Virginia from continuing to impose the more restrictive income and resource methodologies for contiguous property, undivided estates, the limited exemption of the home for a nursing home patient, and jointly owned property. HCFA advised DMAS by letter dated November 21, 1988, that "We conclude that Virginia and other § 1902(f) States (sic) can continue to reflect in their Medicaid plans more restrictive eligibility requirements consistent with the authority of § 1902(f)." Upon receiving this interpretation from HCFA, DMAS did not change its § 209(b) eligibility rules.

A class action lawsuit filed on February 10, 1989, in the U.S. District Court in Harrisonburg charged that Virginia's State Plan for Medical Assistance violated § 1902(r) of the Social Security Act. On October 25, 1989, the court issued an injunction prohibiting the Commonwealth from using

# Calendar of Events

more restrictive income and resource methodologies for the aged, blind or disabled in determining Medicaid eligibility. In order to comply with the court order, emergency regulations were promulgated on December 29, 1989, which eliminated the more restrictive methodologies.

DMAS sought a stay from the District Court which was refused. DMAS then sought a stay of the injunction which was granted on January 24, 1990, by the 4th Circuit Court of Appeals. Upon receipt of the stay, and emergency regulation was then promulgated on May 30, 1990, to restore these policies. On September 24, 1990, the 4th Circuit Court of Appeals reversed the District Court's decision and found that federal law permits Medicaid to have more restrictive income and resource methodologies than those imposed by the Supplemental Security Income Program.

As necessitated by the January 24th stay, the Governor directed DMAS to restore the policies extant before the original court order. DMAS promulgated an emergency regulation. This regulatory action proposed permanent regulations to supersede the temporary emergency language.

**Impact:** DMAS is administering these policies under the authority of an emergency regulation. The fiscal impact of these proposed regulations have been updated since the emergency regulation. If the Commonwealth did not have the more restrictive income and resource policies, more individuals would be eligible for Medicaid. With the stay of the injunction and the reimposition of the more restrictive policies, the Commonwealth avoids additional expenditures which otherwise would be incurred.

In October, 1990, DMAS estimated that the following expenditures would be incurred if the more restrictive income and resource policies were not resumed:

	FY 90	FY 91	FY 92
GF	\$ 324,028	\$ 1,073,058	\$ 8,103,925
NGF	324,028	1,073,058	8,103,925
<b>TOTAL</b>	<b>648,056</b>	<b>2,146,117</b>	<b>16,207,850</b>

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

Written comments may be submitted until 4:30 p.m., March 15, 1991, to Ann E. Cook, Eligibility and Regulatory Consultant, Division of Policy and Research, DMAS, 600 East Broad Street, 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

† **January 18, 1991 - 9 a.m.** – Open Meeting  
Williamsburg Hilton, 50 Kingsmill Road, Williamsburg, Virginia. ☒

**January 22, 1991 - 9:30 a.m.** – Open Meeting  
† **January 25, 1991 - 10 a.m.** – Open Meeting  
Sheraton-Fredericksburg Resort and Conference Center, I-95 and Route 3, Fredericksburg, Virginia. ☒

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia.

Public comment will not be received.

**Contact:** Karen D. Waldron, Deputy Executive Director, Disc., 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9908 or (804) 662-9943/TDD ☒

\* \* \* \* \*

**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 Dr., Richmond, VA 23229-5005, telephone (804) 662-9925.

\* \* \* \* \*

**February 7, 1991 - 8 a.m.** – Open Meeting  
**February 8, 1991 - 8 a.m.** – Open Meeting  
**February 9, 1991 - 8 a.m.** – Open Meeting  
**February 10, 1991 - 8 a.m.** – Open Meeting  
Department of Health Professions, Board Room 1, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The full board will meet on February 7 in open session to conduct general board business and discuss any other items which may come before the board. The board will also meet on Friday, Saturday, and Sunday, to review reports, interview licensees and make decisions on discipline matters.

# Calendar of Events

---

Public comment will be received at the conclusion of the meeting.

## Advisory Board on Occupational Therapy

**January 22, 1991 - 10 a.m. – Open Meeting**  
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to review the bylaws and the application process, and any other business which may come before it.

Public comments will be entertained at the conclusion of the meeting.

## Advisory Board on Physical Therapy

**January 18, 1991 - 9 a.m. – Open Meeting**  
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to review and discuss regulations, bylaws, procedural manuals, receive reports, and other items which may come before the Advisory Board.

Public comment will not be received.

## Advisory Board on Respiratory Therapy

**January 25, 1991 - 2 p.m. – Open Meeting**  
Embassy Suites Hotel, Suite 200, 2925 Emerywood Parkway, Richmond, Virginia. ☒

A meeting to review current bylaws, regulations (VR 465-04-01), and to consider any other matters which may come before it.

Public comments will be received at the conclusion of the business meeting.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-9925.

## STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **January 23, 1991 - 10 a.m. – Open Meeting**  
James Madison Building, 13th Floor Conference Room, Richmond, Virginia. ☒

A regular monthly meeting. The agenda will be published on January 16 and may be obtained by calling Jane Helfrich.

Tuesday: Informal session - 6 p.m.

Wednesday: Committee meetings 8:45 a.m. and Regular session 10 a.m.

See agenda for location.

**Contact:** Jane V. Helfrich, Board Administrator, State MHMRSAS Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3912.

## 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, 500 East Broad Street, Richmond, Virginia. ☒

Fourteenth Annual Symposium on Mental Health and the Law. An annual symposium addressing issues related to mental health and the law. Approximately nine 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.

## VIRGINIA MILITARY INSTITUTE

### Board of Visitors

† **February 16, 1991 - 8:30 a.m. – Open Meeting**  
Virginia Military Institute, Smith Hall Board Room, Smith Hall, Lexington, Virginia. ☒

A regular meeting of the VMI Board of Visitors to consider committee reports and reports on visits to academic departments.

**Contact:** Colonel Edwin L. Dooley, Jr., Secretary to BOV, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206.

## MOTOR VEHICLE DEALERS' ADVISORY BOARD

**January 18, 1991 - 9:30 a.m. – Open Meeting**  
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Virginia Department of Motor Vehicles will host a quarterly meeting of the Motor Vehicle Dealers' Advisory Board. The board will discuss issues and plans concerning the administration of the Motor Vehicle Dealer Licensing Act.

**Contact:** Jerome L. Stein, Manager, Dealer and Records, 2300 W. Broad St., Room 521, Richmond, VA 23220, telephone (804) 367-0455 or 367-1752/TDD ☒

## VIRGINIA MUSEUM OF NATURAL HISTORY

### Board of Trustees

**January 17, 1991 - 9 a.m. - Open Meeting**  
Jefferson-Sheraton Hotel, Franklin and Adams Streets,  
Richmond, Virginia. ☒

The meeting will include reports from the executive, finance, education and exhibits, marketing, personnel, planning/facilities, and research and collections committees.

Public comment will be received following approval of the minutes of the October meeting.

**Contact:** Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (703) 666-8616, SCATS 857-6950 or (703) 666-8638/TDD ☎

### BOARD OF NURSING

**January 28, 1991 - 9 a.m. - Open Meeting**  
**January 29, 1991 - 9 a.m. - Open Meeting**  
**January 30, 1991 - 9 a.m. - Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive,  
Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

Regular meeting of the Virginia Board of Nursing to consider matters related to nursing education programs, discipline of licensees, licensing by examination and endorsement and other matters under the jurisdiction of the board.

Public comment will be received during an open forum session beginning at 11 a.m. on Monday, January 28, 1991.

**February 22, 1991 - 1 p.m. - Open Meeting**  
**February 23, 1991 - 8:30 a.m. - Open Meeting**  
Holiday Inn on the Ocean, 39th and Atlantic Avenue,  
Virginia Beach, Virginia. ☒ (Interpreter for deaf provided upon request)

The board will meet in a work-study session to review its operations, organization and responsibilities for the purpose of improving its effectiveness and efficiency in fulfilling the statutory duties assigned to the board.

No public comment will be received.

### Examination Committee

**February 15, 1991 - noon - Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive,  
Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

The Board of Nursing Examination Committee will convene in open session and go into Executive Session for the purpose of reviewing the National Council Licensing Examination for Registered Nurses. The meeting will reconvene in open session prior to adjournment.

No public comment will be received.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909, toll-free 1-800-533-1560 or (804) 662-7197/TDD ☎

### BOARD OF PROFESSIONAL COUNSELORS

**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.

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 Dr., 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.

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 Dr., Suite 200,



# Calendar of Events

---

Richmond, VA 23229, telephone (804) 662-9912.

† **January 25, 1991 - 10 a.m.** – Open Meeting  
9504-A Lee Highway, Fairfax, Virginia.

Examination Committee meeting of the board.

**Contact:** Joyce D. Williams, Administrative Assistant, Department of Health Professions, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9912.

**January 31, 1991 - 9 a.m.** – Open Meeting  
**February 1, 1991 - 9 a.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

Informal conferences.

**Contact:** Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9912.

## PRIVATE SECURITY SERVICES ADVISORY COMMITTEE

**January 30, 1991 - 10 a.m.** – Open Meeting  
Department of Criminal Justice Services, 805 East Broad Street, 11th Floor Conference Room, Richmond, Virginia. ☒

A business meeting.

**Contact:** Paula J. Scott, Staff Executive, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

## BOARD OF PSYCHOLOGY

† **January 23, 1991 - 6 p.m.** – Open Meeting  
† **January 24, 1991 - 8 a.m.** – Open Meeting  
† **January 25, 1991 - 8 a.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

Wednesday – Orientation Session  
Thursday and Friday – Oral Examinations

Public comment will not be received.

† **January 25, 1991 - 2 p.m.** – Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to conduct general board business and to certify oral examination results.

Public comment will not be received.

**Contact:** Evelyn B. Brown, Executive Director, 1601 Rolling Hills Dr., Suite 200, Richmond, VA 23229-5005, telephone

(804) 662-9913 or (804) 662-7197/TDD ☎

## REAL ESTATE APPRAISER BOARD

### Application Committee

† **January 23, 1991 - 9 a.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to review and comment on draft application forms.

**Contact:** Demetra Y. Kontos, Assistant Director, Appraiser Board, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-2175 or (804) 367-9753/TDD ☎

## BOARD FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

† **January 16, 1991 - 10 a.m.** – Open Meeting  
101 North 14th Street, 1st Floor, Conference Rooms C and D, Richmond, Virginia. (Interpreter for deaf provided upon request)

A quarterly meeting to discuss and review current, on-going, and completed projects.

**Contact:** Meade Boswell, Administrator, 101 N. 14th St., 17th Floor, James Monroe Bldg., Richmond, VA 23219, telephone (804) 225-5042, toll-free 1-800-552-3962/TDD ☎

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

**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 Friedenberg, Legislative Analyst, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **March 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 for Professional Soil Scientists intends to amend regulations entitled: **VR 627-02-01. Board for Professional Soil Scientists Regulations.** The proposed action will amend fees to assure the board's compliance with § 54.1-113 of the Code of Virginia.

### STATEMENT

Preliminary Statement of Basis, Purpose, Summary and Impact:

Pursuant to § 54.1-113 of the Code of Virginia the Virginia Board for Professional Soil Scientists proposes to amend its regulations to adjust all fees. These regulations apply directly to approximately six certified soil scientists in Virginia.

The purpose of the proposed amendments is to adjust all fees 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 of Virginia.

The proposed amendment will increase the fee for initial application from \$125 to \$1,250. While this amount can be considered cost prohibitive, the increase is necessary to meet the costs incurred by this program since its initial start up. Section 54.1-113 of the Code of Virginia requires that the board adjust fees to cover these increased costs.

The proposed amendment will increase the fee for examination and reexamination from \$75 to \$100. While this amount can be considered cost prohibitive, the increase is necessary to meet the costs incurred by this program since its initial start up. Section 54.1-113 of the Code of Virginia requires that the board adjust fees to cover these increased costs.

The proposed amendment will increase the fee for renewal from \$175 to \$1,250 and the late renewal fee from \$200 to \$1,250. While this amount can be considered cost prohibitive, the increase is necessary to meet the costs incurred by this program since its initial start up. Section 54.1-113 of the Code of Virginia requires that the board adjust fees to cover these increased costs.

The proposed amendment will increase the fee for reinstatement from \$200 to \$2,500. While this amount can be considered cost prohibitive, the increase is necessary to meet the costs incurred by this program since its initial start up. Section 54.1-113 of the Code of Virginia requires that the board adjust fees to cover these increased costs.

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

Virginia.

Written comments may be submitted until March 18, 1991.

**Contact:** Nelle P. Hotchkiss, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

## COMMONWEALTH TRANSPORTATION BOARD

**January 16, 1990 - 2 p.m. – Open Meeting**  
Virginia Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

**January 17, 1990 - 10 a.m. – Open Meeting**  
Virginia Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.★B02★ Public comment will be received at the outset of the meeting, on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

**Contact:** John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6670.

## VIRGINIA RACING COMMISSION

† **January 16, 1991 - 1 p.m. – Open Meeting**  
VSRS Building, 1204 East Main Street, Richmond, Virginia. ☒

A regular commission meeting including review of proposed regulations pertaining to the conduct of flat racing, jump, quarter horse and standardbred racing as well as prohibited acts and appeal hearings.

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

## 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

# Calendar of Events

---

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 Ave., Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-662-2155.

## VIRGINIA VOLUNTARY FORMULARY 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 SCATS 786-3596.

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

**January 17, 1991 - 7 p.m. – Open Meeting**  
Hanover County Board Room, Wickham Building, Hanover, Virginia.

Pursuant to the requirements of Part IX of the Solid Waste Management Regulations (VR 672-20-10, § 9.4 B), the director tentatively proposes to grant a variance to Hanover County for installation of a liner on a section of Hanover County Landfill (Permit No. 314). Public comments will be received until January 17, 1991. Pursuant to the requirements of Part VII of the Solid Waste Management Regulations (VR 672-20-10, § 7.14), the director proposes to amend Hanover County Landfill Permit (No. 314) and conduct a public hearing. The amendment is available for public review and comment.

**Contact:** William F. Gilley, P.E., Director, Division of Regulation, 11th Floor, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2667 or (804) 371-8737/TDD ☎

† **February 11, 1991 - 1 p.m. – Open Meeting**  
Monroe Building, Conference Room C, 101 North 14th Street, Richmond, Virginia. ☐

This meeting is an informational one, designed to solicit from interested parties suggestions on the development of a regulation for the certification of "recycling" equipment. Such certification would allow the purchaser to apply for any available tax

exemption for such equipment from the local governing body.

**Contact:** G. Stephen Coe, Program Analyst, Department of Waste Management, 11th Floor, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 786-8679, SCATS 371-0044, toll-free 1-800-533-7488 or (804) 371-8737/TDD ☎

## STATE WATER CONTROL BOARD

† **February 20, 1991 - 7 p.m. – Open Meeting**  
Roanoke County Administration Center, Community Room, 3738 Brambleton Avenue, S.W., Roanoke, Virginia.

The purpose of the meeting is to receive comments on the proposed amendment of the Roanoke River Basin Water Quality Management Plan and the adoption of the Upper Roanoke River Sub-area Water Quality Management Plan. The specifics of the proposals can be found in the General Notices Section.

**Contact:** Wellford S. Estes, State Water Control Board, West Central Regional Office, P.O. Box 7017, Roanoke, VA 24019, telephone (703) 857-7432

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**February 13, 1991 - 10 a.m. – Public Hearing**  
Department of Commerce, 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 Board for Waterworks and Wastewater Works Operators intends to amend regulations entitled: **VR 675-01-02. Board for Waterworks and Wastewater Works Operators Regulations.** The proposed regulation will adjust the fee structure of the board and bring its application in line with these adjustments for waterworks/wastewater works operators in the Commonwealth.

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

Written comments may be submitted until March 4, 1991.

**Contact:** Gerald W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

## THE COLLEGE OF WILLIAM AND MARY Board of Visitors

† **January 31, 1991 - 3 p.m. – Open Meeting**  
† **February 1, 1991 - 7:30 a.m. – Open Meeting**  
Campus Center, Jamestown Road, Williamsburg, Virginia. ☐

A regularly scheduled meeting to (i) review quarterly operations of the college and Richard Bland College, (ii) receive reports from several committees of the board, and (iii) to act on those resolutions that are presented by the administrations of William and Mary and Richard Bland College.

An informational release will be available four days prior to the board meeting for those individuals and organizations who request it.

**Contact:** Mr. William N. Walker, Director, University Relations, Office of University Relations, James Blair Hall, Room 101 C, College of William and Mary, Williamsburg, VA 23185, telephone (804) 221-1004.

## LEGISLATIVE

### Notice to Subscribers

Legislative meetings held during the Session of the General Assembly are exempt from publication in The Virginia Register of Regulations. You may call Legislative Information for information on standing committee meetings. The number is (804) 786-6530.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### January 14

ASAP Policy Board - Valley  
Cosmetology, Board For  
† Health Professions, Board of  
† - Compliance and Discipline Committee  
† - Regulatory Research Committee  
Hearing Aid Specialists, Board For  
Local Government, Commission on

#### January 15

† Health Professions, Board of  
† - Executive/Legislative Committee  
† - Committee on Professional Education and Public Affairs  
Housing Development Authority, Virginia

#### January 16

† Conservation and Recreation, Department of  
† - Advisory Board  
Contractors, Board for  
Corrections, Board of  
† Elections, State Board of  
† Emergency Planning Committee, Local - Roanoke Valley  
Library Board  
† Rights of Virginians with Disabilities, Board for  
Transportation Board, Commonwealth

† Virginia Racing Commission

#### January 17

Conservation and Recreation, Department of  
- Virginia Soil and Water Conservation Board  
† Museum of Natural History, Virginia  
- Board of Trustees  
Game and Inland Fisheries, Board of  
Transportation Board, Commonwealth  
Visually Handicapped, Board for the  
Voluntary Formulary Board, Virginia

#### January 18

Child Day-Care Council  
Game and Inland Fisheries, Board of  
Geology, Board for  
† Medicine, Board of  
- Advisory Board on Physical Therapy  
Motor Vehicle Dealers' Advisory Board

#### January 21

Local Emergency Planning Committee, County of  
Prince William, City of Manassas, and City of  
Manassas Park

#### January 22

Community Colleges, State Board For  
Health Services Cost Review Council, Virginia  
† Marine Resources Commission  
Medicine, Board of  
- Advisory Board on Occupational Therapy

#### January 23

† Alcoholic Beverage Control Board  
† Conservation and Recreation, Department of  
† - Goose Creek Scenic River Advisory Board  
† - Division of Planning and Recreation Resources  
Emergency Planning Committee, Local - Gloucester  
Lottery Board, State  
† Mental Health, Mental Retardation and Substance  
Abuse Services, Board, State  
† Psychology, Board of  
† Real Estate Appraiser Board  
† - Application Committee

#### January 24

Education, Board of  
† Psychology, Board of

#### January 25

† Air Pollution Control Board, State  
Child Day-Care Council  
Compensation Board  
Education, Board of  
† Family and Children's Trust Fund of Virginia  
† - Board of Trustees  
Medicine, Board of  
- Advisory Board on Respiratory Therapy  
† Professional Counselors, Board of  
† Psychology, Board of

# Calendar of Events

---

## January 26

Conservation and Recreation, Department of  
- Virginia Cave Board

## January 28

Accountancy, Board For  
† Health, Board of  
† Medical Assistance Services, Department of  
Nursing, Board of

## January 29

Accountancy, Board For  
Hazardous Materials Training Committee  
† Health, Board of  
Nursing, Board of

## January 30

Court Appointed Special Advocate Program Advisory  
Committee  
Nursing, Board of  
Private Security Services Advisory Committee

## January 31

Professional Counselors, Board of  
† William and Mary, The College of  
† - Board of Visitors

## February 1

Child Day-Care Council  
† Long-Term Care Council  
Professional Counselors, Board of  
† William and Mary, The College of  
† - Board of Visitors

## February 4

† Alcoholic Beverage Control Board

## February 5

Hopewell Industrial Safety Council

## February 7

Local Emergency Planning Committee, Chesterfield  
County  
Medicine, Board of

## February 8

Child Day-Care Council  
† Longwood College  
† - Board of Visitors  
Medicine, Board of

## February 9

Medicine, Board of

## February 10

Medicine, Board of

## February 11

† Waste Management, Department of

## February 13

Corrections, Board of

## February 14

† Housing and Community Development, Department  
of  
† - Regulatory Effectiveness Advisory Committee

## February 15

Nursing, Board of  
- Examination Committee

## February 16

† Virginia Military Institute  
† - Board of Visitors

## February 18

Local Emergency Planning Committee, County of  
Prince William, City of Manassas, and City of  
Manassas Park

## February 20

† Alcoholic Beverage Control Board  
† Water Control Board, State

## February 22

Nursing, Board of

## February 23

Nursing, Board of

## February 26

† Health Services Cost Review Council, Virginia

## February 27

Lottery Board, State

## February 28

Education, Board of

## March 1

Education, Board of

## March 4

† Alcoholic Beverage Control Board

## March 5

Hopewell Industrial Safety Council

## March 7

Local Emergency Planning Committee, Chesterfield  
County  
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

**March 13**

Corrections, Board of

**March 14**

Compensation Board

**March 18**

† Alcoholic Beverage Control Board  
Local Emergency Planning Committee, County of  
Prince William, City of Manassas, and City of  
Manassas Park

**March 27**

Lottery Board, State

**March 28**

† Aging, Department for the  
† - Long-Term Care Ombudsman Program Advisory  
Council

## PUBLIC HEARINGS

**January 14**

† Marine Resources Commission  
Professional Counselors, Board of  
Waste Management, Department of

**January 18**

† Air Pollution Control, Department of  
Geology, Board for

**January 22**

† Marine Resources Commission

**February 11**

Barbers, Board For

**February 13**

Waterworks and Wastewater Works Operators, Board  
for

**February 20**

† Historic Resources, Department of

**February 27**

Lottery Department, State

**March 11**

Architects, Professional Engineers, Land Surveyors and  
Landscape Architects, Board for

**March 14**

Commerce, Department of

# Calendar of Events

---