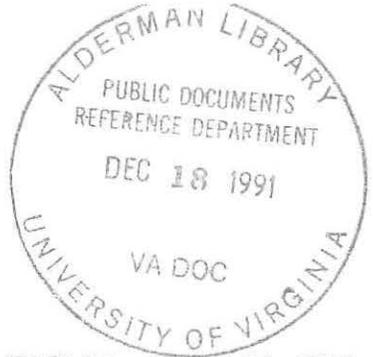
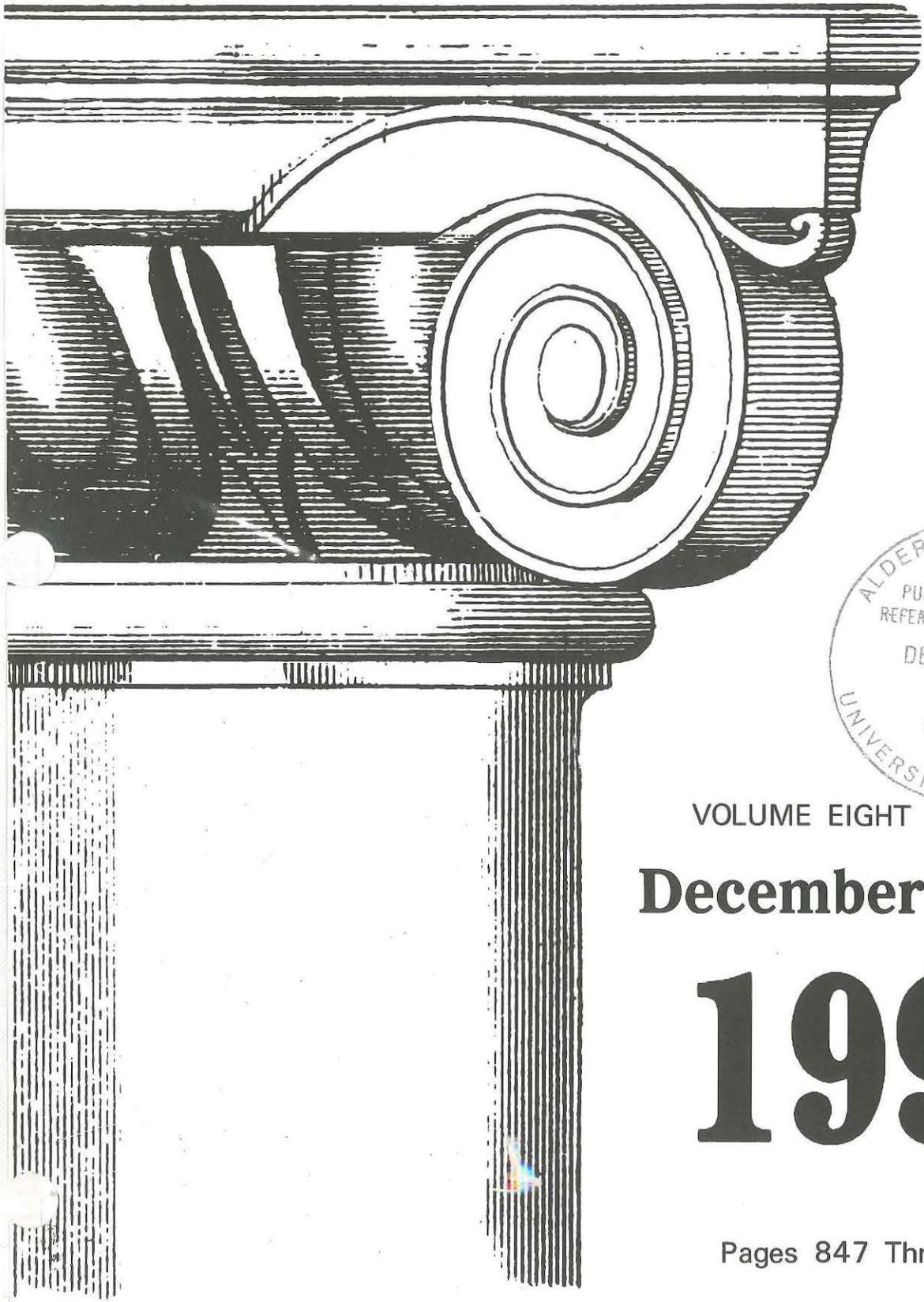


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# THE VIRGINIA REGISTER

OF REGULATIONS

VA  
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VOLUME EIGHT • ISSUE SIX

**December 16, 1991**

# 1991

Pages 847 Through 1032

## 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

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VIRGINIA REGISTER OF REGULATIONS

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July 1991 through September 1992

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July 10	July 29
July 24	Aug. 12
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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	

Dec. 24 (Tuesday)	Jan. 13, 1992
Jan. 8	Jan. 27
Jan. 22	Feb. 10
Feb. 5	Feb. 24
Feb. 19	Mar. 9
Mar. 4	Mar. 23
Index 2 - Volume 8	

Mar. 18	Apr. 6
Apr. 1	Apr. 20
Apr. 15	May 4
Apr. 29	May 18
May 13	June 1
May 27	June 15
Index 3 - Volume 8	

June 10	June 29
June 24	July 13
July 8	July 27
July 22	Aug. 10
Aug. 6	Aug. 24
Aug. 19	Sept. 7
Sept. 2	Sept. 21
Final Index - Volume 8	

---

# TABLE OF CONTENTS

---

## NOTICES OF INTENDED REGULATORY ACTION

Notices of Intent ..... 849

## PROPOSED REGULATIONS

### DEPARTMENT OF TAXATION

Nonprescription Drugs and Proprietary Medicines.  
(VR 630-10-74.1) ..... 853

### STATE WATER CONTROL BOARD

Virginia Water Protection Permit Regulation. (VR  
680-15-02) ..... 854

## FINAL REGULATIONS

### ALCOHOLIC BEVERAGE CONTROL BOARD

Procedural Rules for the Conduct of Hearings  
Before the Board and Its Hearing Officers and the  
Adoption or Amendment of Regulations. (VR  
125-01-1) ..... 869

Advertising. (VR 125-01-2) ..... 888

Tied House. (VR 125-01-3) ..... 895

Retail Operations. (VR 125-01-5) ..... 901

Manufacturers and Wholesalers Operations. (VR  
125-01-6) ..... 912

Other Provisions. (VR 125-01-7) ..... 917

### COUNCIL ON THE ENVIRONMENT

Public Participation Guidelines. (VR 305-01-001) ..... 924

### BOARD FOR HEARING AID SPECIALISTS

Board for Hearing Aid Specialists Regulations. (VR  
375-01-02) ..... 926

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

Virginia Uniform Statewide Building Code, Volume I  
- New Construction Code/1990. (VR 394-01-21) ..... 932

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Rules and Regulations - General Provisions for  
Programs of the Virginia Housing Development  
Authority. (VR 400-01-0001) ..... 963

Rules and Regulations for Multi-Family Housing  
Developments. (VR 400-02-0001) ..... 967

Rules and Regulations for Single Family Mortgage  
Loans to Persons and Families of Low and  
Moderate Income. (VR 400-02-0003) ..... 982

Rules and Regulations for Multi-Family Housing  
Developments for Mentally Disabled Persons. (VR  
400-02-0013) ..... 982

Rules and Regulations for the Acquisition of  
Multi-Family Housing Developments. (VR  
400-02-0014) ..... 992

## EMERGENCY REGULATIONS

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

State Plan for Medical Assistance Relating to  
Disproportionate Share Payment Adjustments.

Methods and Standards for Establishing  
Payment Rates - In-Patient Hospital Care. (VR  
460-02-4.1910) ..... 1004

## STATE CORPORATION COMMISSION

### FINAL REGULATIONS

#### Bureau of Insurance

Unfair Trade Practices Concerning Automobile  
Glass Claims. (12-91) ..... 1006

#### Bureau of Insurance

Preneed Funeral Contracts Funded by Life  
Insurance or Annuities. (13-91) ..... 1006

## STATE LOTTERY DEPARTMENT

"Lucky Game Show Sweepstakes"; Final Rules for  
Game Operation. (28-91) ..... 1008

"Cash Explosion"; Virginia Lottery Retailer Cashing  
Promotional Program and Rules. (29-91) ..... 1008

# Table of Contents

---

"Lucky Game Show Sweepstakes," Final Rules for Game Operation; Revised. (30-91) ..... 1008

Certain Director's Orders Rescinded. (31-91) ..... 1008

## GOVERNOR

### GOVERNOR'S COMMENTS

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

Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations. (VR 130-01-2) ..... 1010

#### **DEPARTMENT OF SOCIAL SERVICES (BOARD OF)**

Aid to Dependent Children (ADC) Program - Elimination of Monthly Reporting. (VR 615-01-37) .... 1010

#### **DEPARTMENT OF SOCIAL SERVICES (BOARD OF) AND CHILD DAY-CARE COUNCIL**

General Procedures and Information for Licensure. (VR 615-30-01, VR 175-03-01) ..... 1010

## GENERAL NOTICES/ERRATA

### GENERAL NOTICES

#### **VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM**

Request for Review of Draft Document. .... 1011

#### **DEPARTMENT OF CRIMINAL JUSTICE SERVICES**

Public Notice of Intention to Submit an Application for Federal Funds to the Bureau of Justice Assistance, U.S. Department of Justice. .... 1011

#### **COUNCIL ON THE ENVIRONMENT**

An Environmental Impact Assessment for an Exploratory Oil or Gas Well to be Drilled in Essex County, Virginia. .... 1012

#### **DEPARTMENT OF HEALTH (STATE BOARD OF)**

Public Notice Regarding Private Well Regulations Pertaining to Class IV (Nondrinking Water) Wells. .. 1013

## DEPARTMENT OF LABOR AND INDUSTRY

Occupational Exposure to Indoor Air Pollutants; Request for Information. .... 1013

### NOTICE TO STATE AGENCIES

Notice of change of address. .... 1013

Forms for filing material on dates for publication. .. 1013

### ERRATA

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

Methods and Standards for Other Types of Services: Obstetric and Pediatric Payments. (VR 460-03-4.1921) ..... 1013

## CALENDAR OF EVENTS

### EXECUTIVE

Open Meetings and Public Hearings ..... 1015

### LEGISLATIVE

Open Meetings and Public Hearings ..... 1029

### CHRONOLOGICAL LIST

Open Meetings ..... 1029

Public Hearings ..... 1030

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# NOTICES OF INTENDED REGULATORY ACTION

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<b>Symbol Key †</b>
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† Indicates entries since last publication of the Virginia Register
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## BOARD OF AVIATION

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Aviation intends to consider repealing existing regulations and promulgating new regulations entitled: **Regulations of the Department of Aviation**. The purpose of the proposed action is to solicit public comments and update current aviation regulations as to their effectiveness.

Statutory Authority: § 5.1-2.15 of the Code of Virginia.

Written comments may be submitted until December 22, 1991.

**Contact:** Keith F. McCrea, AICP, Aviation Planner, Department of Aviation, 4508 S. Laburnum Avenue, Richmond, VA 23231-2422, telephone (804) 786-1365 or toll-free 1-800-292-1034.

## DEPARTMENT OF COMMERCE

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Commerce intends to consider repealing the existing regulation entitled: **VR 190-05-01. Asbestos Licensing Regulations** and promulgating new regulations entitled: **VR 190-05-1:1. Asbestos Licensing Regulations**. The purpose of the proposed action is to review the entire regulation with special attention to sections pertaining to definitions, project designers, asbestos contractors, the exemption process and the training requirements.

Statutory Authority: § 36-99.7 and Chapter 5 (§§ 54.1-500 through 54.1-517) of Title 54.1 of the Code of Virginia.

Written comments may be submitted until January 18, 1992.

**Contact:** Nelle Hotchkiss, Assistant Director, Virginia Asbestos Licensing Program, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595.

## BOARD FOR CONTRACTORS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Contractors intends to consider amending regulations entitled: **VR 220-01-2. Board for Contractors Licensing Regulations**. The purpose of the proposed action is to solicit public comment on all existing regulations as to their effectiveness, efficiency, clarity and necessity.

Statutory Authority: § 54.1-1102 of the Code of Virginia.

Written comments may be submitted until December 20, 1991.

**Contact:** Martha LeMond, Assistant Director, 3600 West Broad Street, Richmond, Virginia 23230, telephone (804) 367-8557.

## DEPARTMENT FOR THE DEAF AND HARD OF HEARING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard of Hearing intends to consider amending regulations entitled: **VR 245-03-01. Regulations Governing Interpreter Services for the Hearing Impaired**. The purpose of the proposed action is to amend current regulations to incorporate guidelines for administration of a Cued Speech Assessment within the section of the regulations related to the Quality Assurance Screening.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until January 2, 1992.

**Contact:** Kathy E. Vesley, Deputy Director, Department for the Deaf and Hard of Hearing, Washington Building, Capitol Square, 1100 Bank Street, 12th Floor, Richmond, Virginia 23219, telephone (804) 225-2570/Voice/TDD ☎ or toll-free 1-800-552-7917/Voice/TDD ☎

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Education intends to consider amending regulations entitled: **VR 270-01-0012. Standards for Accrediting Public Schools in Virginia**. The purpose of the proposed action is to provide

# Notices of Intended Regulatory Action

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minimum standards to give guidance and direction to assist schools in their continuing efforts to offer educational programs to meet the needs, interests, and aspirations of all students. The amendments are necessary to reflect changes in the missions of the Board of Education and the Department of Education. The board is also adopting new goals as part of the Standards of Quality.

Statutory Authority: §§ 22.1-19 and 22.1-253.13:3 (B) of the Code of Virginia.

Written comments may be submitted until December 30, 1991.

**Contact:** Ms. Lin Corbin-Howerton, Lead Policy Analysts, Virginia Department of Education, P.O. Box 6Q, Richmond, Virginia 23216, telephone (804) 225-2092, (804) 225-2543 or toll-free 1-800-292-3820.

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Education intends to consider amending regulations entitled: **VR 270-01-0009. Regulations Governing Literary Loan Applications in Virginia.** The purpose of the proposed action is to amend current regulation in order to provide additional literary fund incentives for local school divisions.

Statutory Authority: §§ 22.1-142 through 22.1-161 of the Code of Virginia.

Written comments may be submitted until January 24, 1992.

**Contact:** Robert L. Aylor, Director, Accounting and Finance, Department of Education, P.O. Box 6Q, Richmond, Virginia 23216-2060, telephone (804) 225-2040.

## 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 amending regulations entitled: **Regulations of the Board of Funeral Directors and Embalmers.** The purpose of the proposed action is to delete all references to the resident trainee program which have now been included in their entirety in the regulations entitled "Resident Trainee Regulations for Funeral Services."

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

Written comments may be submitted until December 18, 1991.

**Contact:** Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-7390 or SCATS (804) 662-9907.

## 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 amending regulations entitled: **Resident Trainee Program for Funeral Services.** The purpose of the proposed action is to add additional language which places a maximum limit on the time a trainee can remain in the trainee program.

Statutory Authority: § 54.1-2817 of the Code of Virginia.

Written comments may be submitted until December 18, 1991.

**Contact:** Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-7390 or SCATS (804) 662-9907.

## † 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 amending regulations entitled: **VR 320-01-03. Preneed Funeral Planning Regulations.** The purpose of the proposed action is to add additional regulations and clarification to existing regulations regarding preneed funeral planning in the Commonwealth in response to House Bill 1906.

Statutory Authority: §§ 54.1-2803 and 54.1-2820 of the Code of Virginia.

Written comments may be submitted until January 27, 1992.

**Contact:** Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9907.



## DEPARTMENT OF HEALTH (STATE BOARD OF)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-200. Sanitary Regulations for Hotels.** The

# Notices of Intended Regulatory Action

purpose of the proposed action is to specify requirements for hotels to protect public health.

Statutory Authority: §§ 32.1-12, 35.1-11 and 35.1-13 of the Code of Virginia.

Written comments may be submitted until December 31, 1991.

**Contact:** John Benko, Director, Bureau of Food and General Environmental Services, Virginia Department of Health, P.O. Box 2448, Suite 144, Richmond, VA 23218, telephone (804) 786-3559.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-300. Sanitary Regulations for Summer Camps.** The purpose of the proposed action is to specify the requirements for summer camps to protect the public health.

Statutory Authority: §§ 32.1-12, 35.1-11 and 35.1-16 of the Code of Virginia.

Written comments may be submitted until December 31, 1991.

**Contact:** John Benko, Director, Bureau of Food and General Environmental Services, Virginia Department of Health, P.O. Box 2448, Suite 144, Richmond, VA 23218, telephone (804) 786-3559.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-400. Sanitary Regulations for Campgrounds.** The purpose of the proposed action is to specify the requirements for campgrounds to protect the public health.

Statutory Authority: §§ 32.1-12, 35.1-11 and 35.1-17 of the Code of Virginia.

Written comments may be submitted until December 31, 1991.

**Contact:** John Benko, Director, Bureau of Food and General Environmental Services, Virginia Department of Health, P.O. Box 2448, Suite 144, Richmond, VA 23218, telephone (804) 786-3559.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-500. Regulations Governing Swimming Pools at**

**Hotels, Motels, Campgrounds, Summer Camps and Related Facilities.** The purpose of the proposed action is to specify the requirements for the operation and maintenance of swimming pools at hotels, motels, campgrounds, summer camps and related facilities to protect public health.

Statutory Authority: §§ 32.1-12, 35.1-13, 35.1-16 and 35.1-17 of the Code of Virginia.

Written comments may be submitted until December 31, 1991.

**Contact:** John Benko, Director, Bureau of Food and General Environmental Services, Virginia Department of Health, P.O. Box 2448, Suite 144, Richmond, VA 23218, telephone (804) 786-3559.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider promulgating regulations entitled: **VR 355-35-700. Swimming Pool Regulations Governing the Posting of Water Quality Test Results.** The purpose of the proposed action is to ensure that all public swimming pools are maintained in a manner which does not adversely affect the public health, welfare and safety.

Statutory Authority: § 32.1-248.1 of the Code of Virginia.

Written comments may be submitted until December 31, 1991.

**Contact:** John Benko, Director, Bureau of Food and General Environmental Services, Virginia Department of Health, P.O. Box 2448, Suite 144, Richmond, VA 23218, telephone (804) 786-3559.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider promulgating regulations entitled: **Alternative Discharging Sewage Treatment System Regulations for Individual Single Family Dwellings.** The purpose of the proposed action is to regulate the installation, operation and maintenance of discharging sewage systems (aerobic treatment units, sandfilters, etc.) serving single family dwellings with flows less than 1,000 GPD. These regulations will replace the emergency discharging regulations which will expire on July 29, 1992.

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.

Written comments may be submitted until January 2, 1992.

**Contact:** Donald J. Alexander, Director, Bureau of Sewage

# Notices of Intended Regulatory Action

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and Water Services, Division of Sanitarian Services, 1500 E. Main Street, Suite 144, Richmond, VA 23219, telephone (804) 786-1750.

## BOARD OF MEDICINE

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-08-01. Regulations for Certification of Occupational Therapists.** The purpose of the proposed action is to (i) define the Test of English as a Foreign Language; (ii) correct a technical error of reference in § 2.2. C and interchange subsections B and C; (iii) establish the Test of English as a requirement for certification for foreign-trained occupational therapists; and (iv) grammatically correct § 2.3 F.

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

Written comments may be submitted until January 2, 1992, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 1601 Rolling Hills Drive, Richmond, Virginia 23229.

**Contact:** Eugenia K. Dorson, Deputy Executive Director of Licensure, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9923.

## BOARD OF PROFESSIONAL COUNSELORS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider amending regulations entitled: **VR 560-01-02. Regulations Governing the Practice of Professional Counseling.** The purpose of the proposed action is to consider the deletion of oral examinations and invite public comment.

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

Written comments may be submitted until December 31, 1991.

**Contact:** Evelyn B. Brown, Executive Director, Board of Professional Counselors, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9912.

## DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

public participation guidelines that the Board of Social Services intends to consider amending regulations entitled: **Child Support Enforcement Program.** The purpose of the proposed action is to change the basis of a default obligation from the ADC grant amount to a higher figure that will be based on poverty level.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until December 20, 1991, to Penny Pellow, Policy Unit, 8007 Discovery Drive, Richmond, Virginia 23229.

**Contact:** Margaret J. Friedenber, Legislative Analyst, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider repealing existing regulations and promulgating new regulations entitled: **VR 615-25-01. Minimum Standards for Licensed Group Family Day Care Homes.** The purpose of the proposed action is to repeal the existing Minimum Standards Licensed Family Day Care Homes while concurrently promulgating Minimum Standards for Licensed Group Family Day Care Homes.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until January 2, 1992, to Gayle Turner, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

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

## DEPARTMENT OF THE TREASURY (STATE TREASURER)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Treasurer intends to consider promulgating regulations entitled: **VR 640-04. Escheats Generally Statute Regulations.** The purpose of the proposed action is to adopt necessary rules and regulations to carry out the provisions of the Escheats Generally Statutes.

Statutory Authority: § 55-200.1 of the Code of Virginia.

Written comments may be submitted until January 2, 1992.

**Contact:** Robert S. Young, Director of Financial Policy, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-3131.

# 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 TAXATION

### Title of Regulation: VR 630-10-74.1. Nonprescription Drugs and Proprietary Medicines.

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

Public Hearing Date: January 24, 1992 - 9 a.m.  
(See Calendar of Events section for additional information)

### Summary:

*This regulation explains the exemption from the retail sales and use tax for nonprescription drugs and proprietary medicines purchased for the cure, mitigation, treatment, or prevention of disease in human beings. The terms "nonprescription drug" and "proprietary medicine" are defined and several categories and examples of taxable and exempt drugs and drug-related products are provided. Cosmetic and toiletry items generally are taxable unless they contain medicinal ingredients and are principally for use as medical treatment.*

*The exemption is effective July 1, 1992.*

### VR 630-10-74.1. Nonprescription Drugs and Proprietary Medicines.

#### § 1. Definitions.

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

"Cosmetic" means all articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness or altering the appearance, and articles intended for use as a component of any such articles. It includes, but is not limited to, cold creams, suntan products, makeup, and body lotions.

"Nonprescription drug" means a drug or any substance or mixture of substances containing medicines, pharmaceuticals, or drugs for which no prescription is required and generally sold for internal or external use in the cure, mitigation, treatment, or prevention of disease in human beings, or which are intended to affect the structure or any function of the human body. It excludes food, devices and components parts, or accessories for

devices.

"Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which (i) does not contain any controlled substance or marijuana as defined in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia and is not in itself poisonous, and (ii) is sold, offered, promoted or advertised directly to the general public by or under the authority of the manufacturer or primary distributor, under a trademark, trade name or other trade symbol privately owned, and the labeling of which conforms to the requirements of Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia and applicable federal law. This term does not include any drug intended for injection.

"Toilet articles" means any article advertised or held out for sale for grooming purposes and those articles which are customarily used for grooming purposes, regardless of the name by which they may be known including, but not limited to, soaps, toothpastes, hair sprays, shaving products, colognes, perfumes, shampoos, deodorants, and mouthwashes.

#### § 2. Generally.

Nonprescription drugs and proprietary medicines are not subject to the tax. This exemption is applicable regardless of the nature of the purchaser. Therefore such drugs and medicines may be purchased exempt by individuals, physicians, profit and nonprofit hospitals, and other entities. Vendors making sales of nonprescription drugs and proprietary medicines shall keep records segregating purchases and sales of exempt items. For purchases of prescription medicines and drugs, eyeglasses and related items, and durable medical equipment, see VR 630-10-65.

#### § 3. Exempt sales.

The following categories of nonprescription drugs and proprietary medicines are generally exempt:

1. Analgesics (internal and external, for relief of pain or discomfort) such as aspirin, Absorbine Jr., Ben-Gay, rubbing alcohol, Bufferin, Desitin, Diaparene, Infra-rub, Tylenol, Midol, Advil, Witch Hazel, Lanacane, Cruex, liniments, and musterole.

2. Antacids (for relief of acidity, stomach discomfort, indigestion) such as Alka Seltzer, Chooz, Di-Gel, Gelusil, Kaopectate, Maalox, Mylanta, Pepto Bismol, Riopan, Roloids, and Tums.

# Proposed Regulations

3. Antiseptics (the primary ingredient of such is used for treatment of infection) such as Clearasil Acne Creme, alcohol swabs, Bactine, boric acid, Campho-Phenique, Desenex, Foille, Medi-Quik, Clearasil Acne Treatment Cream, peroxide medicinal (not for bleaching), Phisoderm, and Sea Breeze.

4. Burn remedies (for treatment of burns or to relieve pain from burns, including sunburn) such as Americaine, nupercainal ointment, Solarcaine, and Surfaccaine.

5. Cough, cold or sore throat remedies such as inhalants, Coricidin, Aspergum, Actifed Tablets, Contac Capsules, Vaporub, Allerest Tablets, Cold Factor Capsules, Formula 44, Nyquil Cold Medicine, Robitussin, Chloraseptic Lozenges and Sprays, and medicated cough drops.

6. Dental and oral hygiene products such as analgesic toothache preparations and teething preparations.

7. Emollients (antiseptic, protective, antibiotic and anti-inflammatory) such as antibiotic ointments, boric acid, Caladryl, calamine lotion, camphor ice, medicated lip balms such as Blistex, Chap Stick, Cold Sore Lip Balm, Lobana Loto Creme, and zinc oxide ointment.

8. Eye preparations (for healing, treatment, or other therapeutic use) such as contact lens solutions, drops such as Clear Eyes Drops, Murine, Visine, ointments such as Styel Ophthalmic Ointment, and washes.

9. Foot products (for treatment of infection or for removal of corns or callouses) such as athlete's foot preparations and other medicated foot powders, creams or sprays but not deodorants.

10. Laxatives and cathartics such as Alophen pills, Ex-Lax, Feenamint, Fiberall, Milk of Magnesia, mineral oil, and Metamucil.

11. Other packaged preparations such as Preparation H, Anusol Suppositories, Nupercainal Suppositories, Cortaid Ointment, Betadine Solution, and Cortef Feminine Itch Cream.

The above list is intended to be exemplary and not all inclusive.

## § 4. Taxable sales.

The following categories are examples of items which are not regarded as nonprescription drugs or proprietary medicines, and therefore do not qualify for the exemption:

1. Cosmetic and toilet articles, as defined above, except for those containing medicinal ingredients and principally for use in the treatment of medically-related conditions, such as dandruff

shampoos. Taxable cosmetics and toilet articles include, but are not limited to deodorants, beauty preparations, facial and hand creams and lotions, feminine hygiene items, powders, shampoos, oils, soaps, teeth cleaning preparations, and suntan preparations.

2. Contraceptive items.

3. Exempt items when packaged with taxable items such as contact lens lubricating solutions packaged with disinfecting solutions or first aid kits containing exempt antiseptic ointments and taxable bandages.

4. Feminine items, except those medicinally treated.

5. First aid medical supplies such as adhesive tape, plasters, and bandages, and similar supplies.

6. Household disinfectants and insecticides.

7. Reducing products such as Ayds, RDX, Tafon, and similar preparations.

8. Vitamins sold as dietary supplements or adjuncts except when sold pursuant to a physician's prescription.

The above list is intended to be exemplary and not all inclusive.

## STATE WATER CONTROL BOARD

**NOTICE:** The Board is WITHDRAWING the proposed regulation entitled "Virginia Water Protection Permit Regulation" (VR 680-15-02) published in 7:2 V.A.R. 218-233 October 22, 1990.

Title of Regulation: VR 680-15-02. Virginia Water Protection Permit Regulation.

Statutory Authority: § 62.1-44.15:5 of the Code of Virginia.

### Public Hearing Dates:

January 27, 1992 - 7:30 p.m.

January 28, 1992 - 7:30 p.m.

January 29, 1992 - 7:30 p.m.

February 3, 1992 - 7:30 p.m.

(See Calendar of Events section for additional information)

### Summary:

In accordance with § 62.1-44.15:5 of the Code of Virginia, the State Water Control Board intends to adopt regulations establishing the Virginia Water Protection Permit Regulation. This proposed regulation delineates the authority and general procedures to be followed in connection with any Virginia Water Protection Permit (VWP) issued by the board pursuant

to § 401 of the Clean Water Act (Act) and § 62.1-44.2 et seq. of the Code of Virginia.

The proposed regulation would require a VWP to be issued for activities that result in a discharge to surface waters, that require a federal permit or license, and are not permitted under the Virginia Pollutant Discharge Elimination System. Conditions of the VWP are designed to protect the beneficial uses of surface waters. VWPs issued pursuant to the proposed regulation would require that the discharge of dredge or fill material be placed in an environmentally acceptable manner.

VWPs issued in conjunction with stream intakes, reservoirs, and hydroelectric facilities would contain conditions restricting the amount and times when water withdrawals are allowed.

The proposed regulation is a substantial revision of a draft regulation proposed in October 1990. The major changes include, but are not limited to, a general reorganization to improve clarity, modification in the definitions and instream flow sections, and the requirements for complete applications.

VR 680-15-02. Virginia Water Protection Permit Regulation.

## PART I. GENERAL.

### § 1.1. Definitions.

Unless a different meaning is required by the context, the following terms, as used in these regulations, shall have the following meanings.

"Act (Clean Water Act)" means 33 USC § 1251 et seq. as amended 1987.

"Applicant" means an individual, operator or owner filing a joint permit to dredge or fill, or both, or requiring a Federal Energy Regulatory Commission (FERC) permit or conducting other activities which require a permit under this regulation.

"Approval authority" means the executive director of the State Water Control Board.

"Best management practices" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of surface waters.

"Board" means the State Water Control Board.

"Certificate" means certification required under § 401 of the Clean Water Act, provided by the State Water Control Board.

"Composite sample" means a combination of individual

samples of sediment or water taken in proportion to the area to be impacted which ensures that a representative sample is obtained.

"Consumptive use" means the withdrawal of surface waters, without recycle of said waters to their source or basin of origin.

"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

"Draft permit" means a prepared document indicating the board's tentative decision relative to a permit action.

"Dredged material" means material that is excavated or dredged from surface waters.

"Effluent" means dredged material or fill, including return flow from confined sites.

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Executive director" means executive director of the State Water Control Board.

"Fill material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a water body for any purpose.

"General permit" means a permit issued by the Corps of Engineers, such as Regional or Nationwide Permits or a permit issued by the State Water Control Board (SWCB) authorizing a specified category of activities within a geographic area.

"Ground water" means any water beneath the land surface in the zone of saturation.

"Nationwide permit" means a permit governing specified activities, issued by the U.S. Army Corps of Engineers, the conditions of which are applicable nationwide.

"Nonpoint source" means a source of pollution, such as a farm, forest or construction site runoff, urban storm water runoff or mine runoff that is not collected or discharged as a point source.

"Permit" means a Virginia Water Protection Permit (VWP) which is the Commonwealth of Virginia's § 401 Water Quality Certification.

"Permittee" means an owner or operator who currently has an effective VWP permit issued by the board.

"Person" means any firm, corporation, association, or partnership, one or more individuals, or any governmental

# Proposed Regulations

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unit or agency thereof.

"Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. It does not mean water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for the disposal purposes if approved by the Department of Mines, Minerals and Energy unless the board determines that such injection or disposal will result in the degradation of surface or ground water resources.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to the board's Procedural Rule No. 1.

"Regional permit" means a type of general permit issued by the Corps of Engineers authorizing a specified category of activities within the Commonwealth of Virginia or other specified geographic region and whose conditions are applicable within the geographic area specified.

"Schedule of compliance" means a schedule of remedial measures including a sequence of enforceable actions or operations leading to compliance with the Act, the law, and the board regulations, standards and policies.

"State general permit" means a VWP permit issued by the Commonwealth of Virginia through the State Water Control Board, and applicable statewide, for activities of minimal environmental consequence.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Surface water" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters including interstate wetlands;

3. All other waters such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including any such waters:

a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. Which are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. "Wetlands" adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.

"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the Act which after discharge will, on the basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health or other adverse environmental effects.

"Water quality standards" means water quality standards VR 680-21-00 adopted by the board.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

## § 1.2. Purpose.

This regulation delineates the procedures and requirements to be followed in connection with the Virginia Water Protection Permit issued by the board pursuant to the State Water Control Law. This regulation supersedes Procedural Rule No. 3 of the regulations of the State Water Control Board.

## § 1.3. Authority for regulations.

The authority for this regulation is pursuant to the State Water Control Law (law), Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1, in particular §§ 62.1-44.15:5, 62.1-44.15(7) and 62.1-44.15(10); and 33 USC § 1251 et seq.

## § 1.4. Federal guidelines.

The following federal guidelines are hereby incorporated by reference:

Guideline for Specification of Disposal Sites for Dredged or Fill Material 40 CFR Part 230, July, 1990.

## § 1.5. Prohibitions and requirements for permits.

A. No person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, except as authorized pursuant to a Virginia Water Protection Permit, or as excluded in § 1.6 of this regulation.

B. No permit shall be issued for the following:

1. Where the terms or conditions of the permit do not comply with state law;
2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into surface waters;
3. For any discharge which will result in the pollution of surface waters or the violation of standards, regulations or policies adopted by the board pursuant to state law.

## § 1.6. Exclusions.

The following do not require a Virginia Water Protection Permit but may require other permits under state and federal law:

1. Discharges of dredged or fill material which are addressed under a U.S. Army Corps of Engineers Regional, General or Nationwide Permit, and for which no § 401 Water Quality Certificate is required. Such permits include the following activities:
  - a. The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (33 CFR Part 66, Subchapter C, § 10).
  - b. Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (33 CFR Part 322.5(g), § 10).
  - c. The repair, rehabilitation or replacement of any previously authorized, currently serviceable structure or fill, or any currently serviceable structure or fill constructed prior to the requirement for authorization, provided such repair, rehabilitation, or replacement does not result in a deviation from the plans of the original structure or fill, and further provided that the structure or fill has not been put to uses differing from uses specified for it in any permit authorizing its original construction. Minor deviations due to changes in materials or construction techniques and which are necessary to make repair, rehabilitation, or replacement are permitted. Maintenance dredging and beach restoration are not authorized under nationwide permits (33 CFR Part 330.5(a), § 10).

d. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, eel pots, duck blinds, and clam and oyster digging (33 CFR Part 330.5(a), § 10).

e. Staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar scientific structures (33 CFR Part 330.5(a), § 10).

f. Survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory-type bore holes. Drilling of exploration-type bore holes for oil and gas exploration is not authorized by any nationwide permit (33 CFR Part 330.5(a), § 10).

g. Structures for the exploration, production, and transportation of oil, gas and minerals on the outer continental shelf within areas leased for such purposes by the Department of Interior, Mineral Management Service, provided those structures are not placed within the limits of any designated shipping safety fairway or traffic separation scheme (33 CFR Part 330.5(a), § 10).

h. Structures placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard (33 CFR Part 330.5(a), § 10).

i. Noncommercial, single boat, mooring buoys (33 CFR Part 330.5(a), § 10).

j. Temporary buoys and markers placed for recreational use such as water skiing and boat racing provided that the buoy or marker is removed within 30 days after its use has been discontinued (33 CFR Part 330.5(a), § 10).

2. Any activity permitted by a Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with VR 680-14-01;

3. Any activity permitted by a Virginia Pollution Abatement (VPA) permit in accordance with VR 680-14-01;

4. Land disposal activities including septic tanks when authorized by a State Department of Health permit or a State Department of Waste Management Permit;

5. Discharges authorized by EPA under the Safe Drinking Water Act Underground Injection Control Program (UIC).

6. a. Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage and harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices. For the purposes of subdivision

# Proposed Regulations

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6 of this subsection, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

(1) "Cultivating" means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality, or yield.

(2) "Harvesting" means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silviculture lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(3) "Minor drainage" means:

(a) The discharge of dredged or fill material incidental to connecting upland drainage facilities to surface waters, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into surface waters, and as such never require a § 401 Water Quality Certificate, and hence no Virginia Water Protection Permit;

(b) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, or other wetland crop species, where these activities and the discharge occur in surface waters which are in established use for such agricultural and silviculture wetland crop production;

(c) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Act, and which are in established use for the production of rice, or other wetland crop species;

(d) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be

accomplished within one year after such blockages are discovered in order to be eligible for exclusion.

(e) Minor drainage in surface waters is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting surface water. Any discharge of dredged or fill material into surface water incidental to the construction of any such structure or waterway requires a permit.

(4) "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of surface water to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities does not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(5) "Seeding" means the sowing of seed and placement of seedlings to produce farm, ranch or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

b. To fall under this exclusion, the activities specified in subdivision 6 a of this subsection must be part of an established (i.e., ongoing) farming, silviculture, or ranching operation, and must be in accordance with best management practices which facilitate compliance with the § 404 (b) (1) Guidelines (40 CFR Part 230). Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation.

c. Activities which bring a new area into farming, silviculture or ranching use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has

lain idle so long that modifications to the hydrological regime are necessary to resume operation. If the activity takes place outside surface waters, or does not involve a discharge, it does not need a § 401 Water Quality Certificate, and therefore no Virginia Water Protection Permit, whether or not it is part of an established farming, silviculture or ranching operation.

7. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, groins, levees, dams, riprap breakwaters, causeways, bridge abutments or approaches, and transportation structures.

8. Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance (but not construction) of drainage ditches. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exclusion.

9. Construction of temporary sedimentation basins on a construction site which does not include the placement of fill materials into surface waters. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in runoff of sediment is controlled through the use of temporary sedimentation basins.

10. Any activity with respect to which the Commonwealth of Virginia has an approved program under § 208(b)(4) of the Act which meets the requirements of § 208(b)(4)(B) and (C).

11. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to ensure that flow and circulation patterns and chemical and biological characteristics of surface waters are not impaired, that the reach of such waters is not reduced, and that any adverse effect on the aquatic environment will otherwise be minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

a. Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming,

silviculture or mining operations, and local topographic and climatic conditions;

b. All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into surface waters;

c. The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

d. The fill shall be properly stabilized and maintained to prevent erosion during and following construction;

e. Discharges of dredged or fill material into surface waters to construct road fill shall be made in a manner which minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within state waters (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

f. In designing, constructing, and maintaining roads, vegetative disturbance in surface waters shall be kept to a minimum;

g. The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

h. Borrow material shall be taken from upland sources whenever feasible;

i. The discharge shall not take, or jeopardize the continued existence of a federally or state listed threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

j. Discharges into the nesting and breeding areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

k. The discharge shall not be located in proximity of a public water supply or intake;

l. The discharge shall not occur in areas of concentrated shellfish production;

m. The discharge shall not occur in a component to the National Wild and Scenic River System;

n. The discharge material shall consist of suitable material free from toxic pollutants in toxic amounts; and

o. All temporary fills shall be removed in their

# Proposed Regulations

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entirety and the area restored to its original elevation.

## § 1.7. Effect of a permit.

A. Compliance with a VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law.

B. The issuance of a permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

## PART II.

### PERMIT APPLICATION AND ISSUANCE.

## § 2.1. Application for a permit.

### A. Duty to apply.

Any person who is required to obtain a Federal 404 permit or federal license or relicense which requires a § 401 Certification and proposes the discharge of dredged or fill material into or adjacent to surface waters, or proposes to construct an intake for the purpose of withdrawing water from surface waters which has the potential to affect the beneficial use of such waters, or is required to have a permit under § 1.5, and who does not have an effective permit except persons excluded under § 1.6 of this regulation, shall submit a complete Joint Permit Application to the State Water Control Board through the Virginia Marine Resources Commission.

1. A complete Joint Permit Application shall be completed and submitted to the Virginia Marine Resources Commission (VMRC) by any owner or applicant who discharges or proposes to discharge dredged or fill materials or requires a FERC permit before a Virginia Water Protection Permit can be issued. These applications are available from VMRC, the Norfolk District, U.S. Army Corps of Engineers, or the State Water Control Board. This item does not apply where Nationwide or General Permits, for which the board has waived certification, are applicable.

2. A complete 404/401/VWPP application to the State Water Control Board, as a minimum, consists of the following:

a. A joint 404/401/VWPP application being completed in its entirety and all maps, attachments and addenda being included;

b. The application must be accompanied by a Local Government Approval Form;

c. The application must have an original signature;

d. A detailed location map of the impact area with the latitude and longitude, hydrologic unit code, stream classification, the drainage area of the affected surface waters and the watershed in which the surface water occurs clearly identified on the map. The map should be of sufficient detail such that the site may be easily located for site inspection;

e. An assessment of functional values of the affected surface waters including information on existing beneficial uses of the surface waters at the proposed project location;

f. A complete narrative description of the project, with detailed sketches, of the type of activity to be conducted and showing any physical alteration to surface waters;

g. If dredged or fill material is involved the applicant must provide evidence that the material is free from toxic contaminants, or that the material, if not free of contaminants, will be placed in an approved disposal area;

h. An assessment of the impacts of the activity to existing beneficial uses;

i. A delineation map of all wetlands if any on the site as required by the U.S. Army Corps of Engineers or U.S. EPA or the Federal Energy Regulatory Commission, including the data utilized to develop the delineation map and the latitude and longitude of the center of the wetland area to be impacted;

j. The drainage area of any wetland identified in subdivision i above, or the watershed in which the wetland occurs;

k. A plan of mitigation for unavoidable impacts to surface waters which must include: measures taken to avoid impacts, the measures proposed to reduce the impacts to surface waters and where impacts could not be avoided the means by which mitigation will be accomplished (e.g., channel relocation, aquatic habitat enhancement, wetland replacement, recreational enhancement etc.).

3. In addition to requirements of subdivision 2 of this subsection, applications involving a surface water withdrawal or a FERC license or relicense also shall include:

a. The drainage area, the average annual flow and the median monthly flows at the withdrawal point;

b. The average daily withdrawal, the maximum daily and instantaneous withdrawals and information on the variability of the demand by season;

# Proposed Regulations

c. The consumptive use and the average daily return flow of the proposed project and the location of the return flow;

d. Information on the proposed use of the surface water and information on how the demand for surface water was determined;

e. Information on flow dependent beneficial uses at the proposed project location;

f. Information on the aquatic life at the proposed project location, including species and habitat requirements.

4. Where an application is considered incomplete the board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a permit application, or submitted incorrect information in a permit application or in any report to the board, he shall immediately submit such facts or the correct information.

5. Any person proposing a new discharge of dredged or fill material shall submit a Joint Permit Application at least 180 days prior to the date planned for commencement of the activity resulting in the discharge. There shall be no discharge of dredged or fill material prior to the issuance of a permit.

6. For any person possessing a § 401 Water Quality Certificate as of December 31, 1989, such certificate shall remain valid and enforceable until such time as the certificate expires, or reapplication or modification is necessary. For certificates issued under § 401 of the Act after December 31, 1989, the board may at its option issue a Virginia Water Protection Permit.

7. Any person with an existing unpermitted discharge of dredged or fill material shall submit a Joint Permit Application immediately upon discovery by the owner or within 30 days upon being requested to by the board which ever comes first.

8. Pursuant to Virginia Code § 62.1-44.15:3 no application for a new permit will be deemed complete until the board receives notification from the local government body of the county, city or town in which the discharge is to take place that the location and operation of the discharging activity is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1. and Chapter 21 (§ 10.1-2100 et seq.) of Title 10.1 where applicable.

## B. Duty to reapply.

1. Any permittee with an effective permit shall submit a new permit application at least 180 days before the expiration date of an effective permit unless permission for a later date has been granted by the board.

2. Owners or persons who have effective permits shall submit a new application 180 days prior to any proposed modification to their activity which will:

a. Result in significantly new or substantially increased discharge of dredged or fill material, or significant change in the nature of the pollutants; or

b. Violate or lead to the violation of the terms and conditions of the permit or the water quality standards of the Commonwealth.

## C. Informational requirements.

All applicants for a Virginia Water Protection Permit shall provide information in accordance with § 404(b)(1) Guidelines for Specification of Disposal Sites of Dredged or Fill Material, 40 CFR Parts 230.60 and 230.61, as revised 1990, where appropriate. All applicants for a permit must submit a complete permit application in accordance with § 2.1 A of this regulation.

## D. Confidentiality.

In accordance with § 62.1-44.21 or as otherwise required by state or federal law and as provided in § 2.1 A of this regulation information submitted to the executive director in accordance with this subpart may be claimed as confidential.

## § 2.2. Conditions applicable to all permits.

### A. Duty to comply.

The permittee shall comply with all conditions of the permit. Nothing in these regulations shall be construed to relieve the VWP holder of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any permit noncompliance is a violation of the Act and law, and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit renewal application.

### B. Duty to cease or confine activity.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

### C. Duty to mitigate.

The permittee shall take all reasonable steps to (i) avoid all adverse environmental impact which could result

# Proposed Regulations

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from the activity, (ii) minimize the adverse environmental impact where avoidance is impractical, and (iii) provide mitigation of the adverse impact on an in kind basis where impacts cannot be avoided.

## D. Permit action.

1. A permit may be modified, revoked and reissued, or terminated as set forth in this regulation.
2. If a permittee files a request for permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective permit.
3. Permits may be modified, revoked and reissued or terminated upon the request of the permittee, or upon board initiative to reflect the requirements of any changes in the statutes or regulations.

## E. Inspection and entry.

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the permit;
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the permit or as otherwise authorized by law.

## F. Duty to provide information.

1. The permittee shall furnish to the board, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

## G. Monitoring and records requirements.

1. Monitoring shall be conducted according to approved analytical methods as specified in the permit as approved by the board. The board may require sediment monitoring in all surface waters where it determines the potential presence of contaminated sediments exists.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the expiration of a granted permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individual(s) who performed the sampling or measurements;
- c. The date the analyses were performed;
- d. The name of the individual(s) who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used; and
- f. The results of such analyses.

## § 2.3. Signatory requirements.

Any application, report, or certification shall be signed as follows:

### 1. Application.

- a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the

manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency).

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

d. Any application for a permit under this regulation must bear the signatures of the responsible party and any agent acting on the responsible party's behalf.

2. Reports. All reports required by permits and other information requested by the board shall be signed by:

a. One of the persons described in subdivision 1 a, b or c of this section; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision 1 a, b or c of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position;

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the board prior to or together with any separate information, or applications to be signed by an authorized representative.

3. Certification of application and reports. Any person signing a document under subdivision 1 or 2 of this section shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate,

and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

§ 2.4. Establishing applicable standards, limitations or other permit conditions.

In addition to the conditions established in §§ 2.2. and 2.3 of this regulation, each permit may include conditions meeting the following requirements where applicable:

1. Instream flow conditions. Subject to the provisions of Virginia Code § 62.1-242 et seq., and subject to the authority of the State Corporation Commission over hydroelectric facilities contained in Virginia Code § 62.1-80 et seq., instream flow conditions may include but are not limited to conditions that limit the volume and rate at which water may be withdrawn at certain times and conditions that require water conservation and reductions and water use.

2. Water quality standards and state requirements. The permit shall include requirements to comply with all appropriate provisions of state laws and regulations.

3. Toxic pollutants.

a. Where the board finds that appropriate limitations may not ensure compliance with the law or State Water Quality Standards the board shall require the permittee to follow a program of biological or chemical toxics monitoring. The requirement may include a permit reopener to allow the imposition of toxicity reduction or elimination measures determined to be necessary as a result of the board's evaluation of the results of the toxic monitoring and other available information. Based upon this determination, appropriate limitations will be included in the permit to ensure the reduction or elimination of toxic pollutants and allow the board to ensure that the proposed project will comply with water quality standards and other appropriate requirements of state law.

b. Limitations will be included in the permit to control all toxic pollutants which the board determines (based on information reported in a permit application or a notification or on other information) are or may be discharged at a level which would adversely affect the beneficial use of the receiving waters.

4. Duration of permits. Virginia Water Protection Permits issued under this regulation shall have an effective and expiration date which will determine the life of the permit.

a. Except as authorized in subdivisions b and c below, Virginia Water Protection Permits shall be effective for a fixed term not to exceed five years

# Proposed Regulations

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for any period of construction, monitoring, or other activity and will be specified in the conditions of the permit.

b. Permits affecting instream flows shall have an effective duration not to exceed 10 years.

c. All maintenance dredging of navigation projects shall be effective for a fixed term not to exceed 10 years.

The term of these permits shall not be extended by modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and reissuance of a new permit.

## 5. Monitoring requirements as conditions of permits.

a. All permits shall specify:

(1) Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate) when required as a condition of the permit;

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and composite samples;

(3) Applicable reporting requirements based upon the impact of the regulated activity on water quality.

b. All permits shall include requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once per year.

c. In addition, the following monitoring requirements may be included in the permits:

(1) Mass or other measurements specified in the permit for each pollutant limited in the permit;

(2) The volume of effluent discharged;

(3) Other measurements as appropriate, including intake water.

6. Best Management Practices (BMPs). The permit may require the use of BMPs to control or abate the discharge of pollutants.

7. Reissued permits. When a permit is renewed or reissued, limitations, standards or conditions must be in conformance with current limitations, standards, or conditions.

8. Reopening permits. Each permit shall have a condition allowing the reopening of the permit for the purpose of modifying the conditions of the permit to meet new regulatory standards duly adopted by the board. Cause for reopening permits include but are not limited to:

a. When state law prohibits conditions in a permit which are more stringent than an applicable effluent limitation guideline;

b. When subsequently promulgated effluent guidelines are modified, and are based on best conventional pollutant control technology; or

c. When the circumstances on which the previous permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the permit was issued and thereby constitute cause for permit modification or revocation and reissuance.

## § 2.5. Draft permit formulation.

A. Upon receipt of a complete application, the board shall make a decision to tentatively issue or deny the application. If a tentative decision is to issue the permit then a draft permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft permit:

1. Conditions, discharge limitations, standards and other requirements applicable to the permit;

2. Monitoring requirements; and

3. Requirements for mitigation of adverse environmental impacts.

B. If the tentative decision is to deny the application, the board shall do so in accordance with § 4.6 of this regulation.

C. Should a decision be made to waive the requirement for a permit, the board shall do so in accordance with § 4.5 of this regulation.

## § 2.6. State general permits.

The board may issue state general permits by regulation for certain specified activities which have been determined to be of minimal environmental consequence.

A. After public interest review, and after such general permits have been issued, individual activities falling within the categories that are authorized do not have to receive an individual permit as described by the procedures of this regulation.

B. The board will determine by regulation the

appropriate conditions, duration of the permit and restrictions to protect the interests of the citizens of the Commonwealth for each general permit issued.

C. When the board determines on a case by case basis that concerns for water quality and the aquatic environment so indicate, the board may exercise its authority to require individual applications and permits rather than issuing a general permit. Cases where an individual permit may be required include the following:

1. Where the discharge(s) is a significant contributor of pollution;
2. Where the discharger is not in compliance with the conditions of the general permit;
3. When a discharger no longer meets general permit conditions;
4. Any owner operating under a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit;
5. When an individual permit is issued to an owner, the applicability of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit;
6. When a general permit is issued which applies to an owner already covered by an individual permit, such owner may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit;
7. A general permit may be revoked as to an individual owner for any of the reasons set forth in § 4.1 subject to appropriate opportunity for a hearing.

### PART III. PUBLIC INVOLVEMENT.

#### § 3.1. Public notice of permit action and public comment period.

A. Every draft permit shall be given public notice paid for by the owner, by publication once in a newspaper of general circulation in the area affected by the discharge.

B. The board shall allow a period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request a public hearing.

C. The contents of the public notice of an application for a permit or proposed permit action shall include:

1. Name and address of the applicant. If the location of the activity differs from the address of the applicant the notice shall also state the location in sufficient detail such that the specific location may be

easily identified.

2. Brief description of the business or activity to be conducted at the discharge site.

3. The name of the receiving waterway.

4. A statement of the tentative determination to issue or deny a permit.

5. A brief description of the final determination procedure.

6. The address and phone number of a specific person at the state office from whom further information may be obtained.

7. A brief description on how to submit comments and request a public hearing.

D. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

E. When a permit is denied the board will do so in accordance with § 4.6 of this regulation.

#### § 3.2. Public access to information.

All information pertaining to permit processing or in reference to any source of discharge of any pollutant, including discharges of dredged or fill material, shall be available to the public, unless the information has been identified by the applicant as a trade secret covered by § 62.1-44.21 of the Code of Virginia. All information claimed confidential must be identified as such at the time of submission to the board and Virginia Marine Resources Commission.

#### § 3.3. Public comments and hearing.

A. The board shall provide a comment period of at least 30 days following the date of public notice of the formulation of a draft permit during which interested persons may submit written comments and requests for an informal hearing on the permit. All written comments submitted during the comment period shall be retained by the board and considered during its final decision on the permit.

B. The executive director shall consider all written comments and requests for an informal hearing received during the comment period, and shall make a determination on the necessity of an informal hearing in accordance with § 1.12 of Procedural Rule No. 1 (VR 680-31-01). All proceedings, informal hearings and decisions therefrom will be in accordance with Procedural Rule No. 1.

C. Should the executive director, in accordance with

# Proposed Regulations

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Procedural Rule No. 1, determine to dispense with the informal hearing, he may grant the permit, or, at his discretion, transmit the application or request, together with all written comments thereon and relevant staff documents and staff recommendations, if any, to the board for its decision.

## § 3.4. Public notice of hearing

A. Public notice of any informal hearing held pursuant to § 3.3 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the county or city where the activity is to occur;

2. Notice of the informal hearing shall be sent to all persons and government agencies which received a copy of the notice of permit application and to those persons requesting an informal hearing or having commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 and 2 of this section at least 30 days in advance of the informal hearing.

C. The content of the public notice of any hearing held pursuant to § 3.3 shall include at least the following:

1. Name and address of each person whose application will be considered at the informal hearing and a brief description of the person's activities or operations;

2. The precise location of such activity and the surface waters that will, or may, be affected. The location should be described, where possible, with reference to route numbers, road intersections, map coordinates or similar information;

3. A brief reference to the public notice issued for the permit application, including identification number and date of issuance unless the public notice includes the informal hearing notice;

4. Information regarding the time and location for the informal hearing;

5. The purpose of the informal hearing;

6. A concise statement of the relevant water quality issues raised by the persons requesting the informal hearing;

7. Contact person and the address of the State Water Control Board office at which the interested persons may obtain further information or request a copy of the draft permit prepared pursuant to § 2.5;

8. A brief reference to the rules and procedures to be followed at the informal hearing.

## PART IV. PERMIT MODIFICATION, REVOCATION, REISSUANCE, TERMINATION AND DENIAL.

### § 4.1. Rules for the modification, revocation, reissuance and termination.

Permits shall be modified, revoked, reissued, or terminated only as authorized by this section as follows:

1. A permit may be modified in whole or in part, revoked and reissued or terminated.

2. Permit modifications shall not be used to extend the term of a permit.

3. Modification, revocation and reissuance, or termination may be initiated by the board, permittee, or other person, under applicable laws or the provisions of this regulation.

4. After public notice and opportunity for a formal hearing pursuant to § 1.20 of Procedural Rule No. 1 a permit can be terminated for cause. Causes for termination are as follows:

a. Noncompliance by the permittee with any condition of the permit;

b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

c. The permittee's violation of a special or judicial order;

d. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by permit modification or termination;

e. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge of dredged and fill material controlled by the permit.

### § 4.2. Causes for modification.

A permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of permit conditions that differ from those of the existing permit or are absent from it.

2. When new information becomes available about the operation or discharge covered by the permit which was not available at permit issuance and would have

justified the application of different permit conditions at the time of permit issuance.

3. When a change is made in the promulgated standards or regulations on which the permit was based.

4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act.

5. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of § 307(a) of the Act.

6. When changes occur which are subject to "reopener clauses" in the permit.

7. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water is detrimental to the instream beneficial use, the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the permit.

8. When the level of discharge of a pollutant not limited in a permit exceeds the level which can be achieved by available methodology for controlling such discharges.

9. When the permittee begins or expects to begin to cause the discharge of any toxic pollutant not reported in the application.

10. When other states were not notified of the change in the permit and their waters may be affected by the discharge.

#### § 4.3. Transferability of permits.

A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a permit shall be transferred only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner.

#### B. Automatic transfer.

Any permit shall be automatically transferred to a new owner if:

1. The current owner notifies the board 30 days in advance of the proposed transfer of the title to the facility or property.

2. The notice to the board includes a written

agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The board does not within the 30-day time period notify the existing owner and the proposed owner of its intent to modify or revoke and reissue the permit.

#### § 4.4. Minor modification.

A. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may be made in the permit without following the public involvement procedures.

B. For Virginia Water Protection Permits, minor modification may only:

1. Correct typographical errors;

2. Require reporting by the permittee at a greater frequency than required in the permit;

3. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date;

4. Allow for a change in ownership or operational control when the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability from the current to the new permittee has been submitted to the board;

5. Change plans and specifications where no change in discharge limitations in the permit are required;

6. When facility expansion, production increases and modification will not cause significant change in the discharge of pollutants;

7. Delete permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated.

#### § 4.5. Waiver of a permit.

A. In applications where the State Water Control Board determines that a proposed activity or activities will have minimal or no environmental consequence, a waiver of the requirement for a permit may be granted.

B. The applicant and the Corps of Engineers will be notified of this decision. Waiver of the requirement for a permit shall be considered when:

1. The impact of the proposed activity is of minimal environmental consequence;

# Proposed Regulations

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2. The impacts of the proposed activity are temporarily in nature and recovery of the beneficial use of the area is ensured; and

3. The impacts of the proposed activity will be fully and successfully mitigated by the applicant such that additional conditions imposed by the board are unnecessary.

## § 4.6. Denial of the permit.

A. The applicant shall be notified by letter of the staff's decision to recommend to the board denial of the permit requested.

B. The staff shall provide sufficient information to the applicant regarding the rationale for denial, such that the applicant may, at his option, modify the application in order to achieve a favorable recommendation, withdraw his application, or proceed with the processing on the original application.

C. Should the applicant withdraw his application, no permit will be issued.

D. Should the applicant elect to proceed with the original project, the staff shall make its recommendation of denial to the executive director for determination of the need for public notice as provided for in accordance with Procedural Rule No. 1.

## PART V. ENFORCEMENT.

### § 5.1. Enforcement.

The board may enforce the provisions of this regulation utilizing all applicable procedures under the law.

## PART VI. MISCELLANEOUS.

### § 6.1. Delegation of authority.

The executive director, or a designee acting for him, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

### § 6.2. Transition.

Upon the effective date of this regulation the following will occur:

1. Procedural Rule No. 3 (VR 680-31-03) will be superseded. All applications received after the effective date of the new regulation will be processed in accordance with these new procedures.

2. Section 401 Water Quality Certificates issued prior to December 31, 1989, have the same effect as a

Virginia Water Protection Permit. Water Quality Certificates issued after this date will remain in effect until reissued as Virginia Water Protection Permits.

# 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.

## ALCOHOLIC BEVERAGE CONTROL BOARD

### Title of Regulations:

VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations.

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.

VR 125-01-7. Other Provisions.

Statutory Authority: § 4-7(1), 4-11, 4-36, 4-69, 4-69.2 4-72.1, 4-98.14, 4-103(b) and 9-6.14:1 et seq. of the Code of Virginia.

Effective Date: January 15, 1992.

### Summary:

Numerous regulations are being amended, some of which relate to (i) streamlining the rulemaking procedures; (ii) allowing individuals of legal drinking age to place mail orders for alcoholic beverages with Virginia retail licensees and farm wineries; (iii) permitting alcoholic beverage advertising on certain antique vehicles for promotional purposes and on billboards located within facilities used primarily for professional or semiprofessional sporting events; (iv) increasing the wholesale value limit of novelty and specialty items which may be given away; (v) allowing manufacturers of alcoholic beverages to sponsor an entire season of athletic and sporting events; (vi) permitting manufacturers, bottlers and wholesalers to provide mixed beverage licensees with nonpermanent, distilled spirits advertising; (vii) standardizing minimum monthly food sale requirements for retail licenses; (viii) allowing manufacturers, bottlers and wholesalers of alcoholic beverages to place public safety advertisements in college student publications; (ix) permitting retail licensees to use electronic fund transfers to pay wholesale licensees for purchases of alcoholic beverages or beverages; (x) clarifying that the placement of alcoholic beverages in containers of ice near cash registers, doors and public display areas by off-premises licensees is an enticement to purchase alcoholic beverages; (xi) making interior advertising less restrictive for on-premises licensees, especially on- and on-and-off-premises licensees who may under certain conditions use mechanical or illuminated devices with alcoholic beverage advertising; and (xii) expanding the types of businesses eligible for off-premises wine and beer licenses by creating a new category which does not require minimum monthly

*food sales.*

VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations.

## PART I.

### HEARINGS BEFORE HEARING OFFICERS.

#### § 1.1. Appearance.

A. Any interested party who would be aggrieved by a decision of the board upon any application or in a disciplinary proceeding may appear and be heard in person, or by duly authorized representative, and produce under oath evidence relevant and material to the matters in issue. Upon due notice a hearing may be conducted by telephone as provided in Part IV.

B. The interested parties will be expected to appear or be represented at the place and on the date of hearing or on the dates to which the hearing may be continued.

C. If an interested party fails to appear at a hearing, the hearing officer may proceed in his absence and render a decision.

#### § 1.2. Argument.

Oral or written argument, or both, may be submitted to and limited by the hearing officer. Oral argument is to be included in the stenographic report of the hearing.

#### § 1.3. Attorneys/representation.

Any individual, partnership, association or corporation who is a licensee of the board or applicant for any license issued by the board or any interested party shall have the right to be represented by counsel at any board hearing for which he has received notice. The licensee, applicant or interested party shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine and question witnesses, present evidence on behalf of the corporation, draw conclusions and make arguments before the hearing officers.

#### § 1.4. Communications.

Communications regarding hearings before hearing officers upon licenses and applications for licenses should be addressed to the Director, Division of Hearings.

#### § 1.5. Complaints.

# Final Regulations

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The board in its discretion and for good cause shown may arrange a hearing upon the complaint of any aggrieved party(s) against the continuation of a license. The complaint shall be in writing directed to the Director of Regulatory Division, setting forth the name and post office address of the person(s) against whom the complaint is filed, together with a concise statement of all the facts necessary to an understanding of the grievance and a statement of the relief desired.

## § 1.6. Continuances.

Motions to continue a hearing will be granted as in actions at law. Requests for continuances should be addressed to the Director, Division of Hearings, or the hearing officer who will preside over the hearing.

## § 1.7. Decisions.

### A. Initial decisions.

The decision of the hearing officer shall be deemed the initial decision, shall be a part of the record and shall include:

1. A statement of the hearing officer's findings of fact and conclusions, as well as the reasons or bases therefor, upon all the material issues of fact, law or discretion presented on the record, and
2. The appropriate rule, order, sanction, relief or denial thereof as to each such issue.

### B. Summary decisions.

At the conclusion of a hearing, the hearing officer, in his discretion, may announce the initial decision to the interested parties.

### C. Notice.

At the conclusion of any hearing, the hearing officer shall advise interested parties that the initial decision will be reduced to writing and the notice of such decision, along with notice of the right to appeal to the board, will be mailed to them or their representative and filed with the board in due course. (See Part II, § 2.1 for Appeals).

### D. Prompt filing.

The initial decision shall be reduced to writing, mailed to interest parties, and filed with the board as promptly as possible after the conclusion of the hearing or the expiration of the time allowed for the receipt of additional evidence.

### E. Request for early or immediate decision.

Where the initial decision is deemed to be acceptable, an interested party may file, either orally before the hearing officer or in writing, a waiver of his right of

appeal to the board and request early or immediate implementation of the initial decision. The board or hearing officer may grant the request for early or immediate implementation of the decision by causing issuance or surrender of the license and prompt entry of the appropriate order.

### F. Timely review.

The board shall review the initial decision and may render a proposed decision, which may adopt, modify or reject the initial decision unless immediate implementation is ordered. In any event, the board shall issue notice of any proposed decision, along with notice of right to appeal, within the time provided for appeals as stated in Part II, § 2.1.

## § 1.8. Docket.

Cases will be placed upon the docket in the order in which they mature except that, for good cause shown or for reasons appearing to the board or to the Director, Division of Hearings, the order may be varied.

## § 1.9. Evidence.

### A. Generally.

All relevant and material evidence shall be received, except that:

1. The rules relating to privileged communications and privileged topics shall be observed; and
2. Secondary evidence of the contents of a document shall be received only if the original is not readily available. In deciding whether a document is readily available the hearing officer shall balance the importance of the evidence against the difficulty of obtaining it, and the more important the evidence the more effort should be made to have the original document produced.

### B. Cross-examination.

Subject to the provisions of subsection A of this section, any interested party shall have the right to cross-examine adverse witnesses and any agent or subordinate of the board whose report is in evidence and to submit rebuttal evidence except that:

1. Where the interested party is represented by counsel, only counsel shall exercise the right of cross-examination;
2. Where there is more than one interested party, only counsel or other representatives of such parties shall exercise the right of cross-examination; and
3. Where there is more than one group of interested parties present for the same purpose, only counsel or

other representative of such groups shall exercise the right of cross-examination. If the hearing officer deems it necessary, in order to expedite the proceedings, a merger of such groups shall be arranged.

#### C. Cumulative testimony.

The introduction of evidence which is cumulative, corroborative or collateral shall be avoided. The hearing officer may limit the testimony of any witness which is judged to be cumulative, corroborative or collateral; provided, however, the interested party offering such testimony may make a short avowal of the testimony which would be given and, if the witness asserts that such avowal is true, this avowal shall be made a part of the stenographic report.

#### D. Subpoenas, depositions and request for admissions.

Subpoenas, depositions de bene esse and requests for admissions may be taken, directed and issued in accordance with § 4.7(j) and § 9-6.14:13 of the Code of Virginia.

#### E. Stenographic report.

All evidence, stipulations and argument in the stenographic report which are relevant to the matters in issue shall be deemed to have been introduced for the consideration of the board.

#### F. Stipulations.

Insofar as possible, interested parties will be expected to stipulate as to any facts involved. Such stipulations shall be made a part of the stenographic report.

#### § 1.10. Hearings.

A. Hearings before the hearing officer shall be held, insofar as practicable, at the county seat of the county in which the establishment of the applicant or licensee is located, or, if the establishment be located within the corporate limits of any city then in such city. However, if it be located in a county or city within a metropolitan area in which the board maintains a hearing room in a district office, such hearings may be held in such hearing room. Notwithstanding the above, hearing officers may conduct hearings at locations convenient to the greatest numbers of persons in order to expedite the hearing process.

B. Any person hindering the orderly conduct or decorum of a hearing shall be subject to penalty provided by law.

#### § 1.11. Hearing officers.

A. Hearing officers are charged with the duty of conducting fair and impartial hearings and of maintaining order in a form and manner consistent with the dignity of

the board.

B. Each hearing officer shall have authority, subject to the published rules of the board and within its powers, to:

1. Administer oaths and affirmations;
2. Issue subpoenas as authorized by law;
3. Rule upon offers of proof and receive relevant and material evidence;
4. Take or cause depositions and interrogatories to be taken, directed and issued;
5. Examine witnesses and otherwise regulate the course of the hearing;
6. Hold conferences for the settlement or simplification of issues by consent of interested parties;
7. Dispose of procedural requests and similar matters;
8. Amend the issues or add new issues provided the applicant or licensee expressly waives notice thereof. Such waiver shall be made a part of the stenographic report of the hearing;
9. Submit initial decisions to the board and to other interested parties or their representatives; and
10. Take any other action authorized by the rules of the board.

#### § 1.12. Interested parties.

As used in this regulation, interested parties shall mean the following persons:

1. The applicant;
2. The licensee;

~~Where in this regulation reference is made to "licensee," the term likewise shall be applicable to a permittee or a designated manager to the extent this regulation is not inconsistent with the statutes and regulations relating to such persons.~~

3. Persons who would be aggrieved by a decision of the board; and
4. For purposes of appeal pursuant to Part II, § 2.1, interested parties shall be only those persons who appeared at and asserted an interest in the hearing before a hearing officer.

~~Where in these regulations reference is made to "licensee," the term likewise shall be applicable to a permittee or a designated manager to the extent that these~~

# Final Regulations

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*regulations are not inconsistent with the statutes and regulations relating to such persons.*

## § 1.13. Motions or requests.

Motions or requests for ruling made prior to the hearing before a hearing officer shall be in writing, addressed to the Director, Division of Hearings, and shall state with reasonable certainty the ground therefor. Argument upon such motions or requests will not be heard without special leave granted by the hearing officer who will preside over the hearing.

## § 1.14. Notice of hearings.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, place and issues involved.

## § 1.15. Consent settlement.

### A. Generally.

Disciplinary cases may be resolved by consent settlement if the nature of the proceeding and public interest permit. In appropriate cases, the chief hearing officer will extend an offer of consent settlement, conditioned upon approval by the board, to the licensee. The chief hearing officer is precluded from presiding over any case in which an offer of consent settlement has been extended.

### B. Who may accept.

The licensee or his attorney may accept an offer of consent settlement. If the licensee is a corporation, only an attorney or an officer, director or majority stockholder of the corporation may accept an offer of consent settlement. Settlement shall be conditioned upon approval by the board.

### C. How to accept.

The licensee must return the properly executed consent order along with the payment in full of any monetary penalty within 15 calendar days from the date of mailing by the board. Failure to respond within the time period will result in a withdrawal of the offer by the agency and a formal hearing will be held on the date specified in the notice of hearing.

### D. Effect of acceptance.

Upon approval by the board, acceptance of the consent settlement offer shall constitute an admission of the alleged violation of the A.B.C. laws or regulations, and will result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The offer of consent settlement is not negotiable; however, the licensee is not precluded from submitting an offer in compromise under § 1.16 of this part.

### E. Approval by the board.

The board shall review all proposed settlements. Only after approval by the board shall a settlement be deemed final. The board may reject any proposed settlement which is contrary to law or policy or which, in its sole discretion, is not appropriate.

### F. Record.

Unaccepted offers of consent settlement will become a part of the record only after completion of the hearing process.

## § 1.16. Offers in compromise.

Following notice of a disciplinary proceeding a licensee may be afforded opportunity for the submission of an offer in compromise in lieu of suspension or in addition thereto, or in lieu of revocation of his license, where in the discretion of the board, the nature of the proceeding and the public interest permit. Such offer should be addressed to the Secretary to the Board. Upon approval by the board, acceptance of the offer in compromise shall constitute an admission of the alleged violation of the A.B.C. laws or regulations, and shall result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The reason for the acceptance of such an offer shall be made a part of the record of the proceeding. Unless good cause be shown, continuances for purposes of considering an offer in compromise will not be granted, nor will a decision be rendered prior to a hearing if received within three days of the scheduled hearing date, nor will more than two offers be entertained during the proceeding. Further, no offers shall be considered by the board if received more than 15 calendar days after the date of mailing of the initial decision or the proposed decision, whichever is later. An offer may be made at the appeal hearing, but none shall be considered after the conclusion of such hearing. The board may waive any provision of this section for good cause shown.

## § 1.17. Record.

A. The certified transcript of testimony, argument and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record of the initial decision.

B. Upon due application made to the Director, Division of Hearings, copies of the record of a hearing shall be made available to parties entitled thereto at a fee established by the board.

## § 1.18. Rehearings.

A rehearing before a hearing officer shall not be held in any matter unless it be affirmatively shown that relevant and material evidence, which ought to produce an opposite result on rehearing, is available, is not merely

cumulative, corroborative or collateral, and could not have been discovered before the original hearing by the use of ordinary diligence; provided, however, that the board, in its discretion, may cause a rehearing to be held before a hearing officer in the absence of the foregoing conditions, as provided in Part II, § 2.6.

## § 1.19. Self-incrimination.

If any witness subpoenaed at the instance of the board shall testify in a hearing before a hearing officer on complaints against a licensee of the board as to any violation in which the witness, as a licensee or an applicant, has participated, such testimony shall in no case be used against him nor shall the board take any administrative action against him as to the offense to which he testifies.

## § 1.20. Subpoenas.

Upon request of any interested party, the Director, Division of Hearings, or a hearing officer is authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents at a hearing before a hearing officer.

## § 1.21. Witnesses.

A. Interested parties shall arrange to have their witnesses present at the time and place designated for the hearing.

B. Upon request of any party entitled to cross-examine witnesses, as set forth in § 1.9 B of this regulation, the hearing officer may separate the witnesses, including agents of the board.

C. A person attending as a witness, under a summons issued at the instance of the board to testify in a hearing, shall be entitled to the same allowance for expenses and compensation as witnesses for the Commonwealth in criminal cases.

## PART II. HEARINGS BEFORE THE BOARD.

### § 2.1. Appeals.

A. An interested party may appeal to the board an adverse initial decision, including the findings of fact and the conclusions, of a hearing officer or a proposed decision, or any portion thereof, of the board provided a request therefor in writing is received within 10 days after the date of mailing of the initial decision or the proposed decision, whichever is later.

B. At his option, an interested party may submit written exceptions to the initial or proposed decision within the 10-day period and waive further hearing proceedings.

C. If an interested party fails to appear at a hearing,

the board may proceed in his absence and render a decision.

### § 2.2. Attorneys; representation.

Any individual, partnership, association or corporation who is a licensee of the board or applicant for any license issued by the board or any interested party shall have the right to be represented by counsel at any board hearing for which he has received notice. The licensee, applicant or interested party shall not be required to be represented by counsel during such hearing. Any officer or director of a corporation may examine, cross-examine and question witnesses, present evidence on behalf of the corporation, draw conclusions and make arguments before the board.

### § 2.3. Communications.

Communications regarding appeal hearings upon licenses and applications for licenses should be addressed to the secretary of the board.

### § 2.4. Continuances.

Continuances will be granted as in actions at law. Requests for continuances of appeal hearings should be addressed to the secretary of the board.

### § 2.5. Decision of the board.

The final decision of the board, together with any written opinion, should be transmitted to each interested party or to his representative.

### § 2.6. Evidence.

#### A. Generally.

Subject to the exceptions permitted in this section, and to any stipulations agreed to by all interested parties, all evidence should be introduced at hearings before hearing officers.

#### B. Additional evidence.

Should the board determine at an appeal hearing, either upon motion or otherwise, that it is necessary or desirable that additional evidence be taken, the board may:

1. Direct that a hearing officer fix a time and place for the taking of such evidence within the limits prescribed by the board and in accordance with Part I, § 1.18;

2. Upon unanimous agreement of the board members permit the introduction of after-discovered or new evidence at the appeal hearing.

If the initial decision indicates that the qualifications of the establishment of an applicant or licensee are such as to cast substantial doubt upon the eligibility of the place

# Final Regulations

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for a license, evidence may be received at the appeal hearing limited to the issue involved and to the period of time subsequent to the date of the hearing before the hearing officer.

## C. Board examination.

Any board member may examine a witness upon any question relevant to the matters in issue.

## D. Cross-examination.

The right to cross-examine and the submission of rebuttal evidence as provided in Part I, § 1.9 shall be allowed in any appeal hearing where the introduction of additional evidence is permitted.

## § 2.7. Hearings.

Hearings before the board in the absence of notice to the contrary will be held in the office of the board, Virginia A.B.C. Building, 2901 Hermitage Road, Richmond, Virginia.

## § 2.8. Motions or requests.

Motions or requests for rulings, made after a hearing before a hearing officer and prior to an appeal hearing before the board, shall be in writing, addressed to the Secretary to the Board, and shall state with reasonable certainty the grounds therefor. Argument upon such motions or requests will not be heard without special leave granted by the board.

## § 2.9. Notice of hearing.

Reasonable notice of the time and place of an appeal hearing shall be given to each interested party who appeared at the initial hearing or his representative.

## § 2.10. Record.

A. The record of the hearing before the hearing officer, including the initial decision, and the transcript of testimony, argument and exhibits together with all papers and requests filed in the proceeding before the board, shall constitute the exclusive record for the final decision of the board.

B. Upon due application made to the Secretary to the Board, copies of the record, including the decision of the board and any opinion setting forth the reasons for the decision shall be made available to parties entitled thereto at a rate established by the board.

## § 2.11. Rehearings and reconsideration.

The board may, in its discretion for good cause shown, grant a rehearing or reconsideration on written petition of an interested party addressed to the Secretary to the Board and received within 30 days after the date of the

final decision of the board. The petition shall contain a full and clear statement of the facts pertaining to the grievance, the grounds in support thereof, and a statement of the relief desired. The board may grant such at any time on its own initiative for good cause shown.

## § 2.12. Scope of hearing.

A. Except as provided in Part H § 2.6, the appeal hearing shall be limited to the record made before the hearing officer.

B. The provisions of Part I of this regulation shall be applicable to proceedings held under this part H except to the extent such provisions are inconsistent herewith.

## PART III.

### WINE AND BEER FRANCHISE ACT ACTS .

## § 3.1. ~~Complaint~~ Complaints .

Complaints shall be referred in writing to the secretary to of the board. The secretary's office, in consultation with the Deputy for Regulation, will determine if reasonable cause exists to believe a violation of the Wine or Beer Franchise Acts, Chapters 2.1 and (§ 4-118.3 et seq.) or 2.3 (§ 4-118.42 et seq.) of Title 4, of the Code of Virginia, has occurred, and, if so, a hearing on the complaint will be scheduled in due course. If no reasonable cause is found to exist, the complainant will be informed of the reason for that decision and given the opportunity to request a hearing as provided by statute.

## § 3.2. Hearings.

Hearings will be conducted in accordance with the provisions of Part I of this regulation. Further, the board and the hearing officers designated by it may require an accounting to be submitted by each party in determining an award of costs and attorneys' fees.

## § 3.3. Appeals.

The decision of the hearing officer may be appealed to the board as provided in Part II, § 2.1 of this regulation. Appeals shall be conducted in accordance with the provisions of Part II of this regulation.

## § 3.4. Hearings on notification of price increases.

Upon receipt from a winery, brewery or wine or beer importer of a request for notice of a price increase less than 30 days in advance, a hearing will be scheduled before the board, not a hearing officer, as soon as practicable with five days' notice to all parties which include at a minimum all the wholesalers selling the winery or brewery's product. There will be no continuances granted and the board must rule within 24 hours of the hearing.

## § 3.5. Discovery, prehearing procedures and production at

hearings.

## A. Introduction.

The rules in this section shall apply in all proceedings under the Beer and Wine Franchise Acts, Chapters 2.1 (§4-118.3 *et seq.*) and 2.3 (§ 4-118.42 *et seq.*) of Title 4 of the Code of Virginia, including arbitration proceedings when necessary pursuant to the Code of Virginia §§ 4-118.10 and 4-118.50 of the Code of Virginia .

No provision of any of the rules in this section shall affect the practice of taking evidence at a hearing, but such practice, including that of generally taking evidence ore tenus only at hearings before hearing officers, shall continue unaffected hereby.

## B. Definitions.

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

"Board" means the Virginia Alcoholic Beverage Control Board and the officers, agents and employees of the board, including the secretary and the hearing officer(s), unless otherwise specified or unless the context requires otherwise.

"Commencement" of proceedings under this Part III of VR 125-01-1 means the date of the board's notice to the complainant(s) and the respondent(s), pursuant to § 3.1, that reasonable cause exists to believe that there has been a violation of either the Wine or Beer Franchise Acts.

"Manufacturer" means a winery or brewery, as those terms are defined in §§ 4-118.43 and 4-118.4, respectively, of the Code of Virginia.

"Person" means a winery, brewery, importer or wholesaler, as well as those entities designated as "persons," within the meaning of §§ 4-118.43 and 4-118.4 of the Code of Virginia.

"Secretary" means the Secretary of the Virginia Alcoholic Beverage Control Board.

## C. General provisions governing discovery.

1. Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and requests for admission. Unless the board orders otherwise under ~~paragraph~~ subdivision 3 of this subsection or ~~paragraph~~ subdivision 1 of subsection P, the frequency of use of these methods is not limited.

2. Scope of discovery. Unless otherwise limited by

order of the board in accordance with this § 3.5, the scope of discovery is as follows:

a. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

b. Applicability. Discovery as provided under this § 3.5 shall apply to all proceedings or hearings of Wine or Beer Franchise Act cases while pending before hearing officers or arbitrators. Discovery under this section shall not be authorized during the course of appeals to the board, unless the board has first granted leave to proceed with additional discovery.

c. Hearing preparation: materials. Subject to the provisions of subdivision 2 d of this subsection E , a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision 2 a of this subsection E and prepared in anticipation of litigation or for the hearing by or for another party or by or for that other party's representative (including his attorney, consultant, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the board shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the proceeding or its subject matter previously made by that party. For purposes of this ~~paragraph~~ subdivision , a statement previously made is (i) a written statement signed or otherwise adopted or approved by the person making it, or (ii) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

d. Hearing preparation: experts; costs. Discovery of facts known and opinions held by experts, otherwise

# Final Regulations

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discoverable under the provisions of subdivision 2 a of this subsection E and acquired or developed in anticipation of litigation or for the hearing, may be obtained only as follows:

(1) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; (ii) upon motion, the board may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision 2 d (3) of this subsection E, concerning fees and expenses as the board may deem appropriate.

(2) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for the hearing and who is not expected to be called as a witness at the hearing, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(3) Unless manifest injustice would result, (i) the board shall require that the party seeking discovery pay the expert a reasonable fee for time spent and his expenses incurred in responding to discovery under subdivisions d(1)(ii) and d(2) of this subsection C; and (ii) with respect to discovery obtained under subdivision d(1)(ii) of this subsection C the board may require, and with respect to discovery obtained under subdivision d(2) of this subsection C the board shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

3. Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (i) that the discovery not be had; (ii) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (iii) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (iv) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (v) that discovery be conducted with no one present except persons designated by the board; (vi) that a deposition after being sealed be opened only by order of the board;

(vii) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (viii) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the board.

If the motion for a protective order is denied in whole or in part, the board may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of subdivision 1 d of subsection O apply to the award of expenses incurred in relation to the motion.

4. Sequence and timing of discovery. Unless the board upon motion, or pursuant to subsection N of this section, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

5. Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired except as follows:

a. A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

b. A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

c. A duty to supplement responses may be imposed by order of the board, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

6. Service under this part. Except for the service of the notice required under subdivision D 1 b of this § 3.5 section, any notice or document required or permitted to be served under this § 3.5 section by one party upon another shall be served as provided in Rule 1:12 of the Rules of the Supreme Court of Virginia. Any notice or document required or permitted to be served under this § 3.5 section by the board upon one or more parties shall be served as

provided in §§ 1.7, 1.14, 2.5 or 2.9 of Parts I and II of VR 125-01-1.

7. Filing. Any request for discovery under this § 3-5 section and the responses thereto, if any, shall be filed with the secretary of the board except as otherwise herein provided.

(Ref: Rule 4:1, Rules of Virginia Supreme Court.)

#### D. Depositions before proceeding or pending appeal.

##### 1. Before proceeding.

a. Petition. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable before the board under this section may file a verified petition before the board. The petition shall be entitled in the name of the petitioner and shall show: (i) that the petitioner expects to be a party to a proceeding under Part III of these regulations *this part* but is presently unable to bring it or cause it to be brought; (ii) the subject matter of the expected action and his interest therein; (iii) the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; (iv) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and (v) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

b. Notice and service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the board, at a time and place named therein, for the order described in the petition. At least 21 days before the date of hearing the notice shall be served in the manner provided in §§ 1.14 or 2.9 of Parts I and II of VR 125-01-1; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the board may make such order as is just for service by publication or otherwise.

c. Order and examination. If the board is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with § 3-5 *this section*. The attendance of witnesses may be compelled by subpoena, and the board may make orders of the

characters provided for by subsection M of this § 3-5 section.

d. Cost. The cost of such depositions shall be paid by the petitioner, except that the other parties in interest who produce witnesses on their behalf or who make use of witnesses produced by others shall pay their proportionate part of the cost of the transcribed testimony and evidence taken or given on behalf of each of such parties.

e. Filing. The depositions shall be certified as prescribed in subsection G of this § 3-5 section and then returned to and filed by the secretary.

f. Use of deposition. If a deposition to perpetuate testimony is taken under these provisions or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any proceeding involving the same subject matter subsequently brought before the board pursuant to Part III of these regulations in accordance with the provisions of subsection C of § 3-5 *this section*.

2. Pending appeal. If an appeal has been taken from a ruling of the board or before the taking of an appeal if any time therefor has not expired and for good cause shown, the board may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings. In such case the party who desires to perpetuate the testimony may make a motion before the board for leave to take the depositions, upon the same notice and service thereof as if the proceeding was pending therein. The motion shall show (i) the names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each; and (ii) the reasons for perpetuating their testimony. If the board finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make orders of the character provided for by subsection M of § 3-5 *this section* and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in this § 3-5 section for depositions taken in pending actions.

3. Perpetuation of testimony. This subsection D provides the exclusive procedure to perpetuate testimony before the board.

(Ref: Rule 4:2, Rules of Virginia Supreme Court.)

#### E. Persons before whom depositions may be taken.

1. Within this Commonwealth. Within this Commonwealth depositions under this § 3-5 section may be taken before any person authorized by law to administer oaths, and if certified by his hand may be received without proof of the signature to such certificate.

# Final Regulations

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2. Within the United States. In any other state of the United States or within any territory or insular possession subject to the dominion of the United States, depositions under this § 3-5 section may be taken before any officer authorized to take depositions in the jurisdiction wherein the witness may be, or before any commissioner appointed by the Governor of this Commonwealth.

3. No commission necessary. No commission by the Governor of this Commonwealth shall be necessary to take a deposition under this § 3-5 section whether within or without this Commonwealth.

4. In foreign countries. In a foreign state or country depositions under this § 3-5 section shall be taken (i) before any American minister plenipotentiary, charge d'affaires, secretary of embassy or legation, consul general, consul, vice-consul, or commercial agent of the United States in a foreign country, or any other representative of the United States therein, including commissioned officers of the armed services of the United States, or (ii) before the mayor, or other magistrate of any city, town or corporation in such country, or any notary therein.

5. Certificate when deposition taken outside Commonwealth. Any person before whom a deposition under this § 3-5 section is taken outside this Commonwealth shall certify the same with his official seal annexed; and, if he has none, the genuineness of his signature shall be authenticated by some officer of the same state or country, under his official seal, except that no seal shall be required of a commissioned officer of the armed services of the United States, but his signature shall be authenticated by the commanding officer of the military installation or ship to which he is assigned.

(Ref: Rule 4:3, Rules of Virginia Supreme Court.)

## F. Stipulations regarding discovery.

Unless the board orders otherwise, the parties may by written stipulation (i) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions and (ii) modify the procedures provided by these rules for other methods of discovery. Such stipulations shall be filed with the deposition.

(Ref: Rule 4:4, Rules of Virginia Supreme Court.)

## G. Depositions upon oral examination.

1. When depositions may be taken. Twenty-one days after commencement of the proceeding, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of the board upon

such terms as the board prescribes, subject to any authorization and limitations that may be imposed by any court within the Commonwealth.

2. Notice of examination. General requirements; special notice; nonstenographic recording; production of documents and things; deposition of organization.

a. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the proceeding. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

b. (Reserved)

c. The board may for cause shown enlarge or shorten the time for taking the deposition.

d. (Reserved)

e. The notice to a party deponent may be accompanied by a request made in compliance with subsection M of this § 3-5 section for the production of documents and tangible things at the taking of the deposition. The procedure of subsection M of this § 3-5 section shall apply to the request.

f. A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision 2 f does not preclude taking a deposition by any other procedure authorized in this § 3-5 section .

g. The parties may stipulate in writing or the board may on motion order that a deposition be taken by telephone. A deposition taken by telephone shall be taken before an appropriate officer in the locality where the deponent is present to answer questions propounded to him.

3. Examination and cross-examination; record of examination; oath; objections. Examination and cross-examination of witnesses may proceed as

permitted at the hearing. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means authorized by this § 3-5 section . If requested by one of the parties, the testimony shall be transcribed.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examinations, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

4. Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the board may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in ~~subsection~~ subdivision C 3 of § 3-5 this section . If the order made terminates the examination, it shall be resumed thereafter only upon the order of the board. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of ~~subsection~~ subdivision O 1 d apply to the award of expenses incurred in relation to the motion.

5. Submission to witness; changes; signing. When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in forms or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under ~~subsection~~ subdivision J 4 d of this § 3-5 section the

board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

6. Certification and filing by officer; exhibits; copies; notice of filing.

a. The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then lodge it with the attorney for the party who initiated the taking of the deposition, notifying the secretary of the board and all parties of such action. Depositions taken pursuant to this subsection G or subsection H shall not be filed with the secretary until the board so directs, either on its own initiative or upon the request of any party prior to or during the hearing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the board, pending final disposition of the case.

b. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

c. The party taking the deposition shall give prompt notice of its filing to all other parties.

7. Failure to attend or to serve subpoena; expenses.

a. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the board may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

b. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in

# Final Regulations

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person or by attorney because he expects the deposition of that witness to be taken, the board may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(Ref: Rule 4:5, Rules of Virginia Supreme Court.)

## H. Deposition upon written questions.

1. Serving questions; notice. Twenty-one days after commencement of the proceeding, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena. The deposition of a person confined in prison may be taken only by leave of the board upon such terms as the board prescribes subject to any authorization and limitations that may be required or imposed by any court within the Commonwealth.

A party desiring to take the deposition upon written questions shall serve them upon every other party with a notice stating that (i) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (ii) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of ~~subsection subdivision~~ *subdivision G 2 f of § 3-5 this section* .

Within 21 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The board may for cause shown enlarge or shorten the time.

2. Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by subdivisions 3, 4 and 5 of subsection G of § 3-5 *this section* , to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by him.

3. Notice of filing. When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.

(Ref: Rule 4:6, Rules of Virginia Supreme Court.)

## I. Limitation on depositions.

No party shall take the deposition of more than five witnesses for any purpose without leave of the board for good cause shown.

(Ref: Rule 4:6A, Rules of Virginia Supreme Court.)

## J. Use of depositions in proceedings under the Beer and Wine Franchise Acts.

1. Use of depositions. At the hearing or upon the hearing of a motion, or during an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

a. (Reserved)

b. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

c. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H of this § 3-5 *section* to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

d. The deposition of a witness, whether or not a party, may be used by any party for any purpose if the board finds: (i) that the witness is dead; or (ii) that the witness is at a greater distance than 100 miles from the place of hearing, or is out of this Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) that the witness is a judge, or is in any public office or service the duties of which prevent his attending hearings before the board provided, however, that if the deponent is subject to the jurisdiction of the board, the board may, upon a showing of good cause or sua sponte, order him to attend and to testify *ore tenus*; or (vi) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally, to allow the deposition to be used.

e. If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

f. No deposition shall be read in any proceeding against a person under a disability unless it be taken in the presence of the guardian ad litem appointed or attorney serving pursuant to § 8.01-9 of the Code of Virginia, or upon questions agreed on by the guardian or attorney before the taking.

g. In any proceeding, the fact that a deposition has not been offered in evidence prior to an interlocutory decree or order shall not prevent its thereafter being so offered except as to matters ruled upon in such interlocutory decree or order, provided, however, that such deposition may be read as to matters ruled upon in such interlocutory decree or order if the principles applicable to after-discovered evidence would permit its introduction.

Substitution of parties does not affect the right to use depositions previously taken; and when there are pending before the board several proceedings between the same parties, depending upon the same facts, or involving the same matter of controversy, in whole or in part, a deposition taken in one of such proceedings, upon notice to the same party or parties, may be read in all, so far as it is applicable and relevant to the issue; and, when an action in any court of the United States or of this or any other state has been dismissed and a proceeding before the board involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the one action may be used in a proceeding before the board as if originally taken therefor.

2. Objections to admissibility. Subject to the provisions of subdivision 4 c of this subsection J of § 3.5, objection may be made at the hearing to receive in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

3. Effect of taking or using depositions. A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision 1 c of this subsection J. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

#### 4. Effect of errors and irregularities in depositions.

a. As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

b. As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

c. As to taking of deposition.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions and answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written questions submitted under subsection H of § 3.5 this section are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

d. As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer under subsections G and H of § 3.5 this section are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

5. (Reserved)

6. Record. Depositions shall become a part of the record only to the extent that they are offered in evidence.

(Ref: Rule 4:7, Rules of Virginia Supreme Court.)

K. Audio-visual depositions.

# Final Regulations

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1. When depositions may be taken by audio-visual means. Any depositions permitted under these rules may be taken by audio-visual means as authorized by and when taken in compliance with law.

2. Use of clock. Every audio-visual deposition shall be timed by means of a timing device, which shall record hours, minutes and seconds which shall appear in the picture at all times during the taking of the deposition.

3. Editing. No audio-visual deposition shall be edited except pursuant to a stipulation of the parties or pursuant to order of the board and only as and to the extent directed in such order.

4. Written transcript. If an appeal is taken in the case, the appellant shall cause to be prepared and filed with the secretary a written transcript of that portion of an audio-visual deposition made a part of the record at the hearing to the extent germane to an issue on appeal. The appellee may designate additional portions to be so prepared by the appellant and filed.

5. Use. An audio-visual deposition may be used only as provided in subsection J of § 3-5 *this section*.

6. Submission, etc. The provisions of ~~subsection subdivision~~ G 5 shall not apply to an audio-visual deposition. The other provisions of subsection G of § 3-5 *this section* shall be applicable to the extent practicable.

(Ref: Rule 4:7A, Rules of Virginia Supreme Court.)

## L. Interrogatories to parties.

1. Availability; procedures for use. Upon the commencement of any proceedings under this part ~~HH~~, any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party.

2. Form. The party serving the interrogatories shall leave sufficient space between each interrogatory so as to permit the party answering the interrogatories to make a photocopy of the interrogatories and to insert the answers between each interrogatory. The party answering the interrogatories shall use a photocopy to insert answers and shall precede the answer with the word "Answer." In the event the space which is left to fully answer any interrogatory is insufficient, the party answering shall insert the words, "see supplemental sheet" and shall proceed to answer the interrogatory fully on a separate sheet or sheets of paper containing the heading "Supplemental Sheet" and identify the answers by reference to the number of the interrogatory. The party answering the interrogatories shall prepare a separate sheet

containing the necessary oath to the answers, which shall be attached to the answers filed with the court to the copies sent to all parties and shall contain a certificate of service.

3. Filing. The interrogatories and answers and objections thereto shall not be filed in the office of the secretary unless the board directs their filing on its own initiative or upon the request of any party prior to or during the hearing. For the purpose of any consideration of the sufficiency of any answer or any other question concerning the interrogatories, answers or objections, copies of those documents shall be made available to the board by counsel.

4. Answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 21 days after the service of the interrogatories. The board may allow a shorter or longer time. The party submitting the interrogatories may move for an order under subdivision ~~1~~ of ~~subsection~~ ~~0~~ 1 with respect to any objection to or other failure to answer an interrogatory.

5. Scope; use. Interrogatories may relate to any matters which can be inquired into under subdivision ~~2~~ of ~~subsection~~ C 2, and the answers may be used to the extent permitted by the rules of evidence. Only such interrogatories and the answers thereto as are offered in evidence shall become a part of the record.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

6. Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

7. Limitation on interrogatories. No party shall serve upon any other party, at any one time or cumulatively, more than 30 written interrogatories, including all parts and subparts without leave of the board for good cause shown.

(Ref: Rule 4:8, Rules of Virginia Supreme Court.)

M. Production of documents and things and entry on land for inspection and other purposes; production at the hearing.

1. Scope. Any party may serve on any other party a request (i) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, any tangible things which constitute or contain matters within the scope of subdivision 2 of subsection C and which are in the possession, custody, or control of the party upon whom the request is served; or (ii) to produce any such documents to the board at the time of the hearing; or (iii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, surveying, and photographing the property or any designated object or operation thereon, within the scope of subdivision 2 of subsection C 2 of § 2.5 *this section* .

When the physical condition or value of a party's plant, equipment, inventory or other tangible asset is in controversy, the board, upon motion of an adverse party, may order a party to submit same to physical inventory or examination by one or more representatives of the moving party named in the order and employed by the moving party. The order may be made only by agreement or on motion for relevance shown and upon notice to all parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

2. Procedure. The request may, without leave of the board, except as provided in subdivision 4 of this subsection M, be served after commencement of the proceeding. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, period and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 21 days after the service of the request. The board may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related

activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under subdivision 1 of subsection O 1 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

3. Production by a person not a party. Upon written request therefor filed with the secretary by counsel of record for any party or by a party having no counsel in any pending case, with a certificate that a copy thereof has been mailed or delivered to counsel of record and to parties having no counsel, the secretary shall, subject to subdivision 4 of this subsection M, issue a person not a party therein a subpoena which shall command the person to whom it is directed, or someone acting on his behalf, to produce the documents and tangible things (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) designated and described in said request, and to permit the party filing such request, or someone acting in his behalf, to inspect and copy any tangible things which constitute or contain matters within the scope of subdivision 2 of subsection C 2 which are in the possession, custody or control of such person to whom the subpoena is directed, at a time and place and for the period specified in the subpoena; but, the board, upon written motion promptly made by the person so required to produce, or by the party against whom such production is sought, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion to quash or modify upon the advancement by the party in whose behalf the subpoena is issued of the reasonable cost of producing the documents and tangible things so designated and described.

Documents subpoenaed pursuant to this subdivision 3 of subsection M shall be returnable only to the office of the secretary unless counsel of record agree in writing filed with the secretary as to a reasonable alternative place for such return. Upon request of any party in interest, or his attorney, the secretary shall permit the withdrawal of such documents by such party or his attorney for such reasonable period of time as will permit his inspection, photocopying, or copying thereof.

4. Certain officials. No request to produce made pursuant to subdivision 2 of this subsection M, above, shall be served, and no subpoena provided for in subdivision 3 of this subsection M, above, shall issue, until prior order of the board is obtained when the party upon whom the request is to be served or the person to whom the subpoena is to be directed is the

# Final Regulations

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Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any ambassador or consul; or any military officer on active duty holding the rank of admiral or general.

5. Proceedings on failure or refusal to comply. If a party fails or refuses to obey an order made under subdivision 2 of this subsection M, the board may proceed as provided by subsection O.

6. Filing. Requests to a party pursuant to subdivisions 1 and 2 of this subsection M shall not be filed in the office of the secretary unless requested in a particular case by the board or by any party prior to or during the hearing.

(Ref: Rule 4:9, Rules of Virginia Supreme Court.)

## N. Requests for admission.

1. Request for admission. Upon commencement of any proceedings under this part H, a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of subdivision 2 of subsection C 2 set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 21 days after service of the request, or within such shorter or longer time as the board may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; he may, subject to the provisions of subdivision 3 of subsection O 3, deny the matter or set forth reasons

why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the board determines that an objection is justified, it shall order that an answer be served. If the board determines that an answer does not comply with the requirements of this subsection N, it may order either that the matter is admitted or that an amended answer be served. The board may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to the hearing. The provisions of subdivision 1 d of subsection O apply to the award of expenses incurred in relation to the motion.

2. Effect of admission. Any matter admitted under this rule is conclusively established unless the board on motion permits withdrawal or amendment of the admission. Subject to the provisions of subsection P governing amendment of a prehearing order, the board may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the board that withdrawal of amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

3. Filing. Requests for admissions and answers or objections shall be served and filed as provided in subsection L.

4. Part of record. Only such requests for admissions and the answers thereto as are offered in evidence shall become a part of the record.

(Ref: Rule 4:11, Rules of Virginia Supreme Court.)

## O. Failure to make discovery: sanctions.

1. Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply to the board for an order compelling discovery as follows:

a. (Reserved)

b. Motion. If a deponent fails to answer a question propounded or submitted under subsections G and H, or a corporation or other entity fails to make a designation under subdivision 2 f of subsection G and subdivision 1 of subsection H, or a party fails to answer an interrogatory submitted under subsection L, or if a party, in response to a request for inspection submitted under subsection M, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested

the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition or oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the board denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subdivision 3 of subsection C.

c. Evasive or incomplete answer. For purposes of this subsection an evasive or incomplete answer is to be treated as a failure to answer.

d. Award of expenses of motion. If the motion is granted and the board finds that the party whose conduct necessitated the motion acted in bad faith, the board shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees.

If the motion is denied and the board finds that the moving party acted in bad faith in making the motion, the board shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees.

If the motion is granted in part and denied in part, the board may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

## 2. Failure to comply with order.

a. Suspension or revocation of licenses, monetary penalties. Failure to comply with any order of the board under this § 3.5 (Discovery) shall constitute grounds for action by the board under § 4-37 A(1)(b) of the Code of Virginia.

b. Sanctions by the board. If a party or an officer, director, or managing agent of a party or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision 1 of this subsection, the board may make such orders in regard to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall

be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part thereof, or rendering a judgment or decision by default against the disobedient party.

In lieu of any of the foregoing orders or in addition thereto, if the board finds that a party acted in bad faith in failing to obey an order to provide or permit discovery, the board shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure.

3. Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under subsection N, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the board for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The board shall make the order if it finds that the party failing to admit acted in bad faith. A party will not be found to have acted in bad faith if the board finds that (i) the request was held objectionable pursuant to subdivision 1 of subsection N, or (ii) the admission sought was of no substantial importance, or (iii) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (iv) there was other good reason for the failure to admit.

4. Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director or managing agent of a party or a person designated under subdivision 2 f of subsection G or subdivision 1 of subsection H to testify on behalf of a party fails (i) to appear before the officer who is to take his deposition, after being served with a proper notice, or (ii) to serve answers or objections to interrogatories submitted under subsection L, after proper service of the interrogatories, or (iii) to serve a written response to the request for inspection submitted under subsection M, after proper service of the request, the board on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions 2 b(1), 2 b(2) and 2 b(3) of this subsection O. In lieu of any order or in addition thereto, if the board finds that a party in bad faith failed to act, the board shall require the

# Final Regulations

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party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subsection may not be excused merely on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subdivision 3 of subsection C.

(Ref: Rule 4:12, Rules of Virginia Supreme Court.)

## P. Prehearing procedure; formulating issues.

1. The hearing officer(s) or the board, may in his or its discretion direct the attorneys for the parties to appear before such hearing officer(s) or the board for a conference to consider;

- a. A determination or clarification of the issues;
- b. A plan and schedule of discovery;
- c. Any limitations on the scope and methods of discovery, including deadlines for the completions of discovery;
- d. The necessity or desirability of amendments to the pleadings;
- e. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, as well as obtaining stipulations as to the evidence;
- f. The limitation of the number of expert witnesses;
- g. The possibility of filing bills of particulars and grounds of defense by the respective parties; and
- h. Such other matters as may aid in the disposition of the action.

2. The hearing officer(s) or the board, shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(Ref: Rule 4:13, Rules of Virginia Supreme Court.)

## Q. Disposition of discovery material.

Any discovery material not admitted in evidence filed in the secretary's office may be destroyed by the secretary after one year after entry of the final order or decision. But if the proceeding is the subject of an appeal, such

material shall not be destroyed until the lapse of one year after receipt of the decision or mandate on appeal or the entry of any final judgment or decree thereafter.

## R. Interlocutory appeals to the board.

If any party to a proceeding under Part III of VR 125-01-1 is aggrieved by a decision or order of the hearing officer(s) relating to discovery or other matters contained in this section, such aggrieved party may appeal such interlocutory decision or order to the board pursuant to VR 125-01-1, Part III, § 2.1.

(Ref: Rule 4:14, Rules of Virginia Supreme Court.)

## PART IV. TELEPHONE HEARINGS.

### § 4.1. Applicability.

The board and its hearing officers may conduct hearings by telephone only when the applicant/licensee expressly waives the in-person hearing. The board will determine whether or not certain hearings might practically be conducted by telephone. The provisions of Part I shall apply only to Part IV where applicable.

### § 4.2. Appearance.

The interested parties will be expected to be available by telephone at the time set for the hearing and may produce, under oath, evidence relevant and material to the matters in issue. The board will arrange for telephone conference calls at its expense.

### § 4.3. Argument.

Oral or written argument may be submitted to and limited by the hearing officer. Oral argument is to be included in the stenographic report of the hearing. Written argument, if any, must be submitted to the hearing officer and other interested parties in advance of the hearing.

### § 4.4. Documentary evidence.

Documentary evidence, which an interested party desires to be considered by the hearing officer, must be submitted to the hearing officer and other interested parties in advance of the hearing.

### § 4.5. Hearings.

A. Telephone hearings will usually originate from the central office of the board in Richmond, Virginia, but may originate from other locations. Interested parties may participate from the location of their choice where a telephone is available. If an interested party is not available by telephone at the time set for the hearing, the hearing may be conducted in his absence.

B. If at any time during a telephone hearing the hearing officer determines that the issues are so complex that a

fair and impartial hearing cannot be accomplished, the hearing officer shall adjourn the telephone hearing and reconvene an in-person hearing as soon as practicable.

#### § 4.6. Notice of hearing.

Interested parties shall be afforded reasonable notice of a pending hearing. The notice shall state the time, issues involved, and the telephone number where the applicant/licensee can be reached.

#### § 4.7. Witnesses.

Interested parties shall arrange to have their witnesses present at the time designated for the telephone hearing, or should supply a telephone number where the witnesses can be reached, if different from that of the interested party.

### PART V. PUBLIC PARTICIPATION GUIDELINES FOR ADOPTION OR AMENDMENT OF REGULATIONS.

§ 5.1. Public participation guidelines in regulation development; applicability; initiation of rulemaking; rulemaking procedures.

#### A. Applicability.

These guidelines shall apply to all regulations subject to the Administrative Process Act which are administered by the Department of Alcoholic Beverage Control, *except as provided in subsection G of this section*. ~~They shall not apply to regulations adopted on an emergency basis.~~

#### B. Initiation of rulemaking (Step 1).

~~The board shall publish notice of the commencement or initiation of any rulemaking process. Rulemaking procedures may be initiated at any time by the Alcoholic Beverage Control Board but shall be initiated at least once each calendar year. At the commencement of any rulemaking process, the board may invite proposals for regulations or regulation changes from any interested person or may limit the process to selected proposals. All initial proposals to be considered shall be in the form of a written petition for the adoption, amendment or repeal of any regulation may be. Petitions shall be filed with the Alcoholic Beverage Control Board at board within any time by any group or individual. limitation as may be specified by the board. A petition may be submitted at any time, by any person, but it shall be at the board's discretion to initiate the rulemaking procedures as a result of such petition or petitions. Any petition not considered may be deferred until the next rulemaking process. The Each petition shall contain the following information, if available:~~

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;

3. ~~Recommended~~ *General description of proposal, with recommendations for adoption, amendment or repeal of specific regulation(s);*

4. Why is change needed? What problem is it meant to address?;

5. What is the anticipated effect of not making the change?;

6. Estimated costs or savings, or both, to regulated entities, the public, or others incurred by this change as compared to current regulations;

7. Who is affected by recommended change? How affected?;

8. ~~Supporting documents.~~ *Draft language; and*

9. *Supporting documents.*

~~The board may also consider any other request for regulatory change at its discretion.~~

#### C. Rule-making procedures Notices - in general .

1. *Mailing list.* The secretary to the board in conjunction with the deputy *director* for regulation shall prepare a general mailing list of those persons and organizations who have demonstrated an interest in specific regulations in the past through *the filing of petitions*, written comments or attendance at public hearings. The mailing list will be updated at least every two years, and a current copy will be on file in the office of the secretary to the board. Periodically, but not less than every two years, the board shall publish in the Virginia Register, in a newspaper published at ~~Richmond~~ and of general circulation in the City of Richmond, and in such other newspapers in Virginia as the board may determine, a request that any individual or organization interested in participating in the development of specific rules and regulations so notify the board. Any persons or organizations identified in this process will be placed on the general mailing list.

2. ~~When developing a regulation proposed by citizens or on its initiative, the board shall prepare a Notice of Intended Regulatory Action, which shall include:~~ *Notice to listed persons. Each person on the general mailing list shall be sent, by U.S. mail, a copy of all notices pertaining to rulemaking for the board as are published in the Virginia Register. In lieu of such copy, the board may notify those on the mailing list of the publication of the notice and, if lengthy, offer to forward a copy upon payment of reasonable costs for copying and mailing.*

~~D. Initial requirement for public comment; participation in regulation development; ad hoc panels; public meetings (Step 2).~~

# Final Regulations

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1. Notice of Intended Regulatory Action. The board shall solicit comments, data, views and argument from the public as to each regulation proposal and shall encourage participation of interested persons in the development of regulations and draft language. As to each petition or proposal, the board shall publish a Notice of Intended Regulatory Action. The notice shall specify the date, time and place of any public meeting to consider the proposals, either with or without an ad hoc advisory panel, and shall contain the following information:

- a. Subject of the proposed action;
- b. Identification of the entities that will be affected;
- c. Discussion of the purpose of the proposed action and the issues involved;
- d. Listing of applicable laws or regulations;
- e. Name of individual, group or entity proposing regulation;
- e. f. Request for comments , data, views or argument from interested parties, either at the public meeting or in writing orally or in writing, to the board or its specially designated subordinate ;
- f. g. Notification of date, time and place of the any scheduled public meeting on the proposal; and
- g. h. Name, address and telephone number of staff person to be contacted for further information.

3. 2. The board shall disseminate the Notice of Intended Regulatory Action to the public via:

- a. ~~Distribution by mail to persons on General Mailing List.~~
- b. a. Publication in the Virginia Register of Regulations;
- b. Distribution by mail to persons on the general mailing list pursuant to subsection C; and
- c. Press release to media throughout the Commonwealth if a public meeting is scheduled .

4. 3. The board ~~shall~~ may form an ad hoc advisory panel consisting of persons selected from the general mailing list to consider regulation proposals to make recommendations on the proposed regulation and formulate draft language , assist in development of draft language, and provide such advice as the board may request. The board may direct the panel to participate in a public meeting to consider regulation proposals .

5. 4. The board ~~shall~~ may conduct a regulation

development public meeting to receive views and comments and answer questions of the public. The meeting will be held at least 20 days following publication of the notice. It normally will be held in Richmond, but if the proposed regulation will apply only to a particular area of the Commonwealth, the meeting will be held in the area affected.

6. After consideration of the public input and the report of the advisory panel, the board shall prepare a final proposed draft regulation and initiate the proceedings required by the Administrative Process Act.

E. Notice of public hearing and publication of proposals pursuant to § 9-6.14:7.1 C of the Virginia Administrative Process Act (Step 3).

1. The board shall consider the comments, recommendations, reports and other input from the public, industry and other interested persons received during the initial steps of public participation in the regulation development process, including comments, views, data and argument received during any public meeting, before publishing a final proposed draft regulation and initiating the proceedings required by the Administrative Process Act.

2. The board shall comply with the notice, publication and other requirements of § 9-6.14:7.1, and final proposed drafts to adopt, amend or repeal regulation together with any other required statements, shall be published in the Virginia Register, in a newspaper published and of general circulation in the City of Richmond, and in such other newspapers in Virginia as the board may determine. In addition, the board shall comply with the provisions of subdivision C 2 above. Such notice shall solicit comments, views, data and argument from the public and shall specify the date, time and place of any scheduled public hearing to consider adoption of such regulation proposals.

F. Public hearing (Step 4).

[ When required by applicable law, the The ] board shall conduct a public hearing to consider adoption of all proposed regulations. At such hearing, the board may receive and consider such additional written and verbal comment as it deems appropriate prior to any final vote.

G. Notwithstanding the foregoing provisions, the board may elect to dispense with any required public participation or other required procedure to the extent authorized by the Virginia Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia. Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

VR 125-01-2. Advertising.

§ 1. Advertising; generally; cooperative advertising; federal laws; beverages and cider; restrictions.

## A. Generally.

All alcoholic beverage and beverage advertising is permitted in this Commonwealth except that which is prohibited or otherwise limited or restricted by this regulation and these following, of the board and such advertising shall not be blatant or obtrusive. Any editorial or other reading matter in any periodical or , publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by or for the benefits of any permittee or licensee does not constitute advertising.

## B. Cooperative advertising.

There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer or wholesaler and a retailer of alcoholic beverages , except as may be authorized by regulation of the board pursuant to § 4-79.1 of the Code of Virginia. The term "cooperative advertising" shall mean the payment or credit , directly or indirectly , by any manufacturer, bottler, importer or wholesaler whether licensed in this Commonwealth or not to a retailer for all or any portion of advertising done by the retailer.

## C. Federal laws.

Advertising regulations adopted by the appropriate federal agency pertaining to alcoholic beverages shall be complied with except where they conflict with regulations of the board.

## D. C. Beverages and cider.

Advertising of beverages and cider, as defined in §§ 4-99 and 4-27 , respectively, of the Code of Virginia, shall conform with the requirements for advertising beer.

## E. D. Exceptions.

The board may issue a permit authorizing a variance from these any of its advertising regulations for good cause shown.

## F. E. General restrictions.

No advertising shall contain any statement, symbol, depiction or reference that:

1. Would [ intend tend ] to induce minors to drink, or would tend to induce persons to consume to excess;
2. Is lewd, obscene or indecent ; or depicts any person or group of persons which is immodest, undignified or in bad taste, or is suggestive of any illegal activity;
3. Incorporates the use of any present or former athlete or athletic team or implies that the product enhances athletic prowess;

4. Is false or misleading in any material respect, or implies that the product has a curative or therapeutic effect, or is disparaging of a competitor's product;

5. Implies or indicates, directly or indirectly, that the product is government endorsed by the use of flags, seals or other insignia or otherwise;

6. Makes any reference to the intoxicating effect of any alcoholic beverages;

7. Makes any appeal to order alcoholic beverages by mail;

8. Offers a special price on alcoholic beverages for sale in the print media, on the radio or on television unless such advertisement appears in conjunction with the advertisement of nonalcoholic merchandise. The alcoholic beverage sale advertising must significantly conform in size, prominence and content to the advertising of nonalcoholic merchandise advertising, except for coupons offered by manufacturers as provided in § 9 of this regulation. This provision shall apply only to advertising by retail licensees; or

9. 7. Is Constitutes or contains a contest or other offer to pay anything of value to a consumer sweepstakes where a purchase is required for participation ; ; or

8. Constitutes or contains an offer to pay or provide anything of value conditioned on the purchase of alcoholic beverages or beverages, except for coupons as provided in § 9 of this regulation.

## § 2. Advertising; interior; retail licensees ; show windows .

### A. Definition.

As used in this § 2, the term "advertising materials" means any tangible property of any kind which utilizes words or symbols making reference to any brand or manufacturer of alcoholic beverages.

[ B. The use of advertising materials inside licensed retail establishments shall be subject to the following provisions: Retail licensees may advertise any brand or brands of alcoholic beverages inside their licensed establishment and use any form of advertising materials within the same, subject to the following provisions: ]

1. The use of advertising materials consisting of anything other than printed matter appearing on paper, cardboard or plastic stock is prohibited except for items listed in subdivision B 3 of this section.

2. The use of advertising materials consisting of printed matter appearing on paper, cardboard or plastic stock is permitted provided that such materials are listed in, and conform to any restrictions set forth in, subdivision B 3 of this section. Any such materials may be obtained by a retail licensee from any source

# Final Regulations

other than manufacturers, bottlers or wholesalers of alcoholic beverages; however, manufacturers, bottlers and wholesalers may supply only those items they are expressly authorized to supply to retail licensees by the provisions of subdivision B 3; and

[ 1. Retail licensees may use any nonpermanent advertising material which is neither designed as, nor functions as, permanent point-of-sale advertising material including, but not limited to, nonmechanical advertising material consisting of printed matter appearing on paper, cardboard or plastic stock; however, plastic advertising materials shall be restricted to thin sheets or strips containing only two dimensional display surfaces. Such advertising materials may be obtained by such retailers from any source, including manufacturers, bottlers and wholesalers of alcoholic beverages who may sell, lend, buy for or give to such retailers such advertising materials; provided, however, that nonpermanent advertising material referring to any brand or manufacturer of distilled spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers, or their employees, unless they hold a distilled spirits solicitor's permit;

2. Retail on-premises and on-and-off-premises licensees may use any mechanical or illuminated devices which are designed or manufactured to serve as permanent point-of-sale advertising. Such advertising devices may be obtained and displayed by retailers provided that any such devices do not make reference to brands of alcoholic beverages offered for sale in such retail establishment or to brands or the name of any manufacturer whose alcoholic beverage products are offered for sale in such retail establishment and, provided further, that such advertising materials are not supplied, installed, maintained or otherwise serviced by any manufacturers, bottlers or wholesalers of alcoholic beverages, and that no such advertising relating to distilled spirits shall be authorized in an establishment not licensed to sell mixed beverages; and ]

3. Advertising materials described in the following categories may be displayed inside a retail establishment by a retail licensee provided that any conditions or limitations stated in regard to a given category of advertising materials are observed:

a. Advertising materials, including those promoting responsible drinking or moderation in drinking, consisting of printed matter appearing on paper, cardboard or plastic stock supplied by any manufacturer, bottler or wholesaler of wine or beer subject to the provisions of VR 125-01-3 § 8 F;

b. Works of art so long as they are not supplied by manufacturers, bottlers, or wholesalers of alcoholic beverages;

c. Materials displayed in connection with the sale of over-the-counter novelty and specialty items in accordance with § 6 of this regulation;

d. Materials used in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting events, and events of a charitable or cultural nature by distilleries, wineries and breweries, subject to the provisions of § 10 B of this regulation;

e. Service items such as placemats, coasters and glasses so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages;

f. Draft beer and wine knobs, bottle or can openers, beer, wine and distilled spirits clip-ons and table tents, subject to the provisions of § 8 of VR 125-01-3;

g. Wine "neckers," recipe booklets and brochures relating to the wine manufacturing process, vineyard geography and history of a wine manufacturing area, which have been shipped in the case;

h. Point-of-sale entry blanks relating to contests and sweepstakes may be made provided by beer and wine wholesalers to retail licensees for use on retail premises if such items are offered to all retail licensees equally and the wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put entry blanks on the package at the wholesale premises and entry blanks may not be shipped in the case to retailers;

i. Refund coupons, if they are supplied, displayed and used in accordance with § 9 of VR 125-01-2; and 4

[ 3. Advertising materials described in the following categories may be displayed inside a retail establishment by a retail licensee provided that any conditions or limitations stated in regard to a given category of advertising materials are observed:

a. Advertising materials, including those promoting responsible drinking or moderation in drinking, consisting of printed matter appearing on paper, cardboard or plastic stock supplied by any manufacturer, bottler or wholesaler of alcoholic beverages in accordance with the provisions of this section provided, however, that nonpermanent advertising materials referring to any brand or manufacturer of distilled spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers or their employees unless they hold a distilled spirits solicitors permit;

b. Works of art so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages;

c. Materials displayed in connection with the sale of over-the-counter novelty and specialty items in accordance with § 6 of this regulation;

d. Materials used in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semiprofessional or amateur athletic and sporting events, and events of a charitable or cultural nature by distilleries, wineries and breweries, subject to the provisions of § 10 B of this regulation;

e. Service items such as placemats, coasters and glasses so long as they are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages;

f. Draft beer and wine knobs, bottle or can openers, beer, wine and distilled spirits clip-ons and table tents, subject to the provisions of § 8 of VR 125-01-3;

g. Beer and wine "neckers," recipe booklets and brochures relating to the wine manufacturing process, vineyard geography and history or a wine manufacturing area, which have been shipped in the case;

h. Point-of-sale entry blanks relating to contests and sweepstakes may be provided by beer and wine wholesalers to retail licensees for use on retail premises if such items are offered to all retail licensees equally and the wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put entry blanks on the package at the wholesale premises and entry blanks may not be shipped in the case to retailers; and

i. Refund coupons, if they are supplied, displayed and used in accordance with § 9 of VR 125-01-2; ]

j. Advertising materials that make reference to brands of alcoholic beverage not offered for sale in Virginia or to any manufacturer whose alcoholic beverage products are not sold in Virginia, provided the materials are not supplied by manufacturers, bottlers or wholesalers of alcoholic beverages.

[ 1. Retail on-premises and on-and-off-premises licensees may use:

a. Any nonpermanent advertising material which is neither designed as, nor functions as, permanent point-of-sale advertising material including, but not limited to, nonmechanical advertising material

consisting of printed matter appearing on paper, cardboard or plastic stock with a value not in excess of \$5.00 at wholesale. Such advertising material may be obtained by such retailers from any source, including manufacturers, bottlers or wholesalers of alcoholic beverages who may sell, lend, buy for or give to such retailers such advertising materials.

b. Any permanent advertising material which is designed or manufactured to serve as permanent point-of-sale including, but not limited to, mechanical devices, illuminated devices, and service items such as placemats, coasters and glasses, and which has a value in excess of \$5.00 at wholesale. Such advertising material may be obtained by such retailers from any source, including manufacturers, bottlers or wholesalers of alcoholic beverages. If such materials are obtained from any manufacturer, bottler or wholesaler, then such materials must be purchased at the normal wholesale price.

2. Retail off-premises licensees may use any nonpermanent advertising material which is neither designed as, nor functions as permanent point-of-sale including, but not limited to nonmechanical advertising material consisting of printed matter appearing on paper, cardboard or plastic stock and which has a nominal value not in excess of \$5.00 at wholesale.

Such advertising material may be obtained by such retailers from any source, including manufacturers, bottlers or wholesalers of alcoholic beverages who may sell, lend, buy for or give to such retailers such advertising materials. ]

C. Manufacturers, wholesalers, etc.

No manufacturer, bottler, wholesaler or importer of alcoholic beverages, whether licensed in this Commonwealth or not, may directly or indirectly sell, rent, lend, buy for or give to any retailer any advertising materials, decorations or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising.

[ C. Manufacturers, wholesalers, etc.

No manufacturer, bottler, wholesaler or importer of alcoholic beverages, whether licensed in this Commonwealth or not, may directly or indirectly sell, rent, lend, buy for, or give to any retailer any advertising materials, decorations or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising. ]

D. Show windows.

# Final Regulations

No advertising of alcoholic beverages may be displayed in show windows facing outside the licensed establishment except that contained on table menus or on newspaper tear sheets, provided such alcoholic beverage advertising is subordinate in size to the main advertising matter.

[ C. D. ] Any advertising materials provided for herein, which may have been obtained by any retail licensee from any manufacturer, bottler or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such manufacturer, bottler or wholesaler using any normal and customary installation materials, provided no such materials are installed or displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises. With the consent of the retail licensee, which consent may be a continuing consent, wholesalers may make or affix retail prices on these materials.

[ D. E. ] Every retail on-premises and on-and-off-premises licensee [ and ] who, pursuant to subdivision B [ 1 b 2 ] above, obtains [ from any manufacturer, bottler or wholesaler of alcoholic beverages any permanent advertising material any mechanical or illuminated advertising devices ] which [ is are ] designed or manufactured to serve as permanent point-of-sale [ advertising material ] shall keep a complete, accurate and separate record of all such material obtained. Such records shall show: (i) the name and address of the [ manufacturer, bottler or wholesaler person ] from whom obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price charged therefor. All such records, invoices and accounts shall be kept by each such licensee at the place designed in the license for a period of two years and shall be available for inspection and copying by any member of the board or its agents at any time during business hours.

## § 3. Advertising; exterior; signs; ~~trucks~~ vehicles ; uniforms.

Outdoor alcoholic beverage advertising shall be limited to signs and is otherwise discretionary, except as follows:

### 1. Manufacturers and wholesalers, including wineries and farm wineries:

a. No more than one sign upon the licensed premises, no portion of which may be higher than 30 feet above ground level on a wholesaler's premises;

b. No more than two signs, which must be directional in nature, not farther than 1/2 mile from the licensed establishment limited in dimension to 64 square feet with advertising limited to brand names;

c. If the establishment is a winery also holding a winery off-premises license or is a farm winery, additional directional signs limited in dimension to

64 square feet with advertising limited to brand names, and four information, may be erected in accordance with state and local rules, regulations and ordinances; and

d. Only on vehicles and uniforms of persons employed exclusively in the business of a manufacturer or wholesaler, which shall include any antique vehicles bearing original or restored alcoholic beverage advertising used for promotional purposes. Additionally, any person whether licensed in this Commonwealth or not, may use and display antique vehicles bearing original or restored alcoholic beverage advertising.

### 2. Retailers, including mixed beverage licensees, other than carriers and clubs:

a. No more than two signs at the establishment and, in the case of establishments at intersections, three signs, the advertising on which, including symbols approved by the United States Department of Transportation relating to alcoholic beverages, shall be limited to 12 inches in height or width and not animated and, in the case of signs remote from the premises, subordinate to the main theme and substantially in conformance with the size and content of advertisements of other services offered at the establishment; and

b. Limited only to words and terms appearing on the face of the license describing the privileges of the license and, where applicable: "Mixed Drinks," "Mixed Beverages," "Cocktails," "Exotic Drinks," "Polynesian Drinks," "Cocktail Lounge," "Liquor," "Spirits," and not including any reference to or depiction of "Bar Room," "Saloon," "Speakeasy," "Happy Hour," or references or depictions of similar import, nor to prices of alcoholic beverages, including references to "special" or "reduced" prices or similar terms when used as inducements to purchase or consume alcoholic beverages. Notwithstanding the above, the terms "Bar," "Bar Room," "Saloon," and "Speakeasy" may be used [ in combination with other words that connote a restaurant ] as part of the retail licensee's trade name; and

c. No advertising of alcoholic beverages may be displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises, except on table menus or newspaper tear sheets.

### 3. Manufacturers, wholesalers and retailers may engage in billboard advertising within stadia, coliseums or racetracks that are used primarily for professional or semiprofessional athletic or sporting events.

## § 4. Advertising; newspaper, magazines, radio, television,

trade publications, etc.

## A. Generally.

Beer, wine and mixed beverage advertising in the print or electronic media is permitted with the following exceptions:

1. All references to mixed beverages are prohibited except the following: "Mixed Drinks," "Mixed Beverages," "Exotic Drinks," "Polynesian Drinks," "Cocktails," "Cocktail Lounges," "Liquor" and "Spirits";

2. The following terms or depictions thereof are prohibited *unless they are [ used in combination with other words that connote a restaurant and they are ] part of the licensee's trade name* : "Bar," "Bar Room," "Saloon," "Speakeasy," or references or depictions of similar import; and

3. Any references to "Happy Hour" or similar terms are prohibited.

## B. Further requirements and conditions:

1. All alcoholic beverage advertising shall include the name and address (street address optional) of the responsible advertiser;

2. No manufacturer, bottler or wholesaler shall be deemed to have any financial interest in the business of a retail licensee nor to have sold or given to the retail licensee any property nor to have engaged in cooperative advertising solely by virtue of any advertisement appearing in college publications or trade publications of associations of retail licensees which conform to the conditions and limitations herein; *Advertising placed by a manufacturer, bottler or wholesaler in trade publications of associations of retail licensees or college publications shall not constitute cooperative advertising;*

3. Advertisements of beer, wine and mixed beverages are not allowed in college student publications unless in reference to a dining establishment, except as provided below. A "college student publication" is defined as any college or university publication that is prepared, edited or published primarily by students at such institution, is sanctioned as a curricular or extra-curricular activity by such institution and which is distributed or intended to be distributed primarily to persons under 21 years of age.

Advertising of beer, wine and mixed beverages by a dining establishment in college student publications shall not contain any reference to particular brands or prices and shall be limited only to the use of the following words: "A.B.C. on-premises," "beer," "wine," "mixed beverages," "cocktails," or any combination of these words; and

4. Advertisements of beer, wine and mixed beverages are prohibited in publications not of general circulation which are distributed or intended to be distributed primarily to persons under 21 years of age, except in reference to a dining establishment as provided in subdivision 3 above; notwithstanding the above mentioned provisions, all advertisements of beer, wine and mixed beverages are prohibited in publications distributed or intended to be distributed primarily to a high school or younger age level.

5. *Notwithstanding the provisions of this or any other regulation of the board pertaining to advertising, a manufacturer, bottler or wholesaler of alcoholic beverages may place an advertisement in a college student publication [ or other publication not of general circulation ] which is distributed or intended to be distributed primarily to persons [ over 18 and ] under 21 years of age which has a message relating solely to and promoting public health, safety and welfare, including, but not limited to, moderation and responsible drinking messages, anti-drug use messages and driving under the influence warnings. Such advertisement may contain the name, logo and address of the sponsoring industry member, provided such recognition is at the bottom of and subordinate to the message, occupies no more than [ 20% 10% ] of the advertising space, and contains no reference to or pictures of the sponsor's brand or brands, mixed drinks, or exterior signs. Any public service advertisement involving alcoholic beverages or beverages shall contain a statement specifying the legal drinking age in the Commonwealth.*

§ 5. Advertising; newspapers and magazines; programs; distilled spirits.

Distilled spirits advertising by distillers, bottlers, importers or wholesalers via the media shall be limited to newspapers and magazines of general circulation, or similar publications of general circulation, and to printed programs relating to professional, semi-professional and amateur athletic and sporting events, conservation and environmental programs and for events of a charitable or cultural nature, subject to the following conditions:

### 1. Required statements.

a. Name. Name and address (street address optional) of the responsible advertiser.

b. Contents. Contents of the product advertised in accordance with all labeling requirements. If only the class of distilled spirits, such as "whiskey," is referred to, statements as to contents may be omitted.

c. Type size. *Required information on contrasting background in no smaller than eight-point size type. Any written, printed or graphic advertisement shall be in lettering or type size sufficient to be*

# Final Regulations

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*conspicuous and readily legible.*

2. Prohibited statements statement. Any reference to a price that is not the prevailing price at government stores, excepting references approved in advance by the board relating to temporarily discounted prices.

a. "Bonded." Any reference to "bond," "bonded," "bottled in bond," "aged in bond," or the like, unless the words or phrases appear upon the label of the distilled spirits advertised.

b. Age. Any statement or depiction of age not appearing on the label, except that if none appears on the label and the distilled spirits advertised are four years or over in age, such representations as "aged in wood," "mellowed in fine oak casks," and the like, if factually correct, may be used.

c. Religious references. Any statement or depiction referring to Easter, Holy Week, similar or synonymous words or phrases, except with reference to the Christmas holiday season if otherwise remote from any religious theme.

d. Price. Any reference to a price that is not the prevailing price at government stores, excepting references approved in advance by the board relating to temporarily discounted prices.

3. Further limitation. Distilled spirits may not be advertised in college student publications as defined in § 4 B 3 of this regulation nor in newspapers, programs or other written or pictorial matter primarily relating to intercollegiate athletic events.

## § 6. Advertising; novelties and specialties.

Distribution of novelty and specialty items, including wearing apparel, bearing alcoholic beverage advertising, shall be subject to the following limitations and conditions:

1. Items not in excess of ~~\$2.00~~ \$5.00 in wholesale value may be given away;

2. Manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give items not in excess of ~~\$2.00~~ \$5.00 in wholesale value, limited to one item per retailer and one item per employee, per visit, which may not be displayed on the licensed premises. Neither manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give such items to patrons on the premises of retail licensees;

3. Items in excess of ~~\$2.00~~ \$5.00 in wholesale value may be donated by distilleries, wineries and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting events subject to the limitations

of § 10 of VR 125-01-2, and for events of a charitable or cultural nature;

4. Items may be sold by mail upon request or over-the-counter at retail establishments customarily engaged in the sale of novelties and specialties, provided they are sold at the reasonable open market price in the localities where sold;

5. Wearing apparel shall be in adult sizes;

6. Point-of-sale order blanks, relating to novelty and specialty items, may be provided by beer and wine wholesalers to retail licensees for use on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put order blanks on the package at the wholesale premises and order blanks may not be shipped in the case to retailers. Wholesalers may not be involved in the redemption process.

## § 7. Advertising; fairs and trade shows; [ wine and beer alcoholic beverage ] displays.

Alcoholic beverage advertising at fairs and trade shows shall be limited to booths assigned to manufacturers, bottlers and wholesalers and to the following:

1. Display of ~~wine and beer alcoholic beverages and beverages~~ in closed containers with informational signs, provided such merchandise is not sold or given away except as permitted in VR 125-01-7, § 10;

2. Distribution of informational brochures, pamphlets, and the like, relating to ~~wine and beer alcoholic beverages and beverages~~ ; and

3. Distribution of novelty and specialty items bearing ~~wine and beer alcoholic beverage and beverage~~ advertising not in excess of ~~\$2.00~~ \$5.00 in wholesale value.

## § 8. Advertising; film presentations.

Advertising of alcoholic beverages by means of film presentations is restricted to the following:

1. Presentations made only to bona fide private groups, associations or organizations upon request; and

2. Presentations essentially educational in nature.

## § 9. Advertising; coupons.

### A. Definitions.

"Normal retail price" shall mean the average retail price of the brand and size of the product in a given market, and not a reduced or discounted price.

B. Coupons may be advertised in accordance with the following conditions and restrictions:

1. Manufacturers of spirits, wine and beer may use only refund, not discount, coupons. The coupons may not exceed 50% of the normal retail price and may not be honored at a retail outlet but shall be mailed directly to the manufacturer or its designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Coupons are permitted in the print media, by direct mail to consumers or as part of, or attached to, the package. Coupons may be part of, or attached to, the package only if the winery or brewery put them on at the point of manufacture; however, beer and wine wholesalers may provide coupon pads to retailers for use by retailers on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in Virginia may not put them on the package at the wholesale premises and coupons may not be shipped in the case to retailers.

2. Manufacturers offering coupons on distilled spirits and wine sold in state government stores shall notify the board at least 45 days in advance of the issuance of the coupons of its amount, its expiration date and the area of the Commonwealth in which it will be primarily used, if not used statewide.

3. Wholesale licensees of the board are not permitted to offer coupons.

4. Retail licensees of the board may offer [ *coupons, including* ] *their own discount or refund* coupons [ , ] on wine and beer sold for off-premises consumption only. Retail licensees may offer [ ~~such their own~~ ] coupons in the print media, at the point-of-sale or by direct mail to consumers. ~~Coupons offered by retail licensees shall appear in an advertisement with nonalcoholic merchandise and conform in size and content to the advertising of such merchandise.~~

5. No retailer may be paid a fee by manufacturers or wholesalers of alcoholic beverages for display or use of coupons ; *and* the name of the retail establishment may not appear on any *refund* coupons offered by manufacturers ~~and no~~ . No manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers *which are customized or designed for discount or refund by the retailer* .

6. Retail licensees or employees thereof may not receive refunds on coupons obtained from the packages before sale at retail.

7. No coupons may be honored for any individual below the legal age for purchase.

§ 10. Advertising; sponsorship of public events; restrictions

and conditions.

A. Generally.

Alcoholic beverage advertising in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional, or amateur athletic and sporting events and events of a charitable or cultural nature by distilleries, wineries, and breweries.

B. Restrictions and conditions:

1. ~~Programs and events~~ Any sponsorship on a college, high school or younger age level ~~are~~ is prohibited;

2. Cooperative advertising, as defined in § 1 of these regulations, is prohibited;

3. Awards or contributions of alcoholic beverages are prohibited;

4. Advertising of alcoholic beverages shall conform in size and content to the other advertising concerning the event and advertising regarding charitable events shall place primary emphasis on the charitable fund raising nature of the event;

5. A charitable event is one held for the specific purpose of raising funds for a charitable organization which is exempt from federal and state taxes;

6. Advertising in connection with the sponsorship of an event may be only in the media, including programs, tickets and schedules for the event, on the inside of licensed or unlicensed retail establishments and at the site of the event;

7. Advertising materials as defined in VR 125-01-3 § 8 F, table tents as defined in VR 125-01-3 § 8 G and canisters are permitted;

~~8. Athletic and sporting events permissible for sponsorship shall be of limited duration such as tournaments or limited fund raising events. An entire season of activities, such as a football season, may not be sponsored;~~

~~9.~~ 8. Prior written notice of the event shall be submitted to the board describing the nature of the sponsorship and giving the date, time and place of it; and

~~10.~~ 9. Manufacturers may sponsor public events and wholesalers may only cosponsor charitable events.

VR 125-01-3. Tied House.

§ 1. Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts.

# Final Regulations

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## A. Permitted acts.

For the purpose of maintaining the freshness of the stock and the integrity of the products sold by him, a wholesaler may perform [, except on Sundays,] the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack and rearrange wine or beer in a display (shelves, coolers, cold boxes, and the like, and floor displays in a sales area);
2. Restock beer and wine;
3. Rotate, repack, rearrange and add to his own stocks of wine or beer in a storeroom space assigned to him by the retailer;
4. Transfer beer and wine between storerooms, between displays, and between storerooms and displays; *and*
5. Create or build original displays using wine or ~~mal~~ *beverage beer* products only ; *and* .
6. ~~Exchange beer or wine, for quality control purposes, on an identical quantity, brand and package basis. Any such exchange shall be documented by the word "exchange" on the proper invoice.~~

## B. Prohibited acts.

### A wholesaler may not:

1. Alter or disturb in any way the merchandise sold by another wholesaler, whether in a display, sales area or storeroom except in the following cases:
  - a. When the products of one wholesaler have been erroneously placed in the area previously assigned by the retailer to another wholesaler; or
  - b. When a floor display area previously assigned by a retailer to one wholesaler has been reassigned by the retailer to another wholesaler;
2. Mark or affix retail prices to products; or
3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:
  - a. Products defective at the time of delivery may be replaced;
  - b. Products erroneously delivered may be replaced or money refunded;
  - c. *Products that a manufacturer discontinues nationally may be returned and money refunded;*

e. *d.* Resaleable draft beer or beverages may be returned and money refunded;

~~d.~~ *e.* Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary surrender or order of the board may be returned and money refunded upon permit issued by the board;

e. *f.* Products which have been condemned and are not permitted to be sold in this state may be replaced or money refunded upon permit issued by the board; or

~~f.~~ *g.* Beer wine may be exchanged on an identical quantity, brand [ *or and* ] package basis for quality control purposes. *Any such exchange shall be documented by the word "exchange" on the proper invoice.*

## § 2. Manner of compensation of employees of retail licensees.

Employees of a retail licensee shall not receive compensation based directly, in whole or in part, upon the volume of alcoholic beverages or beverages sales only; provided, however, that in the case of retail wine and beer or beer only licensees, nothing in this section shall be construed to prohibit a bona fide compensation plan based upon the total volume of sales of the business, including receipts from the sale of alcoholic beverages or beverages.

## § 3. § 2. Interests in the businesses of licensees.

Persons to whom licenses have been issued by the board shall not allow any other person to receive a percentage of the income of the licensed business or have any beneficial interest in such business; provided, however, that nothing in this section shall be construed to prohibit:

1. The payment by the licensee of a franchise fee based in whole or in part upon a percentage of the entire gross receipts of the business conducted upon the licensed premises, where such is reasonable as compared to prevailing franchise fees of similar businesses; or

2. Where the licensed business is conducted upon leased premises, and the lease when construed as a whole does not constitute a shift or device to evade the requirements of this section:

a. The payment of rent based in whole or in part upon a percentage of the entire gross receipts of the business, where such rent is reasonable as compared to prevailing rentals of similar businesses; and

b. The landlord from imposing standards relating to the conduct of the business upon the leased

premises, where such standards are reasonable as compared to prevailing standards in leases of similar businesses, and do not unreasonably restrict the control of the licensee over the sale and consumption of mixed beverages, other alcoholic beverages, or beverages.

#### § 4. § 3. Restrictions upon employment; exceptions.

No retail licensee of the board shall employ in any capacity in his licensed business any person engaged or employed in the manufacturing, bottling or wholesaling of alcoholic beverages or beverages; nor shall any manufacturer, bottler or wholesaler licensed by the board employ in any capacity in his licensed business any person engaged or employed in the retailing of alcoholic beverages or beverages.

This section shall not apply to banquet licensees or to off-premises winery licensees.

§ 5. § 4. Certain transactions to be for cash; "cash" defined; checks and money orders; *electronic fund transfers*; records and reports by sellers; payments to the board.

##### A. Generally.

Sales of wine, beer or beverages between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, ~~and each~~ *except where payment is to be made by electronic fund transfer as hereinafter provided. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.*

##### B. "Cash" defined.

"Cash," as used in this section, shall include (i) legal tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in Virginia ~~or~~ (iii) a valid check drawn upon a bank account in the name of the licensee *or permittee* or in the trade name of the licensee *or permittee* making the purchase, *or (iv) an electronic fund transfer, initiated [ by a wholesaler ] pursuant to subsection D of this section,* from a bank account in the name, or trade name, of the retail licensee making a purchase from a wholesaler or the board.

##### C. Checks ~~and~~, money orders *and electronic fund transfers.*

If a check ~~or~~, money order *or electronic fund transfer* is used, the following provisions apply:

1. If only alcoholic beverage merchandise is being sold, the amount of the ~~check or checks, money order orders or electronic fund transfers~~ shall be no larger than the purchase price of the alcoholic ~~beverage~~

*beverages or beverages; and*

2. If nonalcoholic merchandise is also sold to the retailer, the check ~~or~~, money order *or electronic fund transfer* may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. A separate invoice shall be used for the nonalcoholic merchandise and a copy of it shall be attached to the copies of the alcoholic beverage invoices which are retained in the records of the wholesaler and the retailer.

##### D. *Electronic fund transfers.*

*If an electronic fund transfer is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the board, the following provisions shall apply:*

1. *Prior to an electronic fund transfer, the retail licensee shall enter into a written agreement with the wholesaler specifying the terms and conditions for an electronic fund transfer in payment for the delivery of wine, beer or beverages to that retail licensee. The electronic fund transfer shall be initiated [ by the wholesaler ] no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic fund transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank.*

2. *The wholesaler must generate an invoice covering the sale of wine, beer or beverages and shall specify that payment is to be made by electronic fund transfer. Each invoice must be signed by the purchaser at the time of delivery.*

3. *Nothing in this subsection shall be construed to require that the board or any licensee must accept payment by electronic fund transfer.*

##### ~~D. Reports~~ E. Records and reports by sellers.

*Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine, beer or beverages, as well as any stop payment order, insufficient fund report [ ~~and evidence of any untimely~~ ] or [ any other ] incomplete electronic fund transfer [ reported by the retailer's bank in response to a wholesaler initiated electronic fund transfer from the retailer's bank account ] . Further, wholesalers shall report to the board [ ~~on or before the 15th day of each month~~ ] any [ ~~instances of~~ ] invalid checks [ ~~and or~~ ] incomplete [ ~~or untimely~~ ] electronic fund [ ~~transfers transfer reports~~ ] received [ ~~during the preceding month received~~ ] in payment of wine, beer or beverages [ : when either (i) any such invalid check or*

# Final Regulations

*incomplete electronic fund transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic fund transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one incomplete electronic fund transfer report from the bank of any single retail licensee, or any combination of two, within a period of 180 days.]* Such reports shall be upon a form provided by the board and in accordance with the instructions set forth in such form and if no invalid checks have been received, no report shall be required.

## E. F. Payments to the board.

Payments to the board for the following items shall be for cash, as herein defined in subsection B of this section :

1. State license fees;
2. Purchases of alcoholic beverages from the board by mixed beverage licensees;
3. Wine taxes collected pursuant to § 4-22.1 of the Code of Virginia;
4. Beer and beverage excise taxes pursuant to Chapter 4 (§ 4-127 et seq.) of Title 4 of the Code of Virginia;
5. Registration and certification fees collected pursuant to these regulations;
6. Monetary penalties and costs imposed on licensees and permittees by the board; and
7. Forms provided to licensees and permittees at cost by the board.

§ 6- § 5. Deposits on containers required; records; redemption of deposits; exceptions.

### A. Minimum deposit.

Wholesalers shall collect in cash, at or prior to the time of delivery of any beer or beverages sold to a retail licensee, the following minimum deposit charges on the containers:

Bottles having a capacity of not more than 12 oz. ....	\$ .02
Bottles having a capacity of more than 12 oz. but not more than 32 oz. ....	\$ .04
Cardboard, fibre or composition cases other than for 1 1/8- or 2 1/4-gallon kegs .....	\$ .02
Cardboard, fibre or composition cases for 1 1/8- or 2 1/4-gallon kegs .....	\$ .50

Kegs, 1 1/8-gallon .....	\$ 1.75
Kegs, 2 1/4-gallon .....	\$ 3.50
Kegs, 1/4-barrel .....	\$ 4.00
Kegs, 1/2-barrel .....	\$ 6.00
Keg covers, 1/4-barrel .....	\$ 4.00
Keg covers, 1/2-barrel .....	\$ 6.00
Tapping equipment for use by consumers .....	\$ 10.00
Cooling tubs for use by consumers .....	\$ 5.00
Cold plates for use by consumers .....	\$ 15.00

## B. Records.

The sales ticket or invoice shall reflect the deposit charge and shall be preserved as a part of the licensee's records.

## C. Redemption of deposits.

Deposits shall be refunded upon the return of the containers in good condition.

## D. Exceptions.

Deposits shall not be required on containers sold as nonreturnable items.

§ 7. § 6. Solicitation of licensees by wine, beer and beverage solicitor salesmen or representatives.

## A. Generally.

A permit is not required to solicit or promote wine, beer or beverages to wholesale or retail licensees of the board, including mixed beverage licensees, by a wine, beer or beverage solicitor salesman who represents any winery, brewery, wholesaler or importer licensed in this Commonwealth engaged in the sale of wine, beer and beverages. Further, a permit is not required to sell (which shall include the solicitation or receipt of orders) wine, beer or beverages to wholesale or retail licensees of the board, including mixed beverage licensees, by a wine, beer or beverage solicitor salesman who represents any winery, brewery or wholesaler licensed in this Commonwealth engaged in the sale of wine, beer and beverages.

## B. Permit required.

A permit is required to solicit or promote wine, beer or beverages to wholesale or retail licensees of the board, including mixed beverage licensees, by a wine, beer or beverage solicitor salesman or representative of any wholesaler engaged in the sale of wine, beer or beverages, but not holding a license therefor in this Commonwealth.

or of any manufacturers, wholesalers or any other person outside this Commonwealth holding a wine or beer importer's license issued by the board. A permit under this section shall not authorize the sale of wine and wine coolers by the permittee, the direct solicitation or receipt of orders for wine and wine coolers, or the negotiation of any contract or contract terms for the sale of wine and wine coolers unless such sale, receipt or negotiations are conducted in the presence of a licensed Virginia wholesaler or importer or such Virginia wholesaler's or importer's solicitor salesman or representative. In order to obtain a permit, a person shall:

1. Register with the board by filing an application on such forms as prescribed by the board;
2. Pay a fee of \$125, which is subject to proration on a quarterly basis, pursuant to the provisions of § 4-26(b) of the Code of Virginia; and
3. Be 18 years old or older to solicit or promote the sale of wine, beer or beverages, and may not be employed at the same time by a nonresident person engaged in the sale of wine, beer or beverages at wholesale and by a licensee of the board to solicit the sale of or sell wine, beer or beverages, and shall not be in violation of the provisions of § 5.

C. Each permit shall expire yearly on June 30 unless sooner suspended or revoked by the board.

D. Solicitation and promotion under this regulation may include educational programs regarding wine, beer or beverages to for mixed beverage licensees, but shall not include the promotion of, or educational programs related to, distilled spirits or the use thereof in mixed drinks unless a distilled spirits solicitor's permit has been obtained in addition to a solicitor's permit.

E. For the purposes of this regulation, the soliciting or promoting of wine, beer or beverages shall be distinguished from the sale of such products, the direct solicitation or receipt of orders for alcoholic beverages or the negotiation of any contract or contract terms for the sale of alcoholic beverages. This regulation shall not be deemed to regulate the representative of a manufacturer, importer or wholesaler from merely calling on retail licensees to check on market conditions, the freshness of products on the shelf or in stock, the percentage or nature of display space, or the collection of similar information where solicitation or product promotion is not involved.

§ 8- § 7. Inducements to retailers; tapping equipment; bottle or can openers; banquet licensees; paper, cardboard or plastic advertising materials; clip-ons and table tents.

#### A. Beer tapping equipment.

Any manufacturer, bottler or wholesaler may sell, rent, lend, buy for or give to any retailer, without regard to the value thereof, the following:

1. Draft beer knobs, containing advertising matter which shall include the brand name and may further include only trademarks, housemarks and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer; and
2. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet, excluding the following:
  - a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;
  - b. Gas pressure gauges (may be sold at cost);
  - c. Draft arms or standards;
  - d. Draft boxes; and
  - e. Refrigeration equipment or components thereof.

Further, a manufacturer, bottler or wholesaler may sell, rent or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container.

#### B. Wine tapping equipment.

Any manufacturer, bottler or wholesaler may sell to any retailer and install in the retailer's establishment tapping accessories such as standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves, if the tapping accessories are sold at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

Wine tapping equipment shall not include the following:

1. Draft wine knobs, which may be given to a retailer;
2. Carbonic acid gas, nitrogen gas, or compressed air in containers, except that such gases may be sold in accordance with the reasonable open market prices in the locality where sold and if the price is collected within 30 days of the date of the sales; or
3. Mechanical refrigeration equipment.

C. Any beer tapping equipment may be converted for wine tapping by the beer wholesaler who originally placed the equipment on the premises of the retail licensee, provided that such beer wholesaler is also a wine wholesaler licensee. Moreover, at the time such equipment is converted for wine tapping, it shall be sold, or have previously been sold, to the retail licensee at a price not

# Final Regulations

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less than the initial purchase price paid by such wholesaler.

## D. Bottle or can openers.

Any manufacturer, bottler or wholesaler of wine or beer may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the wholesale value of any such openers given to a retailer by any individual manufacturer, bottler or wholesaler does not exceed ~~\$2.00~~ \$5.00. Openers in excess of ~~\$2.00~~ \$5.00 in wholesale value may be sold, provided the reasonable open market price is charged therefor.

## E. Banquet licensees.

Manufacturers or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees paper or plastic cups upon which advertising matter regarding wine or beer may appear.

## F. Paper, cardboard and plastic advertising materials.

Any [ ~~manufacturer manufacturers~~ ], [ ~~bottler bottlers~~ ] or [ ~~wholesaler wholesalers~~ ] of [ ~~wine or beer alcoholic beverages~~ ] may [ ~~sell, lend, buy for or give to any retailer of wine or beer, any nonmechanical advertising materials consisting of printed matter appearing on paper, cardboard or plastic stock and which has a wholesale value not in excess of \$5.00~~ ]. These materials need not be delivered by such persons in conjunction with deliveries of beer or wine. Such advertising materials may be installed in the interior of the licensed establishment ~~not provide alcoholic beverage advertising to retail licensees except in accordance with VR 125-01-2 § 2.~~ ; other than in exterior windows, [ ~~by any manufacturer, bottler or wholesaler of beer or wine using any normal and customary installation materials provided no such advertising materials are installed or displayed in exterior windows or within the interior of the retail establishment in such a manner that such advertising materials may be viewed from the exterior of the retail premises~~ ]. With the consent of the retail licensee, which may be a continuing consent, wholesalers may mark or affix retail prices on these materials ] ; however, the following restrictions apply to any such paper, cardboard or plastic advertising materials:  
[ : ]

1. Paper and cardboard advertising materials may be two or three dimensional and shall not contain display surfaces which exceed a total of 15 square feet in the aggregate;

2. Plastic advertising materials shall be restricted to thin sheets or strips containing only two dimensional display surfaces and such display surfaces may not exceed 48 square inches;

3. If any such paper, cardboard or plastic advertising materials require assembly, the size limitations set

forth above in subdivisions 1 and 2 shall be applicable to the end product of such assembly; and

4. The size limitations set forth above in subdivisions 1 and 2 shall not be applicable to cardboard advertising material commonly referred to as corrobuff; however, corrobuff may only be used or displayed on the retail license premises when attached to or affixed around the base of a floor display using wine or malt beverage products.

## G. Clip-ons and table tents.

Any manufacturer, bottler or wholesaler of wine, beer or distilled spirits may sell, lend, buy for or give to any retail licensee clip-ons and table tents containing the listing of not more than four wines, four beers and four brands of distilled spirits.

## H. Cleaning and servicing equipment.

Any manufacturer, bottler or wholesaler of alcoholic beverages may clean and service, either free or for compensation, coils and other like equipment used in dispensing wine and beer, and may sell solutions or compounds for cleaning wine and beer glasses, provided the reasonable open market price is charged.

## I. Sale of ice.

Any manufacturer, bottler or wholesaler of alcoholic beverages licensed in this Commonwealth may sell ice to retail licensees provided the reasonable open market price is charged.

## J. Sanctions and penalties.

Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4-79.1 A of the Code of Virginia, wholesaler or retailer who violates, solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalties as provided in § 4-79.1 D of the Code of Virginia.

§ 9. § 8. Routine business entertainment; definition; permitted activities; conditions.

### A. Generally.

Nothing in this regulation shall prohibit a wholesaler or manufacturer of alcoholic beverages licensed in Virginia from providing a retail licensee of the board "routine business entertainment" which is defined as those activities enumerated in subsection B.

### B. Permitted activities:

1. Meals and beverages;

2. Concerts, theatre and arts entertainment;

3. Sports participation and entertainment;
4. Entertainment at charitable events; and
5. Private parties.

#### C. Conditions.

The following conditions apply:

1. Such routine business entertainment shall be provided without a corresponding obligation on the part of the retail licensee to purchase alcoholic beverages or to provide any other benefit to such wholesaler or manufacturer or to exclude from sale the products of any other wholesaler or manufacturer;
2. Wholesaler or manufacturer personnel shall accompany the personnel of the retail licensee during such business entertainment;
3. Except as is inherent in the definition of routine business entertainment as contained herein, nothing in this regulation shall be construed to authorize the providing of property or any other thing of value to retail licensees;
4. Routine business entertainment that requires overnight stay is prohibited;
5. No more than \$200 may be spent per 24-hour period on any employee of any retail licensee, including a self-employed sole proprietor, or, if the licensee is a partnership, or any partner or employee thereof, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership or stockholder, and the like, shall not be included within the foregoing restrictions;
6. No person enumerated in subdivision C 5 may be entertained more than six times by a wholesaler and six times by a manufacturer per calendar year;
7. Wholesale licensees and manufacturers shall keep complete and accurate records for a period of three years of all expenses incurred in the entertainment of retail licensees. These records shall indicate the date and amount of each expenditure, the type of entertainment activity and retail licensee entertained; and
8. This regulation shall not apply to personal friends of wholesalers as provided for in VR 125-01-7 § 10.

#### VR 125-01-5. Retail Operations.

§ 1. Restrictions upon sale and consumption of alcoholic beverages and beverages.

#### A. Prohibited sales.

Except as may be otherwise permitted under §§ 4-48 or 4-50 of the Code of Virginia, no licensee shall sell any alcoholic beverage or beverage to a person whom he shall know, or have reason at the time to believe, is:

1. Under the age of 21 years;
2. Intoxicated; or
3. An interdicted person.

#### B. Prohibited consumption.

No licensee shall allow the consumption of any alcoholic beverage or beverage upon his licensed premises by any person to whom such alcoholic beverage or beverage may not lawfully be sold under this section.

#### § 2. Determination of legal age of purchaser.

A. In determining whether a licensee, or his employee or agent, has reason to believe that a purchaser is not of legal age, the board will consider, but is not limited to, the following factors:

1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior and manner of the purchaser; and
2. Whether the seller demanded, was shown and acted in good faith in reliance upon bona fide evidence of legal age, as defined herein, and that evidence contained a photograph and physical description consistent with the appearance of the purchaser.

B. Such bona fide evidence of legal age shall include a valid motor vehicle driver's license issued by any state of the United States or the District of Columbia, armed forces identification card, United States passport or foreign government visa, valid special identification card issued by the Virginia Department of Motor Vehicles, or any valid identification issued by any other federal or state government agency, excluding student university and college identification cards, provided such identification shall contain a photograph and signature of the subject, with the subject's height, weight and date of birth.

C. It shall be incumbent upon the licensee, or his employee or agent, to scrutinize carefully the identification, if presented, and determine it to be authentic and in proper order. Identification which has been altered so as to be apparent to observation or has expired shall be deemed not in proper order.

#### § 3. Restricted hours; exceptions.

##### A. Generally.

# Final Regulations

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The hours during which licensees shall not sell or permit to be consumed upon their licensed premises any wine, beer, beverages or mixed beverages shall be as follows:

1. In localities where the sale of mixed beverages has been authorized:

a. For on-premises sale and consumption: 2 a.m. to 6 a.m.

b. For off-premises sale: 12 a.m. to 6 a.m.

2. In all other localities: 12 a.m. to 6 a.m. for on-premises sales and consumption and off-premises sales, except that on New Year's Eve the licensees shall have an additional hour in which to exercise the on-premises privileges of their licenses.

## B. Exceptions:

1. Club licensees: No restrictions at any time;

2. Individual licensees whose hours have been more stringently restricted by the board shall comply with such requirements; and

3. Licensees in the City of Danville are prohibited from selling wine and beer for off-premises consumption between the hours of 1 a.m. and 6 a.m.

§ 4. Designated managers of licensees; appointment generally; disapproval by board; restrictions upon employment.

## A. Generally.

Each licensee, except a licensed individual who is on the premises, shall have a designated manager present and in actual charge of the business being conducted under the license at any time the licensed establishment is kept open for business, whether or not the privileges of the license are being exercised. The name of the designated manager of every retail and mixed beverage licensee shall be kept posted in a conspicuous place in the establishment, in letters not less than one inch in size, during the time he is in charge.

The posting of the name of a designated manager shall qualify such person to act in that capacity until disapproved by the board.

## B. Disapproval of designated manager.

The board reserves the right to disapprove any person as a designated manager if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has committed any act that would justify the board in suspending or revoking a license.

Before disapproving a designated manager, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of the Alcoholic Beverage Control Act.

## C. Restrictions upon employment.

No licensee of the board shall knowingly permit a person under 21 years of age, nor one who has been disapproved by the board within the preceding 12 months, to act as designated manager of his business.

§ 5. Restrictions upon employment of minors.

No person licensed to sell alcoholic beverages or beverages at retail shall permit any employee under the age of 18 years to sell, serve or dispense in any manner any alcoholic beverage or beverage in his licensed establishment for on-premises consumption, nor shall such person permit any employee under the age of 21 years to prepare or mix alcoholic beverages or beverages in the capacity of a bartender. "Bartender" is defined as a person who sells, serves or dispenses alcoholic beverages for on-premises consumption at a counter, as defined in § 11 of this regulation, and does not include a person employed to serve food and drink to patrons at tables as defined in that section. However, a person who is 18 years of age or older may sell or serve beer for on-premises consumption at a counter in an establishment that sells beer only.

§ 6. Procedures for mixed beverage licensees generally; mixed beverage restaurant licensees; sales of spirits in closed containers; employment of minors.

## A. Generally.

No mixed beverage restaurant or carrier licensee shall:

1. Preparation to order. Prepare, other than in frozen drink dispensers of types approved by the board, or sell any mixed beverage except pursuant to a patron's order and immediately preceding delivery to him.

2. Limitation on sale. Serve as one drink the entire contents of any spirits containers having a greater capacity than a "miniature" of two fluid ounces or 50 milliliters, nor allow any patron to possess more than two drinks of mixed beverages at any one time. "Miniatures" may be sold by carriers and by retail establishments licensed as hotels, or restaurants upon the premises of a hotel, to sell mixed beverages. However, such licensees, other than carriers, may sell miniatures only for consumption in bedrooms and in private rooms during a scheduled private function.

3. Types of ingredients. Sell any mixed beverage to which alcohol has been added.

## B. Mixed beverage restaurant licensees.

No mixed beverage restaurant licensee shall:

1. Stamps and identification. Allow to be kept upon the licensed premises any container of alcoholic beverages of a type authorized to be purchased under his license which does not bear the required mixed beverage stamp imprinted with his license number and purchase report number.
2. Source of ingredients. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the board or a wholesale wine distributor.
3. Empty container. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.
4. Miniatures. Sell any spirits in a container having a capacity of two fluid ounces or less, or 50 milliliters.

#### C. Sales of spirits in closed containers.

If a restaurant for which a mixed beverage restaurant license has been issued under § 4-98.2 of the Code of Virginia is located on the premises of and in a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packages in original closed containers purchased from the board, as well as other alcoholic beverages and beverages, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board;
2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;
3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages and beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and
4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

#### D. Employment of minors.

No mixed beverage licensee shall employ a person less than 18 years of age in or about that portion of his licensed establishment used for the sale and consumption of mixed beverages; provided, however, that this shall not be construed to prevent the licensee from employing such a person in such portion of his establishment for the purpose of:

1. Seating customers or busing tables when customers generally are purchasing meals;
2. Providing entertainment or services as a member or staff member of an otherwise adult or family group which is an independent contractor with the licensee for that purpose; or
3. Providing entertainment when accompanied by or under the supervision of a parent or guardian.

#### § 7. Restrictions on construction, arrangement and lighting of rooms and seating of licensees.

The construction, arrangement and illumination of the dining rooms and designated rooms and the seating arrangements therein of a licensed establishment shall be such as to permit ready access and reasonable observation by law enforcement officers and by agents of the board. The interior lighting shall be sufficient to permit ready discernment of the appearance and conduct of patrons in all portions of such rooms.

#### § 8. Entreating, urging or enticing patrons to purchase prohibited.

No retail licensee shall entreat, urge or entice any patron of his establishment to purchase any alcoholic beverage or beverage; nor shall such licensee allow any other person to so entreat, urge or entice a patron upon his licensed premises. *Entreating, urging or enticing shall include, but not be limited to, [ making placing ] alcoholic beverages [ placed ] in containers of ice which are visible, located in public display areas and available [ on a self-service basis available ] to patrons of retail establishments [ licensed ] for off-premises sales [ only ]*. Knowledge by a manager of the licensee of a violation of this section shall be imputed to the licensee.

This section shall not be construed to prohibit the taking of orders in the regular course of business, the purchase of a drink by one patron for another patron as a matter of normal social intercourse, nor advertising in accordance with regulations of the board.

#### § 9. Storage of alcoholic beverages and beverages generally; permits for storage; exception.

##### A. Generally.

Alcoholic beverages and beverages shall not be stored at

# Final Regulations

any premises other than those described in the license, except upon a permit issued by the board.

## B. Procedures under permits.

The licensee shall maintain at all times as a part of the records required by VR 125-01-7, § 9, an accurate inventory reflecting additions to and withdrawals of stock. Withdrawals shall specify:

1. The name of the person making the withdrawal who shall be the licensee or his duly authorized agent or servant;
2. The amount withdrawn; and
3. The place to which transferred.

## C. Exception.

Draft beer and draft beverages may be stored without permit by a wholesaler at a place licensed to do a warehousing business in Virginia.

§ 10. Definitions and qualifications for retail off-premises wine and beer licenses and off-premises beer licenses; exceptions; further conditions; temporary licenses.

### A. Wine and beer.

Retail off-premises wine and beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. *"Delicatessen."* An establishment which sells a variety of prepared foods or foods requiring little preparation such as cheeses, salads, cooked meats and related condiments:

Monthly sales ..... \$2,000  
 Inventory (cost) ..... \$2,000

2. *"Drugstore."* An establishment selling medicines prepared by a registered pharmacist according to prescription and other medicines and articles of home and general use;

Monthly sales ..... ~~\$3,500~~ \$2,000  
 Inventory (cost) ..... ~~\$3,500~~ \$2,000

3. *"Grocery store."* An establishment which sells edible items intended for human consumption, including a variety of staple foodstuffs used in the preparation of meals:

Monthly sales ..... \$2,000

Inventory (cost) ..... \$2,000

4. *"Convenience grocery store."* An establishment which has an enclosed room in a permanent structure where stock is displayed and offered for sale, and which sells edible items intended for human consumption, consisting of a variety of such items of the type normally sold in grocery stores, and does not sell any petroleum related service with the sale of petroleum products:

Monthly sales ..... \$2,000  
 Inventory (cost) ..... \$2,000

In regard to both grocery stores and convenience grocery stores, *"edible items"* shall mean such items normally used in the preparation of meals, including liquids, and which shall include a variety (at least five) of representative items from each of the basic food groups: dairy, meat, grain, vegetables and fruit.

5. *"Specialty shop."* An establishment provided with adequate shelving and storage facilities which sell products such as cheese and gourmet foods:

Monthly sales ..... \$2,000  
 Inventory (cost) ..... \$2,000

### B. Beer.

Retail off-premises beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. *"Delicatessen."* An establishment as defined in subsection A:

Monthly sales ..... \$1,000  
 Inventory (cost) ..... \$1,000

2. *"Drugstore."* An establishment as defined in subsection A:

Monthly sales ..... ~~\$1,500~~ \$1,000  
 Inventory (cost) ..... ~~\$1,500~~ \$1,000

3. *"Grocery store."* An establishment as defined in subsection A:

Monthly sales ..... \$1,000  
 Inventory (cost) ..... \$1,000

4. *"Marina store."* An establishment operated by the owner of a marina which sells food and nautical and

fishing supplies:

Monthly sales ..... ~~\$750~~ \$1,000  
 Inventory (cost) ..... ~~\$750~~ \$1,000

### C. Exceptions.

The board may grant a license to an establishment not meeting the qualifying figures in subsections A and B provided it affirmatively appears that there is a substantial public demand for such an establishment and that public convenience will be promoted by the issuance of the license.

### D. Further conditions.

The board in determining the eligibility of an establishment for a license shall give consideration to, but shall not be limited to, the following:

1. The extent to which sales of required commodities are secondary or merely incidental to sales of all products sold in such establishment;
2. The extent to which a variety of edible items of the types normally found in grocery stores are sold; and
3. The extent to which such establishment is constructed, arranged or illuminated to allow reasonable observation of the age and sobriety of purchasers of alcoholic beverages.

### E. Temporary licenses.

Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with the provisions of § 4-30 of the Code of Virginia and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

§ 11. Definitions and qualifications for retail on-premises and on- and off-premises licenses generally; mixed beverage licensee requirements; exceptions; temporary licenses.

#### A. Generally.

The following definitions shall apply to retail licensees and mixed beverage licensees where appropriate:

1. *"Designated room."* A room or area in which a licensee may exercise the privilege of his license, the location, equipment and facilities of which room or area have been approved by the board. *The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale therein. The seating capacity of such room or area shall be included in determining eligibility qualifications for a mixed beverage restaurant.*

2. *"Dining car, buffet car or club car."* A vehicle operated by a common carrier of passengers by rail, in interstate or intrastate commerce and in which food and refreshments are sold.

3. *"Meals."* In determining what constitutes a "meal" as the term is used in this section, the board may consider the following factors, among others:

- a. The assortment of foods commonly offered for sale;
- b. The method and extent of preparation and service required; and
- c. The extent to which the food served would be considered a principal meal of the day as distinguished from a snack.

4. *"Habitual sales."* In determining what constitutes "habitual sales" of specific foods, the board may consider the following factors, among others:

- a. The business hours observed as compared with similar type businesses;
- b. The extent to which such food or other merchandise is regularly sold; and
- c. Present and anticipated sales volume in such food or other merchandise.

5. *"Sale" and "sell."* The definition of "sale" and "sell" in VR 125-01-7, § 9 shall apply to this section.

B. Wine and beer. Retail on- or on-and off-premises licenses may be granted to persons operating the following types of establishments provided the total monthly food sales for consumption in dining rooms and other designated rooms on the premises are not less than those shown:

1. *"Boat."* A common carrier of passengers operating by water on regular schedules in interstate or intrastate commerce, habitually serving in a dining room meals prepared on the premises:

# Final Regulations

Monthly sales ..... ~~\$3,000~~ \$2,000

2. "Restaurant." A bona fide dining establishment habitually selling meals with entrees and other foods prepared on the premises:

Monthly sales ..... ~~\$3,000~~ \$2,000

3. "Hotel." Any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, meals with entrees and other food prepared on the premises and lodging are habitually furnished to persons and which has 10 or more bedrooms:

Monthly sales ..... ~~\$3,000~~ \$2,000

In regard to both restaurants and hotels, at least \$1,000 of the required monthly sales must be in the form of meals with entrees.

## C. Beer.

Retail on- or on- and off-premises licenses may be granted to persons operating the following types of establishments provided the total monthly food sales for consumption in dining rooms on the premises are not less than those shown:

1. "Boat." A common carrier of passengers operating by water on regular schedules in interstate or intrastate commerce, habitually serving in a dining room food prepared on the premises:

Monthly sales ..... ~~\$1,800~~ \$2,000

2. "Restaurant." An establishment habitually selling food prepared on the premises:

Monthly sales ..... ~~\$1,800~~ \$2,000

3. "Hotel." See subdivision B 3;

Monthly sales ..... ~~\$1,800~~ \$2,000

4. "Tavern." An establishment where food and refreshment, including beer or beverages, are habitually sold for on-premises consumption.

## D. Mixed beverage licenses.

The following shall apply to mixed beverage licenses where appropriate:

1. "Bona fide, full-service restaurant." An established place of business where meals with substantial entrees are habitually sold to persons and which has adequate facilities and sufficient employees for cooking, preparing and serving such meals for consumption at tables in dining rooms on the premises. In determining the qualifications of such restaurant, the board may

consider the assortment of entrees and other food sold. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

2. "Monetary sales requirements." The monthly sale of food prepared on the premises shall not be less than ~~\$5,000~~ \$4,000 of which at least ~~\$3,000~~ \$2,000 shall be in the form of meals with entrees.

3. "Dining room." A public room in which meals are regularly sold at substantially all hours that mixed beverages are offered for sale therein.

4. "Designated room." A public room the location, equipment and facilities of which have been approved by the board. The facilities shall be such that patrons may purchase food prepared on the premises for consumption at tables on the premises at all times that mixed beverages are offered for sale therein. The seating area or areas of such designated room or rooms shall not exceed the seating area of the required public dining room or rooms, nor shall the seating capacity of such room or rooms be included in determining eligibility qualifications.

5. 4. "Outside terraces or patios." An outside terrace or patio, the location, equipment and facilities of which have been approved by the board may be approved as a "dining room" or as a "designated room" in the discretion of the board but the seating capacity of an outside "dining room" or "designated room" shall not be included in determining eligibility qualifications of the establishment, and generally a . A location adjacent to a public sidewalk, street or alley will not be approved where direct access is permitted from such sidewalk, street or alley by more than one well-defined entrance therefrom. The seating capacity of an outside terrace or patio if used regularly by those operations which are seasonal in nature, shall be included in determining eligibility qualifications. For purposes of this subdivision, the term "seasonal operations" is defined as an establishment that voluntarily surrenders its license to the board for part of its license year.

6. 5. "Tables and counters."

[ a. ] A "table" shall be considered to be an article of furniture generally having a flat top surface supported by legs, a pedestal or a solid base and designed to accommodate the serving of food and refreshments (though such food and refreshments need not necessarily be served together) and provided with seating for customers. If any table is located between two-backed benches, commonly known as a booth, at least one end of the structure shall be open permitting an unobstructed view therein; [ For purposes of qualifications, a counter shall be considered a table if provided with seating for customers and designed to accommodate the

## *servicing of food and refreshments.*

a. A "table" shall include any article of furniture, fixture or counter generally having a flat top surface supported by legs, a pedestal or a solid base, designed to accommodate the serving of food and refreshments (though such food and refreshments need not necessarily be served together), and to provide seating for customers. If any table is located between two-backed benches, commonly known as a booth, at least one end of the structure shall be open permitting an unobstructed view therein. In no event, shall the number of individual seats at free standing tables and in booths be less than the number of individual seats at counters. ]

b. While the definition of a "table" set forth above shall be sufficient to include a "counter," insofar as the surface area is concerned, a "counter" shall have characteristics sufficient to make it readily distinguishable from the "tables" used by the licensee, either by the manner of service and use provided, or by the type of seating provided for patrons, or in both regards. Counters shall be located only in dining room counter shall not exceed one foot for each qualifying seat at the tables in such dining or designated room, including employee service areas; and

e. b. This subdivision shall not be applicable to a room otherwise lawfully in use for private meetings and private parties limited in attendance to members and guests of a particular group.

## E. Exceptions.

The board may grant a license to an establishment not meeting the qualifying figures in this section, provided the establishment otherwise is qualified under the applicable provisions of the Code of Virginia and this section, if it affirmatively appears that there is a substantial public demand for such an establishment and that the public convenience will be promoted by the issuance of the license.

## F. Temporary licenses.

Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with the provisions of § 4-30 of the Code of Virginia, and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further

temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

## § 12. Fortified wines; definitions and qualifications.

### A. Definition.

"Fortified wine" is defined as wine having an alcoholic content of more than 14% by volume but not more than 21%.

### B. Qualifications.

Fortified wine may be sold for off-premises consumption by licensees authorized to sell wine for such consumption.

## § 13. Clubs; applications; qualifications; reciprocal arrangements; changes; financial statements.

### A. Applications.

Each applicant for a club license shall furnish the following information:

1. A certified copy of the charter, articles of association or constitution;
2. A copy of the bylaws;
3. A list of the officers and directors showing names, addresses, ages and business employment;
4. The average number of members for the preceding 12 months. Only natural persons may be members of clubs; and
5. A financial statement for the latest calendar or fiscal year of the club, and a brief summary of the financial condition as of the end of the month next preceding the date of application.

### B. Qualifications.

In determining whether an applicant qualifies under the statutory definition of a club, as well as whether a club license should be suspended or revoked, the board will consider, but is not limited to, the following factors:

1. The club's objectives and its compliance with the objectives;
2. The club's qualification for tax exempt status from federal and state income taxes; and
3. The club's permitted use of club premises by nonmembers, including reciprocal arrangements.

### C. Nonmember use.

# Final Regulations

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The club shall limit nonmember use of club premises according to the provisions of this section and shall notify the board each time the club premises are used in accordance with this subdivision 1 below. The notice shall be received by the board at least two business days in advance of any such event.

1. A licensed club may allow nonmembers, who would otherwise qualify for a banquet or banquet special events license, to use club premises, where the privileges of the club license are exercised, 12 times per calendar year for public events held at the licensed premises, such events allowing nonmembers to attend and participate in the event at the licensed premises;
2. A member of a licensed club may sponsor private functions on club premises for an organization or group of which he is a member, such attendees being guests of the sponsoring member; or
3. Notwithstanding subdivisions C 1 and C 2 above, a licensed club may allow its premises to be used no more than a total of 12 times per calendar year by organizations or groups who obtain banquet or banquet special events licenses.

Additionally, there shall be no limitation on the numbers of times a licensed club may allow its premises to be used by organizations or groups if alcoholic beverages are not served at such functions.

## D. Reciprocal arrangements.

Persons who are resident members of other clubs located at least 100 miles from the club licensed by the board (the "host club") and who are accorded privileges in the host club by reason of bona fide, prearranged reciprocal arrangements between the host club and such clubs shall be considered guests of the host club and deemed to have members' privileges with respect to the use of its facilities. The reciprocal arrangements shall be set out in a written agreement and approved by the board prior to the exercise of the privileges thereunder.

The mileage limitations of this subsection notwithstanding, members of private, nonprofit clubs or private clubs operated for profit located in separate cities which are licensed by the board to operate mixed beverage restaurants on their respective premises and which have written agreements approved by the board for reciprocal dining privileges may be considered guests of the host club and deemed to have members' privileges with respect to its dining facilities.

## E. Changes.

Any change in the officers and directors of a club shall be reported to the board within 30 days, and a certified copy of any change in the charter, articles of association or by-laws shall be furnished the board within 30 days

thereafter.

## F. Financial statements.

Each club licensee shall furnish the board a financial statement for the latest calendar or fiscal year at the time the annual license renewal fee is submitted prepare and sign an annual financial statement on forms prescribed by the board. The statement may be on a calendar year or fiscal year basis, but shall be consistent with any established tax year of the club. The statement must be prepared and available for inspection on the club premises no later than 120 days next following the last day of the respective calendar or fiscal year, and each such statement must be maintained on the premises for a period of three consecutive years. In addition, each club holding a mixed beverage license shall be required to prepare and timely submit the mixed beverage annual review report required by VR 125-01-7 § 9 C.

## § 14. Lewd or disorderly conduct.

While not limited thereto, the board shall consider the following conduct upon any licensed premises to constitute lewd or disorderly conduct:

1. The real or simulated display of any portion of the genitals, pubic hair or buttocks, or any portion of the breast below the top of the areola, by any employee, or by any other person; except that when entertainers are on a platform or stage and reasonably separate from the patrons of the establishment, they shall be in conformity with subdivision 2;
2. The real or simulated display of any portion of the genitals, pubic hair or anus by an entertainer, or any portion of the areola of the breast of a female entertainer. When not on a platform or stage and reasonably separate from the patrons of the establishment, entertainers shall be in conformity with subdivision 1;
3. Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation or any other sexual act prohibited by law, by any person, whether an entertainer or not; or
4. The fondling or caressing by any person, whether an entertainer or not, of his own or of another's breast, genitals or buttocks.

## § 15. Off-premises deliveries on licensed retail premises; "drive through" establishments.

No person holding a license granted by the board which authorizes the licensee to sell wine or beer at retail for consumption off the premises of such licensee shall deliver such wine or beer to a person on the licensed premises other than in the licensed establishment. Deliveries of such merchandise to persons through windows, apertures or similar openings at "drive through" or similar

establishments, whether the persons are in vehicles or otherwise, shall not be construed to have been made in the establishments. No sale or delivery of such merchandise shall be made to a person who is seated in a vehicle.

The provisions of this section shall be applicable also to the delivery of beverages.

§ 16. Happy hour and related promotions; definitions; exceptions.

#### A. Definitions.

1. "Happy Hour." A specified period of time during which alcoholic beverages are sold at prices reduced from the customary price established by a retail licensee.

2. "Drink." Any beverage containing the amount of alcoholic beverages customarily served to a patron as a single serving by a retail licensee.

#### B. Prohibited practices.

No retail licensee shall engage in any of the following practices:

1. Conducting a happy hour between 9 p.m. of each day and 2 a.m. of the following day;
2. Allowing a person to possess more than two drinks at any one time during a happy hour;
3. Increasing the volume of alcoholic beverages contained in a drink without increasing proportionately the customary or established retail price charged for such drink;
4. Selling two or more drinks for one price, such as "two for one" or "three for one";
5. Selling pitchers of mixed beverages;
6. Giving away drinks;
7. Selling an unlimited number of drinks for one price, such as "all you can drink for \$5.00"; or
8. Advertising happy hour in the media or on the exterior of the licensed premises.

#### C. Exceptions.

This regulation shall not apply to prearranged private parties, functions, or events, not open to the public, where the guests thereof are served in a room or rooms designated and used exclusively for private parties, functions or events.

§ 17. Caterer's license.

#### A. Qualifications.

Pursuant to § 4-98.2(e) of the Code of Virginia, the board may grant a caterer's license to any person:

1. Engaged on a regular basis in the business of providing food and beverages to persons for service at private gatherings, or at special events as defined in § 4-2 of the Code of Virginia or as provided in § 4-98.2(c) of the Code of Virginia, and

2. With an established place of business with catering gross sales average of at least ~~\$5,000~~ \$4,000 per month and who has complied with the requirements of the local governing body concerning sanitation, health, construction or equipment and who has obtained all local permits or licenses which may be required to conduct such a catering business.

#### B. Privileges.

The license authorizes the following:

1. The purchase of spirits, vermouth and wine produced by farm wineries from the board;
2. The purchase of wine and cider from licensed wholesalers or farm wineries or the purchase of beer or 3.2 beverages from licensed wholesalers;
3. The retail sale of alcoholic beverages or mixed beverages to persons who sponsor the private gatherings or special events described in subsection A or directly to persons in attendance at such events. No banquet or mixed beverage special events license is required in either case; and
4. The storage of alcoholic beverages purchased by the caterer at the established and approved place of business.

#### C. Restrictions and conditions.

In addition to other applicable statutes and regulations of the board, the following restrictions and conditions apply to persons licensed as caterers:

1. Alcoholic beverages may be sold only for on-premises consumption to persons in attendance at the gathering or event;
2. The records required to be kept by § 9 of VR 125-01-7 shall be maintained by caterers. If the caterer also holds other alcoholic beverages licenses, he shall maintain the records relating to his caterer's business separately from the records relating to any other license. Additionally, the records shall include the date, time and place of the event and the name and address of the sponsoring person or group of each event catered;

# Final Regulations

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3. The annual gross receipts from the sale of food cooked and prepared for service at gatherings and events referred to in this regulation and nonalcoholic beverages served there shall amount to at least 45% of the gross receipts from the sale of mixed beverages and food;

4. The caterer shall notify the board in writing at least 2 calendar days in advance of any events to be catered under his license for the following month. The notice shall include the date, time, location and address of the event and the name of the sponsoring person, group, corporation or association;

5. Persons in attendance at a private event at which alcoholic beverages are served but not sold under the caterer's license may keep and consume their own lawfully acquired alcoholic beverages;

6. The private gathering referred to in subsection A above shall be a social function which is attended only by persons who are specifically and individually invited by the sponsoring person or organization, not the caterer;

7. The licensee shall insure that all functions at which alcoholic beverages are sold are ones which qualify for a banquet license, for a special event license or a mixed beverage special events license. Licensees are entitled to all services and equipment now available under a banquet license from wholesalers;

8. A photocopy of the caterer's license must be present at all events at which the privileges of the license are exercised; and

9. The caterer's license shall be considered a retail license for purposes of § 4-79.1 of the Code of Virginia.

§ 18. Volunteer fire departments or volunteer rescue squads; banquet facility licenses.

## A. Qualifications.

Pursuant to § 4-25(pl) of the Code of Virginia, the board may grant banquet facility licenses to volunteer fire departments and volunteer rescue squads:

1. Providing volunteer fire or rescue squad services;
2. Having as its premises a fire or rescue squad station regularly occupied by such fire department or rescue squad; and
3. Being duly recognized by the governing body of the city, county or town in which it is located.

## B. Privileges.

The license authorizes the following:

The consumption of legally acquired alcoholic beverages on the premises of the licensee or on premises other than such fire or rescue squad station which are occupied and under the control of the licensee while the privilege of its license is being exercised, by any person, association, corporation or other entity, including the fire department or rescue squad, and bona fide members and guests thereof, otherwise eligible for a banquet license and entitled to such privilege for a private affair or special event.

## C. Restrictions and conditions.

In addition to other applicable statutes and regulations of the board, the following restrictions and conditions apply to persons holding such banquet facility licenses:

1. Alcoholic beverages cannot be sold or purchased by the licensee;

2. Alcoholic beverages cannot be sold or charged for in any way by the person, association, corporation or other entity permitted to use the premises;

3. The private affair referred to in subdivision B 1 shall be a social function which is attended only by persons who are members of the association, corporation or other entity, including the fire department or rescue squad, and their bona fide guests;

4. The volunteer fire department or rescue squad shall notify the board in writing at least two calendar days in advance of any affair or event at which the license will be used away from the fire department or rescue squad station. The notice shall include the date, time, location and address of the event and the identity of the group, and the affair or event. Such records of off-site affairs and events should be maintained at the fire department or rescue squad station for a period of two years;

5. A photocopy of the banquet facility license shall be present at all affairs or events at which the privileges of the license are exercised away from the fire or rescue squad station; and

6. The fire department or rescue squad shall comply with the requirements of the local governing body concerning sanitation, health, construction or equipment and shall obtain all local permits or licenses which may be required to exercise the privilege of its license.

§ 19. Bed and breakfast licenses.

## A. Qualifications.

Pursuant to § 4-25(A)(22) of the Code of Virginia, the board may grant a bed and breakfast license to any person who operates an establishment consisting of:

1. No fewer than three and no more than 15 bedrooms available for rent;
2. Offering to the public, for compensation, transitory lodging or sleeping accommodations; and
3. Offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

## B. Conditions.

In addition to other applicable statutes and regulations of the board, the following restrictions and conditions apply to persons licensed as bed and breakfast establishments:

1. Alcoholic beverages served under the privileges conferred by the license must be purchased from a Virginia A.B.C. store, wine or beer wholesaler or farm winery;
2. Alcoholic beverages may be served for on-premises consumption to persons who are registered, overnight guests and are of legal age to consume alcoholic beverages;
3. Lodging, meals and service of alcoholic beverages shall be provided at one general price and no additional charges, premiums or surcharges shall be exacted for the service of alcoholic beverages;
4. Alcoholic beverages may be served in dining rooms and other designated rooms, including bedrooms, outside terraces or patios;
5. The bed and breakfast establishment upon request or order of lodgers making overnight reservations, may purchase and have available for the lodger upon arrival, any alcoholic beverages so ordered, provided that no premium or surcharge above the purchase price of the alcoholic beverages may be exacted from the consumer for this accommodation purchase;
6. Alcoholic beverages purchased under the license may not be commingled or stored with the private stock of alcoholic beverages belonging to owners of the bed and breakfast establishment; and
7. The bed and breakfast establishment shall maintain complete and accurate records of the purchases of alcoholic beverages and provide sufficient evidence that at least one meal per day is offered to persons to whom overnight lodging is provided.

§ 20. Specialty stores; wine and beer off-premises licenses; conditions; records; inspections.

Pursuant to the provisions of § 4-25 A 13 of the Code of Virginia, the board may grant retail wine and beer off-premises licenses to persons operating [ ~~(i)~~ ~~as~~ a

registered ] historical site or museum specialty store [ ~~or~~ ~~(ii)~~ a handcrafts specialty store ] .

An historical site or museum specialty store shall be defined as any bona fide retail store selling, predominately, gifts, [ books, ] souvenirs and specialty items [ of an historical nature or ] relating to [ the ] history [ of , in general, or to ] the site or any exhibits (i) located on the premises or grounds of a [ government ] registered national, state or local historic building or site and which is open to the public on a regular basis or (ii) which is located within the premises of a museum which is open to the public on a regular basis, provided in either case that such store is located with a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer.

[ A handcrafts specialty store shall be defined as any bona fide retail store selling, predominately, handmade arts, collectibles, crafts or other handmade products which is open to the public on a regular basis, provided that such store is located within a permanent structure where stock is displayed and offered for sale and which facility may be properly secured when closed. ]

The board may consider the purpose, characteristics, nature, and operation of the applicant establishment in determining whether it shall be considered as a specialty store within the meaning of this section.

Specialty store retail licenses, pursuant to this regulation, shall be granted only to persons who have places of business which have been in operation for no less than 12 months next preceding the filing of the application.

A specialty store retail license shall authorize the licensee to sell at retail alcoholic beverages which have been purchased from and received at the establishment from [ farm winery or ] wholesale licensees of the board, to sell such alcoholic beverages only in closed packages for consumption off the premises, to sell such alcoholic beverages only within the interior premises of the store, and to deliver or ship the same to purchasers thereof in accordance with Title 4 of the Code of Virginia and regulations of the board. No chilled alcoholic beverages may be sold under the privileges of the specialty store retail license.

In granting licenses under the provisions of this regulation, the board may impose restrictions and conditions upon purchases and sales of wine and beer in accordance with this regulation or as may be deemed reasonable by the board to ensure that the distribution of alcoholic beverages is orderly, lawful and only incidental to the principal business of the licensee. In no event may the sale of such alcoholic beverages exceed 25% of total annual gross sales at the establishment.

Every person licensed to sell alcoholic beverages under the provisions of this regulation shall comply with VR 125-01-7 § 9.

# Final Regulations

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## § 21. Manner of compensation of employees of retail licensees.

Employees of a retail licensee shall not receive compensation based directly, in whole or in part, upon the volume of alcoholic beverages or beverages sales only; provided, however, that in the case of retail wine and beer or beer only licensees, nothing in this section shall be construed to prohibit a bona fide compensation plan based upon the total volume of sales of the business, including receipts from the sale of alcoholic beverages or beverages.

## VR 125-01-06. Manufacturers and Wholesalers Operations.

### § 1. Solicitor salesmen; records; employment restrictions; suspension or revocation of permits.

#### A. Records.

A solicitor salesman employed by any nonresident person to solicit the sale of or sell wine or beer at wholesale shall keep complete and accurate records for a period of two years, reflecting all expenses incurred for him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a certified copy of such records.

#### B. Restrictions upon employment.

A solicitor salesman must be 18 years old or older to solicit the sale of beer or wine and may not be employed at the same time by a nonresident person engaged in the sale of beer or wine at wholesale and by a licensee of the board to solicit the sale of or sell wine or beer.

#### C. Suspension or revocation of permit.

The board may suspend or revoke the permit of a solicitor salesman if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.

Before suspending or revoking such permit, the board shall accord the solicitor salesman the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of the Alcoholic Beverage Control Act.

### § 2. Wines; purchase orders generally; wholesale wine distributors.

#### A. Purchase orders generally.

Purchases of wine from the board, between licensees of the board and between licensees and persons outside the Commonwealth shall be executed only for orders on forms prescribed by the board and provided at cost if supplied

by the board.

#### B. Wholesale wine distributors.

Wholesale wine distributors shall comply with the following procedures:

1. Purchase orders. A copy of each purchase order for wine and a copy of any change in such order shall be forwarded to the board by the wholesale wine distributor at the time the order is placed or changed. Upon receipt of shipment, one copy of such purchase order shall be forwarded to the board by the distributor reflecting accurately the date received and any changes.

2. Sales in the Commonwealth. Separate invoices shall be used for all nontaxed wine sales in the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale.

3. Out-of-state sales. Separate sales invoices shall be used for wine sold outside the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale.

4. Peddling. Wine shall not be peddled to retail licensees.

5. Repossession. Repossession of wine sold to a retailer shall be accomplished on forms prescribed by the board and provided at cost if supplied by the board, and in compliance with the instructions on the forms.

6. Reports to the board. Each month wholesale wine distributors shall, on forms prescribed by the board and in accordance with the instructions set forth therein, report to the board the purchases and sales made during the preceding month, and the amount of state wine tax collected from retailers pursuant to § 4-22.1 of the Code of Virginia. Each wholesale wine distributor shall on forms prescribed by the board on a quarterly basis indicate to the board the quantity of wine on hand at the close of business on the last day of the last month of the preceding quarter based on actual physical inventory by brands. Reports shall be accompanied by remittance for the amount of taxes collected, less any refunds, replacements or adjustments and shall be postmarked no later than the fifteenth of the month, or if the fifteenth is not a business day, the next business day thereafter.

### § 3. Procedures for retail off-premises winery licenses; purchase orders; segregation, identification and storage.

#### A. Purchase orders.

Wine offered for sale by a retail off-premises winery licensee shall be procured on order forms prescribed by the board and provided at cost if supplied by the board

The order shall be accompanied by the correct amount of state wine tax levied by § 4-22.1 of the Code of Virginia, due the Commonwealth in cash, as defined in these regulations.

## B. Segregation, identification and storage.

Wine procured for sale at retail shall be segregated from all other wine and stored only at a location on the premises approved by the board. The licensee shall place his license number and the date of the order on each container of wine so stored for sale at retail. Only wine acquired, segregated, and identified as herein required may be offered for sale at retail.

## § 4. Indemnifying bond required of wholesale wine distributors.

No wholesale wine distributor's license shall be issued unless there shall be on file with the board an indemnifying bond running to the Commonwealth of Virginia in the penalty of \$1,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth of Virginia as surety, conditioned upon the faithful compliance with requirements of the Alcoholic Beverage Control Act and the regulations of the board.

A wholesale wine distributor may request in writing a waiver of the surety and the bond by the board. If the waiver is granted, the board may withdraw such waiver of surety and bond at any time for good cause.

## § 5. Records required of distillers, fruit distillers, winery licensees and farm winery licensees; procedures for distilling for another; farm wineries.

A person holding a distiller's license, a fruit distiller's license, a winery license, or a farm winery license shall comply with the following procedures:

1. Records. Complete and accurate records shall be kept at the licensee's place of business for a period of two years, which records shall be available at all times during business hours for inspection by any member of the board or its agents. Such records shall include the following information:

- a. The amount in liters and alcoholic content of each type of alcoholic beverage manufactured during each calendar month;
- b. The amount of alcoholic beverages on hand at the end of each calendar month;
- c. Withdrawals of alcoholic beverages for sale to the board or licensees of the board;
- d. Withdrawals of alcoholic beverages for shipment outside of Virginia showing:

- (1) Name and address of consignee;
- (2) Date of shipment; and
- (3) Alcoholic content, brand name, type of beverage, size of container and quantity of shipment.

## e. Purchases of cider or wine including:

- (1) Date of purchase;
- (2) Name and address of vendor;
- (3) Amount of purchase in liters; and
- (4) Amount of consideration paid.

f. A distiller or fruit distiller employed to distill any alcoholic beverage shall include in his records the name and address of his employer for such purpose, the amount of grain, fruit products or other substances delivered by such employer, the type, amount in liters and alcoholic content of alcoholic beverage distilled therefrom, the place where stored, and the date of the transaction.

## 2. Distillation for another. A distiller or fruit distiller manufacturing distilled spirits for another person shall:

a. At all times during distillation keep segregated and identifiable the grain, fruit, fruit products or other substances furnished by the owner thereof;

b. Keep the alcoholic beverages distilled for such person segregated in containers bearing the date of distillation, the name of the owner, the amount in liters, and the type and alcoholic content of each container; and

c. Release the alcoholic beverages so distilled to the custody of the owner, or otherwise, only upon a written permit issued by the board.

3. Farm wineries. A farm winery shall keep complete, accurate and separate records of fresh fruits or other agricultural products grown or produced elsewhere and obtained for the purpose of manufacturing wine. At least 51% of the fresh fruits or agricultural products used by the farm winery to manufacture the wine shall be grown or produced on such farm.

## § 6. Wine or beer importer licenses; conditions for issuance and renewal exercise of license privileges .

In addition to complying with the requirements of § 4-26 A 10 of the Code of Virginia relating to wine importers' licenses, and of § 4-25 A 7 of the Code of Virginia, relating to beer importers' licenses, and to other requirements of law applying to board licensees generally, all persons applying to the board for the issuance or renewal of a wine or beer importer's license shall file

# Final Regulations

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with the board a list of the brands of wine or beer they intend to sell and deliver or ship into this Commonwealth, along with a corresponding list of the names of the owners of such brands and a copy of the written permission of the brand owner, or its duly designated agent, authorizing such applicant to sell and deliver or ship the indicated brands of wine or beer into this Commonwealth. In the event that, subsequent to the issuance or renewal of a wine or beer importer's license, the licensee makes arrangements to sell and deliver or ship additional brands of wine or beer into this Commonwealth, the licensee shall make a supplemental filing with the board identifying such additional brands and brand owners and providing the required evidence of authorization by the brand owner, or its duly designated agent, for the licensee to sell and deliver or ship such additional brands of wine or beer into this Commonwealth.

A. In addition to complying with the requirements of subdivisions 7 and 10 of § 4-25 A of the Code of Virginia, pertaining to beer and wine importer licenses, holders of beer and wine importer licenses must comply with the provisions of § 4-25 D in order to exercise the privileges of such licenses. The board shall approve such forms as are necessary to facilitate compliance with § 4-25 D. Any document executed by, or on behalf of, brand owners for the purpose of designating beer or wine importer licensees as the authorized representative of such brand owner must be signed by a person authorized by the brand owner to do so. If such person is not an employee of the brand owner, then such document must be accompanied by a written power of attorney which provides that the person executing the document on behalf of the brand owner is the attorney-in-fact of the brand owner and has full power and authority from the brand owner to execute the required statements on its behalf. The board may approve a limited power of attorney form in order to effectuate the aforesaid provision.

B. When filing the list required by § 4-25 D of the Code of Virginia of all wholesale licensees authorized by a beer or wine importer to distribute brands of beer or wine in the Commonwealth, beer and wine importer licensees shall comply with the provisions of the Beer and Wine Franchise Acts pertaining to designation of sales territories in the case of wholesale beer licensees and designations of primary areas of responsibility in the case of wholesale wine licensees.

C. In the event that, subsequent to the filing of the brand owner's authorization for a licensed importer to import any brand of beer or wine, the importer makes arrangements to sell and deliver or ship additional brands of beer or wine into this Commonwealth, the privileges of its license shall not extend to such additional brands until the licensee complies with the requirements of § 4-25 D of the Code of Virginia and the provisions of this section in relation to each such additional brand. Likewise, if the brand owner who has previously authorized a licensed importer to import one or more of its brands of beer or wine into this Commonwealth should, subsequent thereto,

withdraw from the importer its authority to import such brand, it shall be incumbent upon such importer to make a supplemental filing of its brand owner authorizing documents indicating the deletion of any such brand(s) of beer or wine.

[ D. The foregoing provisions of this regulation shall not impair contracts in existence or entered into prior to the July 1, 1991, effective date of the amendments to §§ 4-25, 4-118.4 and 4-118.43 of the Code of Virginia, between the licensed importer and its supplier or brand owner. ]

## § 7. Beer and beverage excise taxes.

A. Indemnifying bond required of beer manufacturers, bottlers or wholesalers.

1. No license shall be issued to a manufacturer, bottler or wholesaler of beer or beverages as defined in § 4-127 of the Code of Virginia unless there shall be on file with the board, on a form approved or authorized by the board, an indemnifying bond running to the Commonwealth of Virginia in the penalty of not less than \$1,000 or more than \$100,000, with the licensee as principal and some good and responsible surety company authorized to transact business in the Commonwealth of Virginia as surety, conditioned upon the payment of the tax imposed by Chapter 4 (§ 4-127 et seq.) of Title 4 of the Code of Virginia in accordance with the provisions thereof.

2. A manufacturer, bottler or wholesaler of beer or beverages may request in writing a waiver of the surety and the bond by the board. The board may withdraw such waiver at any time for failure to comply with the provisions of §§ 4-128, 4-129 and 4-131 of the Code of Virginia.

B. Shipment of beer and beverages to installations of the armed forces.

1. Installations of the United States Armed Forces shall include, but not be limited to, all United States, Army, Navy, Air Force, Marine, Coast Guard, Department of Defense and Veteran Administration bases, forts, reservations, depots, or other facilities.

2. The direct shipment of beer and beverages from points outside the geographical confines of the Commonwealth to installations of the United States Armed Forces located within the geographical confines of the Commonwealth for resale on such installations shall be prohibited. Beer and beverages must be shipped to duly licensed Virginia wholesalers who may deliver the same to such installations, but the sale of such beer and beverages so delivered shall be exempt from the beer and beverage excise tax as provided by Chapter 4 of Title 4 of the Code of Virginia only if the sale thereof meets the exemption requirements of § 4-130.

C. Filing of monthly report and payment of tax falling due on Saturday, Sunday or legal holiday; filing or payment by mail.

1. When the last day on which a monthly report may be filed or a tax may be paid without penalty or interest falls on a Saturday, Sunday or legal holiday, then any report required by Chapter 4 of Title 4 of the Code of Virginia may be filed or such payment may be made without penalty or interest on the next succeeding business day.

2. When remittance of a monthly report or a tax payment is made by mail, receipt of such report or payment by the person with whom such report is required to be filed or to whom such payment is required to be made, in a sealed envelope bearing a postmark on or before midnight of the day such report is required to be filed or such payment made without penalty or interest, shall constitute filing and payment as if such report had been filed or such payment made before the close of business on the last day on which such report may be filed or such tax may be paid without penalty or interest.

#### D. Rate of interest.

Unless otherwise specifically provided, interest on omitted taxes and refunds under Chapter 4 of Title 4 of the Code of Virginia shall be computed in the same manner specified in § 58.1-15 of the Code of Virginia, as amended.

§ 8. Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of distilled spirits.

#### A. Generally.

This regulation applies to the solicitation, directly or indirectly, of a mixed beverage licensee to sell or offer for sale distilled spirits. Solicitation of a mixed beverage licensee for such purpose other than by a permittee of the board and in the manner authorized by this regulation shall be prohibited.

#### B. Permits.

1. No person shall solicit a mixed beverage licensee unless he has been issued a permit by the board. To obtain a permit, a person shall:

a. Register with the board by filing an application on such forms as prescribed by the board;

b. Pay in advance a fee of \$300, which is subject to proration on a quarterly basis, pursuant to the provisions of § 4-98.16 D of the Code of Virginia;

c. Submit with the application a letter of authorization from the manufacturer, brand owner or its duly designated United States agent, of each

specific brand or brands of distilled spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and

d. Be an individual at least 21 years of age.

2. Each permit shall expire yearly on June 30, unless sooner suspended or revoked by the board.

3. A permit hereunder shall authorize the permittee to solicit or promote only the brand or brands of distilled spirits for which the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or its duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand or brands he is authorized to represent shall be on file with the board. Until written authorization or a letter of authorization, in a form authorized by the board, is received and filed with the board for a particular brand or brands of distilled spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal or revocation, in whole or in part, of a letter of authorization on file with the board shall be effective as against the board until written notice thereof is received and filed with the board; and, until the board receives notice thereof, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand or brands specified on the most current authorization on file with the board.

#### C. Records.

1. A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of two years, ~~which shall include the following: reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a copy of such records.~~

a. Name and address of each mixed beverage licensee solicited;

b. Date of solicitation and name of each individual contacted;

c. Brand names of all distilled spirits promoted during the solicitation; and

d. Amount and description of any expenses incurred with respect to each such solicitation.

2. A permittee shall make available to any agent of the board on demand the records referred to in subdivision C 1.

# Final Regulations

## D. Permitted activities.

Solicitation by a permittee shall be limited to his authorized brand or brands, may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees thereof on the licensed premises, and in conjunction with solicitation, a permittee may:

1. Distribute directly or indirectly written educational material (one *item per retailer per brand and one item per employee, per visit* ) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing distilled spirits advertising not in excess of ~~\$2.00~~ \$5.00 in wholesale value (one *item per retailer per brand and one item per employee, per visit* ) which may not be displayed on the licensed premises; and provide film or video presentations of distilled spirits which are essentially educational to licensees and their employees only, and not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from packages of distilled spirits and furnish one, unopened, 50 milliliter sample container of each brand being promoted by the permittee and not sold by the licensee; such packages and sample containers shall be purchased at a Virginia ABC store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the package or container label; further, the distilled spirits package shall remain the property of the permittee and may not be left with the licensee and any 50 milliliter sample containers left with the licensee shall not be sold by the licensee;

3. Promote their authorized brands of distilled spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or distilled spirits representatives for the benefit of their members and guests, and shall be limited as follows:

a. To sample servings from packages of distilled spirits purchased from Virginia ABC stores when the distilled spirits donated are intended for consumption during the gathering;

b. To displays of distilled spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs provided such merchandise is not sold or given away except as permitted in this regulation;

c. To distribution of informational brochures, pamphlets and the like, relating to distilled spirits;

d. To distribution of novelty and specialty items bearing distilled spirits advertising not in excess of ~~\$2.00~~ \$5.00 in wholesale value; and

e. To film or video presentations of distilled spirits

which are essentially educational [ ; ; ]

[ ~~4. Provide or offer to provide point-of-sale advertising material to licensees as provided in § 2 of VR 125-01-2. ]~~

## E. Prohibited activities.

A permittee shall not:

1. Sell distilled spirits to any licensee of the board, solicit or receive orders for distilled spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or to negotiate any contract or contract terms for the sale of distilled spirits with a licensee;

2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell distilled spirits to licensees;

3. Provide or offer to provide gifts, entertainment or other forms of gratuity to licensees except at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3;

4. Provide or offer to provide any equipment, furniture, fixtures, property or other thing of value to licensees except as permitted by this regulation;

5. Purchase or deliver distilled spirits or other alcoholic beverages for or to licensees or provide any services as inducements to licensees, except that this provision shall not preclude the sale or delivery of wine, beer or beverages by a licensed wholesaler;

6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail licensee;

[ ~~7. Provide or offer to provide point-of-sale material to licensees;~~

~~8. Solicit licensees on Sundays except at conventions, trade association meetings, and similar gatherings as permitted in subdivision D 3; ]~~

~~9. [ ~~8. 7. ] Solicit licensees on any premises other than on their licensed premises or at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3;~~~~

~~10. [ ~~9. 8. ] . Solicit or promote any brand or brands of distilled spirits without having on file with the board a letter from the manufacturer or brand owner authorizing the permittee to represent such brand or brands in the Commonwealth; or~~~~

~~11. [ ~~10. 9. ] Engage in solicitation of distilled spirits other than as authorized by law.~~~~

## F. Refusal, suspension or revocation of permits.

1. The board may refuse, suspend or revoke a permit if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.

2. Before refusing, suspending or revoking such permit, the board shall follow the same administrative procedures accorded an applicant or licensee under the Alcoholic Beverage Control Act and regulations of the board.

### § 9. Sunday deliveries by wholesalers prohibited; exceptions.

Persons licensed by the board to sell alcoholic beverages at wholesale shall make no delivery to retail purchasers on Sunday, except to ships sailing for a port of call outside of the Commonwealth, or to banquet licensees.

### [ § 9. Sunday deliveries by wholesalers prohibited; exceptions.

Persons licensed by the board to sell alcoholic beverages at wholesale shall make no delivery to retail purchasers on Sunday, except to ships sailing for a port of call outside of the Commonwealth, or to banquet licensees. ]

## VR 125-01-7. Other Provisions.

§ 1. Transportation of alcoholic beverages and beverages; noncommercial permits; commercial carrier permits; refusal, suspension or revocation of permits; exceptions; out-of-state limitation not affected.

### A. Permits generally.

The transportation within or through this Commonwealth of alcoholic beverages or beverages lawfully purchased within this Commonwealth is prohibited, except upon a permit issued by the board, when in excess of the following limits:

1. Wine and beer. No limitation.
2. Alcoholic beverages other than those described in subdivision A 1. Three gallons; provided, however, that not more than one gallon thereof shall be in packages containing less than 1/5 of a gallon.
3. Beverages. No limitation.

If any part of the alcoholic beverages being transported is contained in a metric-sized package, the three-gallon limitation shall be construed to be 12 liters, and not more than four liters shall be in packages smaller than 750 milliliters.

The transportation within, into or through this Commonwealth of alcoholic beverages or beverages lawfully purchased outside of this Commonwealth is prohibited, except upon a permit issued by the board, when in excess of the following limits:

1. Alcoholic beverages, including wine and beer. One gallon (four liters if any part is in a metric-sized package).
2. Beverages. One case of not more than 384 ounces (12 liters if in metric-sized packages).

If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit, which shall accompany the alcoholic beverages or beverages at all times to the final destination.

### B. Commercial carrier permits.

Commercial carriers desiring to engage regularly in the transportation of alcoholic beverages or beverages within, into or through this Commonwealth shall, except as hereinafter noted, file application in writing for a transportation permit upon forms furnished by the board. If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit. Such permit shall not be transferable and shall authorize the carrier to engage in the regular transportation of alcoholic beverages or beverages upon condition that there shall accompany each such transporting vehicle:

1. A bill of lading or other memorandum describing the alcoholic beverages or beverages being transported, and showing the names and addresses of the consignor and consignee, who shall be lawfully entitled to make and to receive the shipment; and
2. Except for express companies and carriers by rail or air, a certified photocopy of the carrier's transportation permit.

### C. Refusal, suspension or revocation of permits.

The board may refuse, suspend or revoke a carrier's transportation permit if it shall have reasonable cause to believe that alcoholic beverages or beverages have been illegally transported by such carrier or that such carrier has violated any condition of a permit. Before refusing, suspending or revoking such permit, the board shall accord the carrier involved the same notice, opportunity to be heard, and follow the same administrative procedures accorded an applicant or licensee under the Alcoholic Beverage Control Act.

### D. Exceptions.

There shall be exempt from the requirements of this section:

1. Common carriers by water engaged in transporting

# Final Regulations

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lawfully acquired alcoholic beverages for a lawful consignor to a lawful consignee;

2. Persons transporting wine, beer, cider or beverages purchased from the board or a licensee of the board;

3. Persons transporting alcoholic beverages or beverages which may be manufactured and sold without a license from the board;

4. A licensee of the board transporting lawfully acquired alcoholic beverages or beverages he is authorized to sell in a vehicle owned or leased by the licensee;

5. Persons transporting alcoholic beverages or beverages to the board, or to licensees of the board, provided that a bill of lading or a complete and accurate memorandum accompanies the shipment, and provided further, in the case of the licensee, that the merchandise is such as his license entitles him to sell;

6. Persons transporting alcoholic beverages or beverages as a part of their official duties as federal, state or municipal officers or employees; and

7. Persons transporting lawfully acquired alcoholic beverages or beverages in a passenger vehicle, other than those alcoholic beverages or beverages referred to in subdivisions D 2 and D 3, provided the same are in the possession of the bona fide owners thereof, and that no occupant of the vehicle possesses any alcoholic beverages in excess of the maximum limitations set forth in subsection A.

E. One-gallon (four liters if any part in a metric-sized package) limitation.

This regulation shall not be construed to alter the one-gallon (four liters if any part is in a metric-sized package) limitation upon alcoholic beverages which may be brought into the Commonwealth pursuant to § 4-84(d) of the Code of Virginia.

§ 2. Procedures for handling cider; authorized licensees; containers; labels; markup; age limits.

A. Procedures for handling cider.

The procedures established by regulations of the board for the handling of wine having an alcoholic content of not more than 14% by volume shall, with the necessary change of detail, be applicable to the handling of cider, subject to the following exceptions and modifications.

B. Authorized licensees.

Licensees authorized to sell beer and wine, or either, at retail are hereby approved by the board for the sale of cider and such sales shall be made only in accordance with the age limits set forth below.

C. Containers.

Containers of cider shall have a capacity of not less than 12 ounces (375 milliliters if in a metric-sized package) nor more than one gallon (three liters if in a metric-sized package).

D. Labels.

If the label of the product is subject to approval by the federal government, a copy of the federal label approval shall be provided to the board.

E. Markup.

The markup or profit charged by the board shall be \$.08 per liter or fractional part thereof.

F. Age limits.

Persons must be 21 years of age or older to purchase or possess cider.

§ 3. Sacramental wine; purchase orders; permits; applications for permits; use of sacramental wine.

A. Purchase orders.

Purchase orders for sacramental wine shall be on separate order forms prescribed by the board and provided at cost if supplied by the board.

B. Permits.

Sales for sacramental purposes shall be only upon permits issued by the board without cost and on which the name of the wholesaler authorized to make the sale is designated.

C. Applications for permits.

Requests for permits by a religious congregation shall be in writing, executed by an officer of the congregation, and shall designate the quantity of wine and the name of the wholesaler from whom the wine shall be purchased.

D. Use of sacramental wine.

Wine purchased for sacramental purposes by a religious congregation shall not be used for any other purpose.

§ 4. Alcoholic beverages for culinary purposes; permits; purchases; restrictions.

A. Permits.

The board may issue a culinary permit to a person operating a dining room where meals are habitually served an establishment where food is prepared on the premises. The board may refuse to issue or may suspend or revoke such a permit for any reason that it may refuse

to issue, suspend or revoke a license.

## B. Purchases.

Purchases shall be made from the board at government stores or at warehouses operated by the board, and all purchase receipts issued by the board shall be retained at the permittee's place of business for a period of one year and be available at all times during business hours for inspection by any member of the board or its agents. Purchases shall be made by certified or cashier's check, money order or cash, except that if the permittee is also a licensee of the board, remittance may be by check drawn upon a bank account in the name of the licensee or in the trade name of the licensee making the purchase, provided that the money order or check is in an amount no larger than the purchase price. Distilled spirits shall be purchased from ABC retail stores. Wine and beer may be purchased from retail licensees when the permittee does not hold any retail on- or off-premises licenses. A permittee possessing a retail on- or off- premises license must purchase its wine and beer from a wholesaler. However, a permittee who only has an on- or on- and off-premises beer license may purchase its wine from a retail licensee.

## C. Records.

Permittees shall keep complete and accurate records of their purchases of alcoholic beverages and beverages at the permittee's place of business for two years. The records shall be available for inspection and copying by any member of the board or its agents at any time during business hours.

## E. D. Restrictions.

Alcoholic beverages purchased for culinary purposes shall not be sold or used for any other purpose ; nor shall the permit authorize the possession of any other alcoholic beverages . They shall be stored in a place designated for the purpose upon the premises of at the permittee permittee's place of business , separate and apart from all other commodities ; and custody thereof shall be limited to persons designated in writing by the permittee .

§ 5. Procedures for druggists and wholesale druggists; purchase orders; records.

### A. Purchase orders.

Purchases of alcohol by druggists or wholesale druggists shall be executed only on orders on forms supplied by the board. In each case the instructions on the forms relative to purchase and transportation shall be complied with.

### B. Records.

Complete and accurate records shall be kept at the place of business of each druggist and wholesale druggist for a period of two years, which records shall be available

at all times during business hours for inspection by any member of the board or its agents. Such records shall show:

1. The amount of alcohol purchased;
2. The date of receipt; and
3. The name of the vendor.

In addition, records of wholesale druggists shall show:

1. The date of each sale;
2. The name and address of the purchaser; and
3. The amount of alcohol sold.

§ 6. Alcoholic beverages for hospitals, industrial and manufacturing users.

### A. Permits.

The board may issue a yearly permit authorizing the shipment and transportation direct to the permittee of orders placed by the board for alcohol or other alcoholic beverages for any of the following purposes:

1. For industrial purposes;
2. For scientific research or analysis;
3. For manufacturing articles allowed to be manufactured under the provisions of § 4-48 of the Code of Virginia; or
4. For use in a hospital or home for the aged (alcohol only).

Upon receipt of alcohol or other alcoholic beverages, one copy of the bill of lading or shipping invoice, accurately reflecting the date received and complete and accurate records of the transaction, shall be forwarded to the board by the permittee.

The application for such permits shall be on forms provided by the board.

### B. Permit fees.

Applications for alcohol shall be accompanied by a fee of \$10, where the order is in excess of 110 gallons during a calendar year, or a fee of \$5.00 for lesser amounts. Applications for other alcoholic beverages shall be accompanied by a fee of 5.0% of the delivered cost to the place designated by the permittee. No fee shall be charged agencies of the United States or of the Commonwealth of Virginia or eleemosynary institutions.

### C. Storage.

# Final Regulations

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A person obtaining a permit under this section shall:

1. Store such alcohol or alcoholic beverages in a secure place upon the premises designated in the application separate and apart from any other articles kept on such premises;
2. Maintain accurate records of receipts and withdrawals of alcohol and alcoholic beverages;
3. Furnish to the board within 10 days after the end of the calendar year for which he was designated a permittee, a statement setting forth the amount of alcohol or alcoholic beverages on hand at the beginning of the previous calendar year, the amount purchased during the year, the amount withdrawn during the year, and the amount on hand at the end of the year.

#### D. Refusal of permit.

The board may refuse to designate a person as a permittee if it shall have reasonable cause to believe either that the alcohol or alcoholic beverages would be used for an unlawful purpose, or that any cause exists under § 4-31 of the Code of Virginia for which the board might refuse to grant the applicant any license.

#### E. Suspension or revocation of permit.

The board may suspend or revoke the designation as a permittee if it shall have reasonable cause to believe that the permittee has used or allowed to be used any alcohol or alcoholic beverages obtained under the provisions of this section for any purpose other than those permitted under the Code of Virginia, or has done any other act for which the board might suspend or revoke a license under § 4-37 of the Code of Virginia.

#### F. Access to storage and records.

The board and its agents shall have free access during business hours to all places of storage and records required to be kept pursuant to this section for the purpose of inspection and examining such place and such records.

~~§ 7. Procedures Permits for owners persons having alcoholic beverages distilled from grain, fruit, fruit products or other substances lawfully grown or produced by such person; permits and limitations thereon .~~

#### A. Permits.

~~An owner having Any person who contracts with or engages a licensed distiller or fruit distiller to manufacture distilled spirits out of from grain fruit, fruit products or other substances lawfully grown or lawfully produced by such person may remove the finished product only upon shall obtain a board permit issued by the board, which before withdrawing the distilled spirits from the distillery's~~

~~premises. The permit shall accompany the shipment at all times. The application for the permit shall include the following:~~

1. The name, address and license number (if any) of the consignee;
2. The kind and quantity in gallons of alcoholic beverages; and
3. The name of the company employed to transport the shipment.

#### B. Limitations on permits.

~~Permits shall be issued only for (i) distilled spirits shipments to the board, (ii) for sale sales and shipments to a lawful consignee outside of Virginia the Commonwealth under a bona fide written contract therefor , and for the withdrawal of or (iii) shipments of distilled spirits samples for the owner's use to the person growing or producing the substance distilled . Samples shall be packaged in containers of one pint or 500 375 or 750 milliliters and the words "Sample-Not for Sale ;" shall be printed in letters of reasonable size on the label.~~

~~§ 8. Manufacture, sale, etc., of "sterno," and similar substances for fuel purposes.~~

~~No license from the board is required for the manufacture, sale, delivery and shipment of "Sterno," canned heat and similar substances intended for fuel purposes only.~~

~~§ 9. Records to be kept by licensees generally; additional requirements for certain retailers; "sale" and "sell" defined; gross receipts; reports.~~

#### A. Generally.

~~All licensees of the board shall keep complete and accurate records at the licensee's place of business for a period of two years. The records shall be available for inspection and copying by any member of the board or its agents at any time during business hours. Licensees of the board may use microfilm, microfiche, disks or other available technologies for the storage of their records, provided the records so stored are readily subject to retrieval and made available for viewing on a screen or in hard copy by the board or its agents.~~

#### B. Retail licensees.

~~Retail licensees shall keep complete and accurate records, including invoices, of the purchases and sales of alcoholic beverages, and beverages, food and other merchandise. The records of alcoholic beverages and beverages shall be kept separate from other records.~~

#### C. Mixed beverage restaurant licensees.

In addition to the requirements of subsections A and B above, mixed beverage restaurant licensees shall keep records of all alcoholic beverages purchased for sale as mixed beverages and records of all mixed beverage sales. The following actions shall also be taken:

1. On delivery of a mixed beverage restaurant license by the board, the licensee shall furnish to the board or its agents a complete and accurate inventory of all alcoholic beverages and beverages currently held in inventory on the premises by the licensee; and

2. Once a year, each licensee shall submit on prescribed forms to the board an annual review report. The report is due within 30 days after the end of the mixed beverage license year and shall include:

a. A complete and accurate inventory of all alcoholic beverages and beverages purchased for sale as mixed beverages and held in inventory at the close of business at the end of the annual review period;

b. An accounting of the annual purchases of food, nonalcoholic beverages, alcoholic beverages, and beverages, including alcoholic beverages purchased for sale as mixed beverages, and miscellaneous items; and

c. An accounting of the monthly and annual sales of all merchandise specified in subdivision C 2 b.

#### D. "Sale" and "sell."

The terms "sale" and "sell" shall include exchange, barter and traffic, and delivery made otherwise than gratuitously, by any means whatsoever, of mixed beverages, other alcoholic beverages and beverages, and of meals or food.

E. Gross receipts; food, hors d'oeuvres, alcoholic beverages, etc.

In determining "gross receipts from the sale of food" for the purposes of Chapter 1.1 (§ 4-98.1 et seq.) of Title 4 of the Code of Virginia, a licensee shall not include any receipts for food for which there was no sale, as defined in this section. Food which is available at an unwritten, non-separate charge to patrons or employees during Happy Hours, private social gatherings, promotional events, or at any other time, shall not be included in the gross receipts. Food shall include hors d'oeuvres.

If in conducting its review pursuant to § 4-98.7 of the Code of Virginia, the board determines that the licensee has failed or refused to keep complete and accurate records of the amounts of mixed beverages, other alcoholic beverages or beverages sold at regular prices, as well as at all various reduced and increased prices offered by the licensee, the board may calculate the number of mixed drinks, alcoholic beverage and beverage drinks sold,

as determined from purchase records, and presume that such sales were made at the highest posted menu prices for such merchandise.

#### F. Reports.

Any changes in the officers, directors or shareholders owning 10% or more of the outstanding capital stock of a corporation shall be reported to the board within 30 days; provided, however, that corporations or their wholly owned subsidiaries whose corporate common stock is publicly traded and owned shall not be required to report changes in shareholders owning 10% or more of the outstanding capital stock.

§ 10. Gifts of alcoholic beverages or beverages generally; exceptions; wine tastings; taxes and records.

#### A. Generally.

Gifts of alcoholic beverages or beverages by a licensee to any other person are prohibited except as otherwise provided in this section.

#### B. Exceptions.

Gifts of alcoholic beverages or beverages may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no wise a shift or device to evade the provisions of this section.

2. Samples. A wholesaler may give a retail licensee a sample serving or a package not then sold by such licensee of wine, beer or beverages, which such wholesaler otherwise may sell to such retail licensee, provided that in a case of packages the package does not exceed 52 fluid ounces in size (1.5 liter if in a metric-sized package) and the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample package.

3. Hospitality rooms; conventions. A person licensed by the board to manufacture wine, beer or beverages may:

a. Give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, provided the donees are persons to whom such products may be lawfully sold; and

b. Host an event at conventions of national, regional or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or national purposes upon the premises occupied by such licensee, or upon property of the licensee

# Final Regulations

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contiguous to such premises, or in a development contiguous to such premises, owned and operated by the licensee or a wholly owned subsidiary.

4. Conventions; educational programs, including wine tastings; research; licensee associations. Licensed manufacturers, bottlers and wholesalers may donate beer, beverages or wines to:

a. A convention, trade association or similar gathering, composed of licensees of the board, and their guests, when the alcoholic beverages or beverages donated are intended for consumption during the convention;

b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages or beverages being given away;

c. Research departments of educational institutions, or alcoholic research centers, for the purpose of scientific research on alcoholism;

d. Licensed manufacturers and wholesalers may donate wine to official associations of wholesale wine licensees of the board when conducting a bona fide educational program concerning wine, with no promotion of a particular brand, for members and guests of particular groups, associations or organizations.

5. Conditions. Exceptions authorized by subdivisions B 3 b and B 4 are conditioned upon the following:

a. That prior written notice of the activity be submitted to the board describing it and giving the date, time and place of such; and

b. That the activity be conducted in a room or rooms set aside for that purpose and be adequately supervised.

## C. Wine tastings.

Wine wholesalers may participate in a wine tasting sponsored by a wine specialty shop licensee for its customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine.

## D. Taxes and records.

Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4 of the Code of Virginia, and complete and accurate records shall be maintained.

§ 11. Release of alcoholic beverages from customs and internal revenue bonded warehouses; receipts; violations; limitation upon sales.

## A. Release generally.

Alcoholic beverages held in a United States customs bonded warehouse may be released therefrom for delivery to:

1. The board;

2. A person holding a license authorizing the sale of the alcoholic beverages at wholesale;

3. Ships actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or trade between the United States and any of its possessions outside of the several states and the District of Columbia; or

4. Persons for shipment outside this Commonwealth to someone legally entitled to receive the same under the laws of the state of destination.

Releases to any other person shall be under a permit issued by the board and in accordance with the instructions therein set forth.

## B. Receipts.

A copy of the permit, if required, shall accompany the alcoholic beverages until delivery to the consignee. The consignee, or his duly authorized representative, shall acknowledge receipt of delivery upon a copy of the permit, which receipted copy shall be returned to the board by the permittee within 10 days after delivery.

## C. Violations.

The board may refuse to issue additional permits to a permittee who has previously violated any provision of this section.

## D. Limitation upon sales.

A maximum of six imperial gallons of alcoholic beverages may be sold, released and delivered in any 30-day period to any member of foreign armed forces personnel.

§ 12. Approval of warehouses for storage of alcoholic beverages not under customs or internal revenue bond; segregation of merchandise; release from storage; records; exception.

## A. Certificate of approval.

Upon the application of a person qualified under the provisions of § 4-84.1 of the Code of Virginia, the board may issue a certificate of approval for the operation of a warehouse for the storage of lawfully acquired alcoholic beverages not under customs bond or internal revenue bond, if satisfied that the warehouse is physically secure.

## B. Segregation.

The alcoholic beverages of each owner shall be kept separate and apart from merchandise of any other person.

## C. Release from storage.

Alcoholic beverages shall be released for delivery to persons lawfully entitled to receive the same only upon permit issued by the board, and in accordance with the instructions therein set forth. The owner of the alcoholic beverages, or the owner or operator of the approved warehouse as agent of such owner, may apply for release permits, for which a charge may be made by the board.

## D. Records.

Complete and accurate records shall be kept at the warehouse for a period of two years, which records shall be available at all times during business hours for inspection by a member of the board or its agents. Such records shall include the following information as to both receipts and withdrawals:

1. Name and address of owner or consignee;
2. Date of receipt or withdrawal, as the case may be; and
3. Type and quantity of alcoholic beverage.

## E. Exceptions.

Alcoholic beverages stored by licensees pursuant to VR 125-01-5, § 9 are excepted from the operation of this regulation.

§ 13. Special mixed beverage licenses; locations; special privileges; taxes on licenses.

### A. Location.

Special mixed beverage licenses may be granted to persons by the board at places primarily engaged in the sale of meals where the place to be occupied is owned by the government of the United States, or any agency thereof, is located on land used as a port of entry or egress to and from the United States, and otherwise complies with the requirements of § 7.1-21.1 of the Code of Virginia, which licenses shall convey all of the privileges and be subject to all of the requirements and regulations pertaining to mixed beverage restaurant licensees, except as otherwise altered or modified herein.

### B. Special privileges.

"Meals" need not be "full meals," but shall at least constitute "light lunches," and the gross receipts from the sales thereof *sale of food and nonalcoholic beverages at such establishment* shall be not less than 45% of the gross receipts from the sale of alcoholic beverages; mixed

beverages; beverages as defined in § 4-99 of the Code of Virginia; and meals food.

## C. Taxes on licenses.

The annual tax on a special mixed beverage license shall be \$500 and shall not be prorated; provided, however, that if application is made for a license of shorter duration, the tax thereon shall be \$25 per day.

§ 14. Definitions and requirements for beverage licenses.

### A. Definition.

Wherever the term "beverages" appears in these regulations, it shall mean beverages as defined in § 4-99 of the Code of Virginia. Section 4-99 defines beverages as beer, wine, similar fermented malt, and fruit juice, containing 0.5% or more of alcohol by volume, and not more than 3.2% of alcohol by weight.

B. Beverage licenses may be issued to carriers, and to applicants for retailers' licenses pursuant to § 4-102 of the Code of Virginia for either on-premises, off-premises, or on-and-off premises consumption, as the case may be, to persons meeting the qualifications of a licensee having like privileges with respect to the sale of beer. The license of a person meeting only the qualifications for an off-premises beer license shall contain a restriction prohibiting the consumption of beverages on premises.

§ 15. Wholesale alcoholic beverage and beverage sales; discounts, price-fixing; price increases; price discrimination; inducements.

### A. Discounts, price-fixing.

No winery as defined in § 4-118.43 or brewery as defined in § 4-118.4 of the Code of Virginia shall require a person holding a wholesale license to discount the price at which the wholesaler shall sell any alcoholic beverage or beverage to persons holding licenses authorizing sale of such merchandise at retail. No winery, brewery, bottler or wine or beer importer shall in any other way fix or maintain the price at which a wholesaler shall sell any alcoholic beverage or beverage.

### B. Notice of price increases.

No winery as defined in § 4-118.43 or brewery as defined in § 4-118.4 of the Code of Virginia shall increase the price charged any person holding a wholesale license for alcoholic beverages or beverages except by written notice to the wholesaler signed by an authorized officer or agent of the winery, brewery, bottler or importer which shall contain the amount and effective date of the increase. A copy of such notice shall also be sent to the board and shall be treated as confidential financial information, except in relation to enforcement proceedings for violation of this section.

# Final Regulations

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No increase shall take effect prior to 30 calendar days following the date on which the notice is postmarked; provided that the board may authorize such price increases to take effect with less than the aforesaid 30 calendar days' notice if a winery, brewery, bottler or importer so requests and demonstrates good cause therefor.

## C. No price discrimination by breweries and wholesalers.

No winery as defined in § 4-118.43 or brewery as defined in § 4-118.4 of the Code of Virginia shall discriminate in price of alcoholic beverages between different wholesale purchasers and no wholesale wine or beer licensee shall discriminate in price of alcoholic beverages or beverages between different retail purchasers except where the difference in price charged by such winery, brewery or wholesale licensee is due to a bona fide difference in the cost of sale or delivery, or where a lower price was charged in good faith to meet an equally low price charged by a competing winery, brewery or wholesaler on a brand and package of like grade and quality. Where such difference in price charged to any such wholesaler or retail purchaser does occur, the board may ask and the winery, brewery or wholesaler shall furnish written substantiation for the price difference.

## D. Inducements.

No person holding a license authorizing sale of alcoholic beverages or beverages at wholesale or retail shall knowingly induce or receive a discrimination in price prohibited by subsection C of this section.

## § 16. Alcoholic Beverage Control Board.

Wherever in these rules and regulations the word "Board," "board" or "Commission" shall appear, and the clear context of the meaning of the provision in which it is contained is intended to refer to the Alcoholic Beverage Control Board, it shall be taken to mean the board.

## § 17. § 16. Farm wineries; percentage of Virginia products; other agricultural products; remote outlets.

A. No more than 25% of the fruits, fruit juices or other agricultural products used by the farm winery licensee shall be grown or produced outside this state, except upon permission of the board as provided in § 4-25.1 B of the Code of Virginia. This 25% limitation applies to the total production of the farm winery, not individual brands or labels.

B. The term "other agricultural products," as used in subsection A of this section, includes wine.

C. A farm winery license limits retail sales to the premises of the winery and to two additional retail establishments which need not be located on the premises. These two additional retail outlets may be moved throughout the state as long as advance board approval is

obtained for the location, equipment and facilities of each remote outlet.

## COUNCIL ON THE ENVIRONMENT

Title of Regulation: VR 305-01-001. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 10.1-1206 and 62.1-195.1 of the Code of Virginia.

Effective Date: January 16, 1992.

### Summary:

*The basic elements of council's public participation guidelines include (i) maintaining a general information mailing list of persons interested in council's activities and a regulation mailing list for each regulatory proceeding; (ii) consulting with interested persons or forming standing or ad hoc committees as needed to obtain assistance in drafting regulations; (iii) allowing 15 days of public comment after publication of a notice of intended regulatory action (NOIRA); (iv) the council approving publication of draft regulations; (v) allowing at least 60 calendar days for public review and comment after publication of a notice of public comment (NOPC) in the Virginia Register, a Richmond area newspaper, and by other means deemed appropriate; (vi) providing for public hearings to receive comments on draft regulations, (vii) submitting the proposed regulation and supporting documentation to the Governor and the Department of Planning and Budget in conformance with the requirements of the Administrative Process Act and executive order concurrently with the distribution of the NOPC to the Registrar; and (viii) adopting final regulations in conformance with the Administrative Process Act and executive order.*

VR 305-01-001. Public Participation Guidelines.

### § 1. Definitions.

*The following words or terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:*

*"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.*

*"Administrator" means the Administrator of the Virginia Council on the Environment or his designee.*

*"Council" means the Council on the Environment established under § 10.1-1200 et seq. of the Code of Virginia.*

*"Executive order" means any directive issued pursuant to § 9-6.14:9.1 A of the Administrative Process Act.*

"Member agencies" means those agencies designated as members of the council in § 10.1-1202 of the Code of Virginia.

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

## § 2. Policy and application.

A. The procedures in § 3 of this regulation shall be used by the council for soliciting the comments of interested persons in the formulation, development and repeal of regulations and any revisions thereto as required by the Administrative Process Act. These procedures shall be used in the entire formulation, drafting, promulgation and final adoption process.

B. At the discretion of the council or the administrator, the procedures in § 3 may be supplemented by any means and in any manner necessary to gain additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. The failure of any person or organization to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with the Administrative Process Act and executive order.

## § 3. Public participation procedures.

A. The administrator shall establish and maintain a general information list consisting of persons expressing an interest in the adoption, amendment or repeal of regulations by the council. The administrator shall also develop and maintain a regulation development mailing list for each regulatory proceeding. The list shall consist of persons who express an interest in any specific regulatory proceeding and other persons the administrator believes have an interest in the regulatory proceeding.

B. Whenever the council so directs or upon his own initiative, the administrator may begin the regulation adoption process according to these procedures and proceed to draft a regulatory proposal.

C. The council or the administrator may consult with any person and may form and use either standing or ad-hoc advisory groups to assist in [ the ] drafting and formulating a regulatory proposal.

D. The administrator [ may shall ] prepare and issue a notice of intended regulatory action (NOIRA) in accordance with the Administrative Process Act. A NOIRA shall include the notice of the opportunity to comment on issues to be addressed by a regulatory proposal, the time and date the public comment period will close, and the address where comments shall be directed. The public comment period shall remain open at least 15 calendar days after publication of the NOIRA in the Virginia Register. The administrator shall disseminate the NOIRA

to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations, and
2. Distribution to parties on the general information list established under subsection A of this section.

E. After consideration of public comment on the NOIRA, the administrator may prepare a draft regulation, a notice of public comment (NOPC), and supporting documentation required by the Administrative Process Act and executive order. The NOPC shall include the notice of the opportunity to comment on the proposed regulation, the time and date the public comment period will close, and the address where comments shall be directed.

F. [ The ] council shall approve the publication of draft regulations. Upon approving the release of a draft regulation for public review and comment, the administrator shall publish the NOPC in conformance with these guidelines. The public comment period shall remain open at least 60 days after publication of the NOPC in the Virginia Register of Regulations.

G. The administrator shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register and in a Richmond area newspaper,
2. Distribution to persons on the regulation development list established under subsection A of this section, and
3. Distribution by other means the administrator may deem appropriate.

H. Upon approval of a draft regulation, council or the administrator may schedule one or more informational hearings to receive comments on a proposed regulation. Hearings may be held at any time during the public comment period. Advance notice shall be provided to the general public with respect to the time, date and place of hearings.

I. Concurrently with distribution of the NOPC to the Registrar of Regulations, the [ agency council ] shall submit the proposed regulation and supporting documentation to the Office of the Governor and the Department of Planning and Budget in accordance with the Administrative Process Act and executive order.

J. At the close of the public comment period, the remaining steps in the regulation adoption process shall be carried out in accordance with the Administrative Process Act and executive order.

## § 4. Applicability.

# Final Regulations

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*The public participation procedures described in this regulation apply only to the regulatory proceedings of the Council on the Environment. Comments on the regulatory proceedings of a council member agency must be submitted directly to that member agency in conformance with its public participation guidelines.*

## BOARD FOR HEARING AID SPECIALISTS

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

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

**Effective Date:** January 15, 1992.

### Summary:

*This regulation will affect approximately 330 licensed hearing aid specialists and 40 temporary permit holders in the Commonwealth of Virginia who maintain or work in an established business and who engage in the business of selling or offering for sale hearing aids and accessories. The regulations have been reorganized to clarify sections covering requirements for licensure as physicians and out of state applicants who apply for licensure as a hearing aid specialist, and audiometer calibrations.*

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

## PART I. DEFINITIONS.

### § 1.1. Definitions.

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

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

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

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

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

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

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

## PART II. ENTRY REQUIREMENTS.

### § 2.1. Entry requirements.

The applicant must meet the following entry requirements:

1. *The applicant shall submit an application fee of \$60.*

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

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

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

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

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

- a. *Basic physics of sound;*
- b. *Basic maintenance and repair of hearing aids;*
- c. *The anatomy and physiology of the ear;*
- d. *Introduction to psychological aspects of hearing loss;*
- e. *The function of hearing aids and amplification;*
- f. *Visible disorders of the ear requiring medical referrals;*
- g. *Practical tests of proficiency in the required techniques as they pertain to the fitting of hearing aids;*

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

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

j. Masking when indicated;

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

l. Taking earmold impressions;

m. Proper earmold selection;

n. Adequate instruction in proper hearing aid orientation;

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

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

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

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

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

## § 2.2. Examination.

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

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

C. [ B. C. ] If the temporary permit holder fails to achieve a passing score on any section of the examination in two successive attempts to take the examination, the temporary permit shall expire upon receipt of the examination failure letter resulting from the second attempt.

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

E. [ D. E. ] Physicians licensed to practice in Virginia

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

## § 2.3. Temporary permit.

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

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

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

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

## § 2.4. License by endorsement.

Applicants holding a current license/certificate as a hearing aid specialist in another state or territory of the United States, based on requirements equivalent to and not conflicting with the provisions of these regulations, ~~may be granted a license without further examination~~ may be granted a license upon successful completion of specified sections of the examination [ at the discretion of the board after a review of the application ]. The fee for endorsement shall be \$60.

## § 2.5. License for physicians.

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

B. *The licensee shall also attach verification of certification by the American Board of Otolaryngology.*

## PART III. RENEWAL.

### § 3.1. License renewal required.

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

B. Each licensee applying for renewal shall return the renewal notice and a fee of \$110 to the Department of Commerce prior to the expiration date shown on the license. If the licensee fails to receive the renewal notice, a copy of the license may be submitted with the required

# Final Regulations

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fee.

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

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

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

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

G. All fees are nonrefundable.

## PART IV. STANDARDS OF PRACTICE.

### § 4.1. Business records and practice.

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

A. The licensee shall keep on record with the board the location of the licensee's records, which shall be accessible to the board, with or without notice, during reasonable business hours. The licensee shall notify the board in writing of any change of *physical* address within 30 days of such change. *A post office box is not considered a physical address.*

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

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

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

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

b. The full terms of the sale clearly stated.

2. If an aid which is not new is sold or rented, the

purchase agreement and the hearing aid container shall be clearly marked "used" or "reconditioned," whichever is applicable, with terms of warranty, if any.

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

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

a. Address and telephone number where the specialist can be reached.

b. Days and hours contact can be made;

c. Whether service/maintenance will be provided in the office or in the person's home;

d. If the specialist has an office, address of the office as listed with the board; and

e. If the specialist has no office in Virginia, a clear statement that there is no office in Virginia;

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

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

a. A statement that this initial advice was given to the purchaser shall be entered on the purchase agreement in print as large as the other printed matter on the receipt.

b. Exemption: Specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of subdivisions 2 and 3 of § 4.3.

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

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

a. The purchaser was advised that the seller is not a physician licensed to practice medicine; and

b. No examination or representation made by the seller should be regarded as a medical examination, opinion, or advice.

2. Exemption: Specialists who are physicians licensed

to practice medicine in Virginia are exempt from the requirements of subdivisions [ 1 ] a and b [ of ] § 4.4.

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

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

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

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

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

§ 4.8. Testing procedures.

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

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

presentation, and results noted.

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

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

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

§ 4.9. Calibration statement required.

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

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

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

§ 4.10. Grounds for discipline.

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

1. Improper conduct, including but not limited to:
  - a. Obtaining or renewing a license by false or

# Final Regulations

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fraudulent representation;

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

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

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

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

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

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

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

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

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

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

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

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

7. Having been convicted or found guilty regardless of

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

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

COMMONWEALTH OF VIRGINIA  
APPLICATION FOR HEARING AID SPECIALIST LICENSE

THE FOLLOWING FEES MUST ACCOMPANY THIS APPLICATION:

FOR OFFICE USE ONLY  
LIC. # \_\_\_\_\_  
DATE \_\_\_\_\_  
CODE \_\_\_\_\_

FOR OFFICE USE ONLY  
PEND. # \_\_\_\_\_  
FEE AMT. \_\_\_\_\_  
CLASS/FEE \_\_\_\_\_

Application fee - \$60  
(Required by ALL applicants)

Licensure by reciprocity - \$60     Licensure for physicians - \$60

Temporary permit - \$60     Examination fee - \$40

EXAMPLE: If you are a new, non-licensed applicant, you must remit a \$60 application fee and a \$60 temporary permit fee.

TOTAL PAID \_\_\_\_\_

DEPARTMENT OF COMMERCE  
P. O. Box 11066  
Richmond, Virginia 23230-1066

1. NAME IN FULL \_\_\_\_\_
2. DATE OF BIRTH \_\_\_\_\_ 3. SOCIAL SECURITY NUMBER \_\_\_\_\_
4. RESIDENCE ADDRESS \_\_\_\_\_
5. PHONE ( ) \_\_\_\_\_
6. BUSINESS ADDRESS \_\_\_\_\_
7. PHONE ( ) \_\_\_\_\_
8. Did you complete high school? YES \_\_\_ NO \_\_\_

9. PROFESSIONAL EXPERIENCE - HEARING AID RELATED

DATES		NAME OF EMPLOYER AND ADDRESS	POSITION	DUTIES	NAME OF SUPV. OR DEPT. HEAD
FROM	TO				

10. What is your primary purpose in applying for this license and where will you practice upon being licensed?  
\_\_\_\_\_

11. Do you hold a current license/registration in another state? \_\_\_\_\_  
If so, what state? \_\_\_\_\_ Has your license in another state been revoked, suspended, or expired? \_\_\_\_\_ If yes, provide an explanation on a separate sheet.

12. Have you ever been convicted in any jurisdiction involving moral turpitude or a felony? YES \_\_\_ NO \_\_\_ If yes, submit documentation

13. AFFIDAVIT (To be executed by every applicant)

STATE OF \_\_\_\_\_

COUNTY OR CITY OF \_\_\_\_\_

The undersigned being duly sworn deposes and says that he/she is the person who executed this application, that the statements herein contained are true, that he/she has not suppressed any information that might affect this application, and that he/she has read and understands this affidavit.

\_\_\_\_\_  
SIGNATURE OF APPLICANT

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

12. STATEMENT OF LICENSED SPONSOR - A signed statement from the licensed sponsor indicating that the licensed sponsor assumes full responsibility for the competent and proper conduct of the temporary permit holder.

I hereby certify that I am a licensed, practicing Hearing Aid Specialist and on this date \_\_\_\_\_, 19\_\_\_\_,

\_\_\_\_\_ is sponsored by me. Should he or she, at any time, leave my employ or supervision, I will within forty-eight (48) hours notify the Secretary of the Virginia Board for Hearing Aid Specialists in writing and by returning the temporary permit to the Board by certified mail.

\_\_\_\_\_  
SIGNATURE OF LICENSED SPONSOR

\_\_\_\_\_  
LICENSE NUMBER

Revised 11/91

# Final Regulations

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

**REGISTRAR'S NOTICE:** This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Housing and Community Development will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

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

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

**Effective Date:** February 1, 1992.

### Summary:

The 1990 edition of the Virginia Uniform Statewide Building Code, Volume I - New Construction Code (USBC) is a mandatory, statewide uniform regulation which must be complied with in the construction, alteration, repair, or conversion of all buildings or structures. Its purpose is to protect the health, safety and welfare of building users and to provide for energy conservation, water conservation and accessibility for the physically handicapped and aged. Technical requirements of the USBC are based on nationally recognized model codes and standards.

This action incorporates by reference as part of the USBC the Final Fair Housing Accessibility Guidelines (24 CFR Chapter 1) promulgated by the U.S. Department of Housing and Urban Development (HUD) and the Americans with Disabilities Act Accessibility Guidelines (28 CFR Part 36) adopted by the U.S. Department of Justice. The HUD guidelines establish minimum accessibility requirements for the physically handicapped in the construction of new multi-family dwellings containing four or more dwelling units. The Justice Department guidelines establish minimum standards for accessibility for the disabled in new construction and alterations involving commercial facilities and places of public accommodation.

The requirements of the HUD Guidelines were previously added to the USBC by amending the existing accessibility provisions (Addendum 3) of the regulation rather than incorporating the document by reference due to a difference in formatting between the federal guidelines and Addendum 3 of the USBC. This action deletes Addendum 3 of the regulation in its entirety and incorporates both federal documents

by reference.

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

### ARTICLE 1. ADOPTION, ADMINISTRATION AND ENFORCEMENT.

#### SECTION 100.0. GENERAL.

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

Note: See Volume II - Building Maintenance Code for maintenance regulations applying to existing buildings.

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

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

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

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

100.6. Application. The USBC shall apply to all buildings, structures and associated equipment which are constructed, altered, repaired or converted in use after March 1, 1991.

Buildings and structures that were designed within one year prior to March 1, 1991, shall be subject to the previous edition of the code provided that the permit application is submitted by March 1, 1992. This provision shall also apply to subsequent amendments to this edition of the code based on the effective date of the amendments.

*Exception: Use Group R-2 buildings subject to Section 2.2.7 of Addendum 3 for which an application is submitted after November 1, 1991, shall comply with amendments effective November 1, 1991. Buildings and structures for which a permit application is submitted after February 1, 1992, shall comply with applicable provisions of Section 512.0.*

100.6.1. Industrialized buildings and manufactured homes. Industrialized buildings registered under the Virginia Industrialized Building Safety Law and manufactured homes labeled under the Federal Manufactured Housing Construction and Safety Standards shall be exempt from the USBC; however, the building official shall be responsible for issuing permits, inspecting the site work and installation of industrialized buildings and manufactured homes, and issuing certificates of occupancy for such buildings when all work is completed satisfactorily.

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

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

Amusement Device Regulations.

## SECTION 101.0. REFERENCE STANDARDS AND AMENDMENTS.

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

The referenced model codes are:

THE BOCA NATIONAL BUILDING CODE/1990 EDITION

(also referred to herein as BOCA Code)

Published by:

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

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

BOCA National Plumbing Code/1990 Edition

BOCA National Mechanical Code/1990 Edition

NFPA National Electrical Code/1990 Edition

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

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

Jointly published by:

Building Officials and Code Administrators  
International, Inc.

Southern Building Code Congress and International  
Conference of Building Officials.

101.2. General administrative and enforcement amendments to referenced codes. All requirements of the

# Final Regulations

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

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

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

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

## SECTION 102.0. LOCAL BUILDING DEPARTMENTS.

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

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

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

102.2.2. Qualifications. The building official shall have at least five years of building experience as a licensed professional engineer or architect, building inspector, contractor or superintendent of building construction, with at least three years in responsible charge of work, or shall

have any combination of education and experience which would confer equivalent knowledge and ability. The building official shall have general knowledge of sound engineering practice in respect to the design and construction of buildings, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

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

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

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

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

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

102.4. Relief from personal responsibility. The local building department personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees. The building official or subordinates shall not be personally liable for costs in any

action, suit or proceedings that may be instituted in pursuance of the provisions of the USBC as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the discharge of official duties and under the provisions of the USBC may be defended by the department's legal representative.

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

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

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

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

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

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

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

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

carried out in accordance with the USBC.

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

## SECTION 104.0. FEES.

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

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

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

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

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

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

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

# Final Regulations

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the Building Code Academy.

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

## SECTION 105.0.

### APPLICATION FOR CONSTRUCTION PERMIT.

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

1. Constructing, enlarging, altering, repairing, or demolishing a building or structure.
2. Changing the use of a building either within the same use group or to a different use group when the new use requires greater degrees of structural strength, fire protection, exit facilities or sanitary provisions.
3. Installing or altering any equipment which is regulated by this code.
4. Removing or disturbing any asbestos containing materials during demolition, alteration, renovation of or additions to buildings or structures.

#### Exceptions:

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

- a. Painting.
- b. Roofing when not exceeding 100 square feet of roof area.
- c. Glass when not located within specific hazardous locations as defined in Section 2203.2 of the BOCA Code and all glass repairs in Use Group R-3 and R-4 buildings.

d. Doors, except those in fire-rated wall assemblies or exitways.

e. Floor coverings and porch flooring.

f. Repairs to plaster, interior tile work, and other wall coverings.

g. Cabinets installed in residential occupancies.

h. Wiring and equipment operating at less than 50 volts.

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

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

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

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

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

105.4. Description of work. The application shall contain a general description of the proposed work, its location, the use of all parts of the building, and of all portions of the site not covered by the building, and such additional information as may be required by the building official.

105.5. Plans and specifications. The application for the permit shall be accompanied by not less than two copies of specifications and of plans drawn to scale, with sufficient clarity and dimensional detail to show the nature and character of the work to be performed. Such plans and specifications shall include the seal and signature of

The architect or engineer under whose supervision they were prepared, or if exempt under the provisions of state law, shall include the name, address, and occupation of the individual who prepared them. When quality of materials is essential for conformity to the USBC, specific information shall be given to establish such quality. In cases where such plans and specifications are exempt under state law, the building official may require that they include the signature and seal of a professional engineer or architect.

#### Exceptions:

1. The building official may waive the requirement for filing plans and specifications when the work involved is of a minor nature.
2. Detailed plans may be waived by the building official for buildings in Use Group R-4, provided specifications and outline plans are submitted which satisfactorily indicate compliance with the USBC.

Note: Information on the types of construction exempted from the requirement for a professional engineer's or architect's seal and signature is included in Addenda 4 and 10.

105.5.1. Site plan. The application shall also contain a site plan showing to scale the size and location of all the proposed new construction and all existing buildings on the site, distances from lot lines, the established street grades and the proposed finished grades. The building official may require that the application contain the elevation of the lowest floor of the building. It shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing buildings and construction that are to remain on the site. In the case of alterations, renovations, repairs and installation of new equipment, the building official may waive submission of the site plan or any parts thereof.

105.6. Plans review. The building official shall examine all plans and applications for permits within a reasonable time after filing. If the application or the plans do not conform to the requirements of the USBC, the building official shall reject such application in writing, stating the reasons for rejection.

105.7. Approved plans. The building official shall stamp "Approved" or provide an endorsement in writing on both sets of approved plans and specifications. One set of such approved plans shall be retained by the building official. The other set shall be kept at the building site, open to inspection by the building official at all reasonable times.

105.8. Approval of partial plans. The building official may issue a permit for the construction of foundations or any other part of a building before the plans and specifications for the entire building have been submitted, provided

adequate information and detailed statements have been filed indicating compliance with the pertinent requirements of the USBC. The holder of such permit for the foundations or other part of a building shall proceed with construction operations at the holder's risk, and without assurance that a permit for the entire building will be granted.

105.9. Engineering details. The building official may require adequate details of structural, mechanical, plumbing, and electrical work to be filed, including computations, stress diagrams and other essential technical data. All engineering plans and computations shall include the signature of the professional engineer or architect responsible for the design. Plans for buildings more than two stories in height shall indicate where floor penetrations will be made for pipes, wires, conduits, and other components of the electrical, mechanical and plumbing systems. The plans shall show the material and methods for protecting such openings so as to maintain the required structural integrity, fire-resistance ratings, and firestopping affected by such penetrations.

105.10. Asbestos inspection in buildings to be renovated or demolished. A local building department shall not issue a building permit allowing a building for which an initial building permit was issued before January 1, 1978, to be renovated or demolished until the local building department receives a certification from the owner or the owner's agent that the building has been inspected for asbestos, in accordance with standards developed pursuant to subdivision 1 of subsection A of § 2.1-526.14:1 of the Code of Virginia that response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR 61, Subpart M) the management standards for asbestos-containing materials prepared by the Department of General Services in accordance with § 2.1-526.14:2 of the Code of Virginia, and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.58).

#### Exceptions:

1. Single family dwellings.
2. Residential housing with four or fewer units.
3. Farm buildings.
4. Buildings less than 3,500 square feet in area.
5. Buildings with no central heating system.
6. Public utilities required by law to give notification to the Commonwealth of Virginia and to the United States Environmental Protection Agency prior to removing asbestos in connection with the renovation or demolition of a building.

# Final Regulations

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105.10.1. Replacement of roofing, floorcovering, or siding materials. To meet the inspection requirements of Section 105.10 except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floorcovering, or siding materials may be satisfied by:

1. A statement that the materials to be repaired or replaced are assumed to contain asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor or a licensed asbestos roofing, flooring, siding contractor; or
2. A certification by the owner that sampling of the material to be renovated was accomplished by an RFS inspector as defined in § 54.1-500 of the Code of Virginia and analysis of the sample showed no asbestos to be present.

105.11. Amendments to application. Amendments to plans, specifications or other records accompanying the application for permit may be filed at any time before completion of the work for which the permit is issued. Such amendments shall be considered part of the original application and shall be filed as such.

105.12. Time limitation of application. An application for a permit for any proposed work shall be considered to have been abandoned six months after notification by the building official that the application is defective unless the applicant has diligently sought to resolve any problems that are delaying issuance of the permit; except that for reasonable cause, the building official may grant one or more extensions of time.

## SECTION 106.0. PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES.

106.1. Special professional services; when required. The building official may require representation by a professional engineer or architect for buildings and structures which are subject to special inspections as required by Section 1308.0.

106.2. Attendant fees and costs. All fees and costs related to the performance of special professional services shall be the responsibility of the building owner.

## SECTION 107.0. APPROVAL OF MATERIALS AND EQUIPMENT.

107.1. Approval of materials; basis of approval. The building official shall require that sufficient technical data be submitted to substantiate the proposed use of any material, equipment, device or assembly. If it is determined that the evidence submitted is satisfactory proof of performance for the use intended, the building official may approve its use subject to the requirements of the USBC. In determining whether any material, equipment, device or assembly complies with the USBC,

the building official shall approve items listed by nationally recognized research, testing and product certification organizations or may consider the recommendations of engineers and architects certified in this state.

107.2. Used materials and equipment. Used materials, equipment and devices may be used provided they have been reconditioned, tested or examined and found to be in good and proper working condition and approved for use by the building official.

107.3. Approved materials and equipment. All materials, equipment, devices and assemblies approved for use by the building official shall be constructed and installed in accordance with the conditions of such approval.

## SECTION 108.0. INTERAGENCY COORDINATION - FUNCTIONAL DESIGN.

108.1. Functional design approval. Pursuant to § 36-98 of the Code of Virginia, certain state agencies have statutory authority to approve functional design and operation of building related activities not covered by the USBC. The building official may refuse to issue a permit until the applicant has supplied certificates of functional design approval from the appropriate state agency or agencies. State agencies with functional design approval are listed in Addendum 5. For purposes of coordination, the local governing body may require reports to the building official by other departments as a condition for issuance of a building permit or certificate of use and occupancy. Such reports shall be based upon review of the plans or inspection of the project as determined by the local governing body.

## SECTION 109.0. CONSTRUCTION PERMITS.

109.1. Issuance of permits. If the building official is satisfied that the proposed work conforms to the requirements of the USBC and all applicable laws and ordinances, a permit shall be issued as soon as practicable. The building official may authorize work to commence prior to the issuance of the permit.

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

109.3. Separate or combined permits. Permits for two or more buildings on the same lot may be combined. Permits for the installation of equipment such as plumbing, electrical or mechanical systems may be combined with the structural permit or separate permits may be required for the installation of each system. Separate permits may also be required for special construction considered appropriate by the local government.

109.4. Annual permit. The building official may issue an

annual permit for alterations to an already approved equipment installation.

109.4.1. Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of all alterations to an approved equipment installation made under such annual permit. Such records shall be accessible to the building official at all times or shall be filed with the building official when so requested.

109.5. Posting of permit. A copy of the building permit shall be posted on the construction site for public inspection until the work is completed.

109.6. Previous permits. No changes shall be required in the plans, construction or designated use of a building for which a permit has been properly issued under a previous edition of the USBC, provided the permit has not been revoked or suspended in accordance with Section 109.7 or 109.8.

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

109.8. Suspension of permit. Any permit issued shall become invalid if the authorized work is not commenced within six months after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work; however, permits issued for building equipment such as plumbing, electrical and mechanical work shall not become invalid if the building permit is still in effect. Upon written request the building official may grant one or more extensions of time not to exceed six months per extension.

109.9. Compliance with code. The permit shall be a license to proceed with the work in accordance with the application and plans for which the permit has been issued and any approved amendments thereto and shall not be construed as authority to omit or amend any of the provisions of the USBC, except by modification pursuant to Section 103.2.

## SECTION 110.0. INSPECTIONS.

110.1. Right of entry. The building official may inspect buildings for the purpose of enforcing the USBC in accordance with the authority granted by § 36-105 of the Code of Virginia. The building official and assistants shall carry proper credentials of office when inspecting buildings and premises in the performance of duties under the USBC.

Note: Section 36-105 of the Code of Virginia provides, pursuant to enforcement of the USBC, that any building may be inspected at any time before

completion. It also permits local governments to provide for the reinspection of buildings.

110.2. Preliminary inspection. Before issuing a permit, the building official may examine all buildings and sites for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, demolish or change the use thereof.

110.3. Minimum inspections. Inspections shall include but are not limited to the following:

1. The bottom of footing trenches after all reinforcement steel is set and before any concrete is placed.
2. The installation of piling. The building official may require the installation of pile foundations be supervised by the owner's professional engineer or architect or by such professional service as approved by the building official.
3. Reinforced concrete beams, or columns and slabs after all reinforcing is set and before any concrete is placed.
4. Structural framing and fastenings prior to covering with concealing materials.
5. All electrical, mechanical and plumbing work prior to installation of any concealing materials.
6. Required insulating materials before covering with any materials.
7. Upon completion of the building, and before issuance of the certificate of use and occupancy, a final inspection shall be made to ensure that any violations have been corrected and all work conforms with the USBC.

110.3.1. Special inspections. Special inspections required by this code shall be limited to only those required by Section 1308.0.

110.4. Notification by permit holder. It shall be the responsibility of the permit holder or the permit holder's representative to notify the building official when the stages of construction are reached that require an inspection under Section 110.3 and for other inspections as directed by the building official. All ladders, scaffolds and test equipment required to complete an inspection or test shall be provided by the property owner, permit holder or their representative.

110.5. Inspections to be prompt. The building official shall respond to inspection requests without unreasonable delay. The building official shall approve the work or give written notice of defective work to the permit holder or the agent in charge of the work. Such defects shall be corrected and reinspected before any work proceeds that

# Final Regulations

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would conceal them.

Note: A reasonable response time should normally not exceed two working days.

110.6. Approved inspection agencies. The building official may accept reports from individuals or inspection agencies which satisfy qualifications and reliability requirements, and shall accept such reports under circumstances where the building official is unable to make the inspection by the end of the following working day. Inspection reports shall be in writing and shall be certified by the individual inspector or by the responsible officer when the report is from an agency. An identifying label or stamp permanently affixed to the product indicating that factory inspection has been made shall be accepted instead of the written inspection report, if the intent or meaning of such identifying label or stamp is properly substantiated.

110.7. In-plant inspections. When required by the provisions of this code, materials or assemblies shall be inspected at the point of manufacture or fabrication. The building official shall require the submittal of an evaluation report of each prefabricated assembly, indicating the complete details of the assembly, including a description of the assembly and its components, the basis upon which the assembly is being evaluated, test results, and other data as necessary for the building official to determine conformance with this code.

110.8. Coordination with other agencies. The building official shall cooperate with fire, health and other state and local agencies having related maintenance, inspection or functional design responsibilities, and shall coordinate required inspections for new construction with the local fire official whenever the inspection involves provisions of the BOCA National Fire Prevention Code.

## SECTION 111.0. WORKMANSHIP.

111.1. General. All construction work shall be performed and completed so as to secure the results intended by the USBC.

## SECTION 112.0. VIOLATIONS.

112.1. Code violations prohibited. No person, firm or corporation shall construct, alter, extend, repair, remove, demolish or use any building or equipment regulated by the USBC, or cause same to be done, in conflict with or in violation of any of the provisions of the USBC.

112.2. Notice of violation. The building official shall serve a notice of violation on the person responsible for the construction, alteration, extension, repair, removal, demolition or use of a building in violation of the provisions of the USBC, or in violation of plans and specifications approved thereunder, or in violation of a permit or certificate issued under the provisions of the

USBC. Such order shall reference the code section that serves as the basis for the violation and direct the discontinuance and abatement of the violation. Such notice of violation shall be in writing and be served by either delivering a copy of the notice to such persons by mail to the last known address, delivered in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place at the entrance door or accessway if such person cannot be found on the premises.

112.3. Prosecution of violation. If the notice of violation is not complied with, the building official shall request, in writing, the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation or to require the removal or termination of the use of the building in violation of the provisions of the USBC.

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

112.5. Abatement of violation. Conviction of a violation of the USBC shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of the USBC relating to construction and use of the building or premises.

## SECTION 113.0. STOP WORK ORDER.

113.1. Notice to owner. When the building official finds that work on any building is being executed contrary to the provisions of the USBC or in a manner endangering the general public, an order may be issued to stop such work immediately. The stop work order shall be in writing. It shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. It shall state the conditions under which work may be resumed. No work covered by a stop work order shall be continued after issuance, except under the conditions stated in the order.

113.2. Application of order limited. The stop work order shall apply only to the work that was being executed contrary to the USBC or in a manner endangering the general public, provided other work in the area would not cause concealment of the work for which the stop work order was issued.

## SECTION 114.0. POSTING BUILDINGS.

114.1. Use group and form of sign. Prior to its use, every building designed for Use Groups B, F, H, M or S shall be posted by the owner with a sign approved by the building official. It shall be securely fastened to the building in a readily visible place. It shall state the use group, the live

load, the occupancy load, and the date of posting.

114.2. Occupant load in places of assembly. Every room constituting a place of assembly or education shall have the approved occupant load of the room posted on an approved sign in a conspicuous place, near the main exit from the room. Signs shall be durable, legible, and maintained by the owner or the owner's agent. Rooms or spaces which have multiple-use capabilities shall be posted for all such uses.

114.3. Street numbers. Each structure to which a street number has been assigned shall have the number displayed so as to be readable from the public right of way.

## SECTION 115.0. CERTIFICATE OF USE AND OCCUPANCY.

115.1. When required. Any building or structure constructed under this code shall not be used until a certificate of use and occupancy has been issued by the building official.

115.2. Temporary use and occupancy. The holder of a permit may request the building official to issue a temporary certificate of use and occupancy for a building, or part thereof, before the entire work covered by the permit has been completed. The temporary certificate of use and occupancy may be issued provided the building official determines that such portion or portions may be occupied safely prior to full completion of the building.

115.3. Contents of certificate. When a building is entitled thereto, the building official shall issue a certificate of use and occupancy. The certificate shall state the purpose for which the building may be used in its several parts. When the certificate is issued, the building shall be deemed to be in compliance with the USBC. The certificate of use and occupancy shall specify the use group, the type of construction, the occupancy load in the building and all parts thereof, the edition of the USBC under which the building permit was issued, and any special stipulations, conditions and modifications.

115.4. Changes in use and occupancy. A building hereafter changed from one use group to another, in whole or in part, whether or not a certificate of use and occupancy has heretofore been issued, shall not be used until a certificate for the changed use group has been issued.

115.5. Existing buildings. A building constructed prior to the USBC shall not be prevented from continued use. The building official shall issue a certificate of use and occupancy upon written request from the owner or the owner's agent, provided there are no violations of Volume II of the USBC and the use of the building has not been changed.

## SECTION 116.0. LOCAL BOARD OF BUILDING CODE APPEALS.

116.1. Local board of building code appeals. Each local government shall have a local board of building code appeals to act on applications for appeals as required by § 36-105 of the Code of Virginia; or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a State agency approved by the Virginia Department of Housing and Community Development, to act on appeals.

116.1.1. Separate divisions. The local board of building code appeals may be divided into separate divisions to consider appeals relating to separate areas of regulation of the USBC. When separate divisions are created, the scope of each shall be clearly stated. The local board of appeals may permit appeals from a division to be submitted directly to the State Building Code Technical Review Board. Each division shall comply with the membership requirements and all other requirements of the USBC relating to the local board of building code appeals.

116.2. Membership. The local board of building code appeals shall consist of at least five members appointed by the local government. Members may be reappointed.

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

116.2.1. Qualifications of board members. Board members shall be selected by the local government on the basis of their ability to render fair and competent decisions regarding application of the code, and shall, to the extent possible, represent different occupational or professional fields. Employees or officials of the local government appointing the board shall not serve as board members.

Note: At least one member should be an experienced builder. At least one other member should be a licensed professional engineer or architect.

116.3. Officers of the board. The board shall select one of its members to serve as chairman. The building official shall designate an employee from the department to serve as secretary to the board. The secretary shall keep a detailed record of all proceedings on file in the local building department.

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

116.5. Control of conflict of interest. A member of the board shall not vote on any appeal in which that member is currently engaged as contractor or material dealer, has prepared the plans or specifications, or has any personal interest.

# Final Regulations

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

116.7. Application for appeal. The owner of a building, the owner's agent, or any other person, firm or corporation directly involved in the design or construction of a building or structure may appeal to the local building code board of appeals within 90 calendar days from a decision of the building official when it is claimed that:

1. The building official has refused to grant a modification which complies with the intent of the provisions of the USBC; or
2. The true intent of the USBC has been incorrectly interpreted; or
3. The provisions of the USBC do not fully apply; or
4. The use of a form of construction that is equal to or better than that specified in the USBC has been denied.

116.7.1. Form of application. Applications for appeals shall be submitted in writing to the local building code board of appeals.

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

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

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

116.11. Enforcement of decision. The building official shall take immediate action in accordance with the decision of the board.

116.12. Appeal by State Fire Marshal. This section shall apply only to buildings subject to inspection by § 36-139.3 of the Code of Virginia. The State Fire Marshal, appointed pursuant to § 36-139.2 of the Code of Virginia, shall have the right to inspect applications for building permits or conversions of use group. The State Fire Marshal may appeal to the local building code board of appeals from the decision of the building official when it is claimed that the true intent of the USBC has been incorrectly

interpreted as applied to the proposed construction or conversion. Such appeals shall be filed before the required permits are issued. The State Fire Marshal may also inspect the building during construction, repair or alteration and may appeal to the local building code board of appeals from the decision of the building official when it is claimed that the construction, repairs or alterations do not comply with the approved plans. Such appeals shall be filed prior to the issuance of the new or revised certificate of occupancy. Copies of all appeals shall be furnished to the building official and to the applicant for the building permit.

Note: The building official is encouraged to have plans submitted to the State Fire Marshal for buildings subject to state licensure in order to prevent delays in construction.

## SECTION 117.0. APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

117.1. Appeal to the State Building Code Technical Review Board. Any person aggrieved by a decision of the local board of building code appeals who was a party to the appeal may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 21 calendar days of receipt of the decision of the local appeals board by the aggrieved party.

117.2. Control of conflict of interest. A member of the State Technical Review Board shall not vote on any appeal in which that member is currently engaged as contractor or material dealer, has prepared plans or specifications, or has any personal interest.

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

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

## SECTION 118.0. EXISTING BUILDINGS AND STRUCTURES.

118.1. Additions, alterations, and repairs. Additions, alterations or repairs to any structure shall conform to that required of a new structure without requiring the existing structure to comply with all of the requirements of this code. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building plir

new additions shall not exceed the height, number of stories and area specified for new buildings. Alterations or repairs to an existing structure which are structural or adversely affect any structural member or any part of the structure having a fire-resistance rating shall be made with materials required for a new structure.

Exception: Existing materials and equipment may be replaced with materials and equipment of a similar kind or replaced with greater capacity equipment in the same location when not considered a hazard.

Note 1: Alterations after construction may not be used by the building official as justification for requiring any part of the old building to be brought into compliance with the current edition of the USBC. For example, replacement of worn exit stair treads that are somewhat deficient in length under current standards does not, of itself, mean that the stair must be widened. It is the intent of the USBC that alterations be made in such a way as not to lower existing levels of health and safety.

Note 2: The intent of this section is that when buildings are altered by the addition of equipment that is neither required nor prohibited by the USBC, only those requirements of the USBC that regulate the health and safety aspects thereof shall apply. For example, a partial automatic alarm system may be installed when no alarm system is required provided it does not violate any of the electrical safety or other safety requirements of the code.

118.1.1. Damage, restoration or repair in flood hazard zones. Buildings located in any flood hazard zone which are altered or repaired shall comply with the floodproofing requirements applicable to new buildings in the case of damages or cost of reconstruction or restoration which equals or exceeds 50% of the market value of the building before either the damage occurred or the start of construction of the improvement.

Exceptions:

1. Improvements required under Volume II of the USBC necessary to assure safe living conditions.
2. Alterations of historic buildings provided the alteration would not preclude the building's continued designation as an historic building.

*118.1.2. Requirements for accessibility. Buildings and structures which are altered or to which additions are added shall comply with applicable requirements of Section 512.0.*

118.2. Conversion of building use. No change shall be made in the use of a building which would result in a change in the use group classification unless the building complies with all applicable requirements for the new use group classification in accordance with Section 105.1(2). An

application shall be made and a certificate of use and occupancy shall be issued by the building official for the new use. Where it is impractical to achieve exact compliance with the USBC the building official shall, upon application, consider issuing a modification under the conditions of Section 103.2 to allow conversion.

118.3. Alternative method of compliance. Compliance with the provisions of Article 32 for repair, alteration, change of use of, or additions to existing buildings shall be an acceptable method of complying with this code.

## SECTION 119.0. MOVED BUILDINGS.

119.1. General. Any building moved into or within the jurisdiction shall be brought into compliance with the USBC unless it meets the following requirements after relocation.

1. No change has been made in the use of the building.
2. The building complies with all state and local requirements that were applicable to it in its previous location and that would have been applicable to it if it had originally been constructed in the new location.
3. The building has not become unsafe during the moving process due to structural damage or for other reasons.
4. Any alterations, reconstruction, renovations or repairs made pursuant to the move have been done in compliance with the USBC.

119.2. Certificate of use and occupancy. Any moved building shall not be used until a certificate of use and occupancy is issued for the new location.

## SECTION 120.0. UNSAFE BUILDINGS.

120.1. Right of condemnation before completion. Any building under construction that fails to comply with the USBC through deterioration, improper maintenance, faulty construction, or for other reasons, and thereby becomes unsafe, unsanitary, or deficient in adequate exit facilities, and which constitutes a fire hazard, or is otherwise dangerous to human life or the public welfare, shall be deemed an unsafe building. Any such unsafe building shall be made safe through compliance with the USBC or shall be taken down and removed, as the building official may deem necessary.

120.1.1. Inspection of unsafe buildings; records. The building official shall examine every building reported as unsafe and shall prepare a report to be filed in the records of the department. In addition to a description of unsafe conditions found, the report shall include the use of the building, and nature and extent of damages, if any,

# Final Regulations

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caused by a collapse or failure.

120.1.2. Notice of unsafe building. If a building is found to be unsafe the building official shall serve a written notice on the owner, the owner's agent or person in control, describing the unsafe condition and specifying the required repairs or improvements to be made to render the building safe, or requiring the unsafe building or portion thereof to be taken down and removed within a stipulated time. Such notice shall require the person thus notified to declare without delay to the building official the acceptance or rejection of the terms of the notice.

120.1.3. Posting of unsafe building notice. If the person named in the notice of unsafe building cannot be found after diligent search, such notice shall be sent by registered or certified mail to the last known address of such person. A copy of the notice shall be posted in a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

120.1.4. Disregard of notice. Upon refusal or neglect of the person served with a notice of unsafe building to comply with the requirement of the notice to abate the unsafe condition, the legal counsel of the jurisdiction shall be advised of all the facts and shall be requested to institute the appropriate legal action to compel compliance.

120.1.5. Vacating building. When, in the opinion of the building official, there is actual and immediate danger of failure or collapse of a building, or any part thereof, which would endanger life, or when any building or part of a building has fallen and life is endangered by occupancy of the building, the building official may order the occupants to vacate the building forthwith. The building official shall cause a notice to be posted at each entrance to such building reading as follows. "This Structure is Unsafe and its Use or Occupancy has been Prohibited by the Building Official." No person shall thereafter enter such a building except for one of the following purposes: (i) to make the required repairs; (ii) to take the building down and remove it; or (iii) to make inspections authorized by the building official.

120.1.6. Temporary safeguards and emergency repairs. When, in the opinion of the building official, there is immediate danger of collapse or failure of a building or any part thereof which would endanger life, or when a violation of this code results in a fire hazard that creates an immediate, serious and imminent threat to the life and safety of the occupants, he shall cause the necessary work to be done to the extent permitted by the local government to render such building or part thereof temporarily safe, whether or not legal action to compel compliance has been instituted.

120.2. Right of condemnation after completion. Authority to condemn unsafe buildings on which construction has been completed and a certificate of occupancy has been issued, or which have been occupied, may be exercised after official action by the local governing body pursuant to §

36-105 of the Code of Virginia.

## SECTION 121.0. DEMOLITION OF BUILDINGS.

121.1. General. Demolition permits shall not be issued until the following actions have been completed:

1. The owner or the owner's agent has obtained a release from all utilities having service connections to the building stating that all service connections and appurtenant equipment have been removed or sealed and plugged in a safe manner.
2. Any certificate required by Section 105.10 has been received by the building official.
3. The owner or owner's agent has given written notice to the owners of adjoining lots and to the owners of other lots affected by the temporary removal of utility wires or other facilities caused by the demolition.

121.2. Hazard prevention. When a building is demolished or removed, the established grades shall be restored and any necessary retaining walls and fences shall be constructed as required by the provisions of Article 30 of the BOCA Code.

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

As provided in Section 101.3 of the Virginia Uniform Statewide Building Code, the amendments noted in this addendum shall be made to the BOCA National Building Code/1990 Edition for use as part of the USBC.

### ARTICLE 1. ADMINISTRATION AND ENFORCEMENT.

(A) Entire article is deleted and replaced by Article 1, Adoption, Administration and Enforcement, of the Virginia Uniform Statewide Building Code.

### ARTICLE 2. DEFINITIONS.

(A) Change the following definitions in Section 201.0, General Definitions, to read:

"Building" means a combination of any materials, whether portable or fixed, that forms a structure for use or occupancy by persons or property; provided, however, that farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from the provisions of the USBC, but such buildings lying within a flood plain or in a mudslide regulations, as applicable. The word building shall be construed as though followed by the words "or part or parts and fixed equipment thereof"

unless the context clearly requires a different meaning. The word "building" includes the word "structure."

## Dwellings:

"Boarding house" means a building arranged or used for lodging, with or without meals, for compensation and not occupied as a single family unit.

"Dormitory" means a space in a building where group sleeping accommodations are provided for persons not members of the same family group, in one room, or in a series of closely associated rooms.

"Hotel" means any building containing six or more guest rooms, intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

"Multi-family apartment house" means a building or portion thereof containing more than two dwelling units and not classified as a one- or two-family dwelling.

"One-family dwelling" means a building containing one dwelling unit.

"Two-family dwelling" means a building containing two dwelling units.

"Jurisdiction" means the local governmental unit which is responsible for enforcing the USBC under state law.

"Mobile unit" means a structure of vehicular, portable design, built on a chassis and designed to be moved from one site to another, subject to the Industrialized Building and Manufactured Home Safety Regulations, and designed to be used without a permanent foundation.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a building.

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

(B) Add these new definitions to Section 201.0, General Definitions:

"Family" means an individual or married couple and the children thereof with not more than two other persons related directly to the individual or married couple by blood or marriage; or a group of not more than eight unrelated persons, living together as a single housekeeping unit in a dwelling unit.

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

"Historic building" means any building that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Federal Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on the Virginia Department of Historic Resources' inventory of historic places; or

4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the Virginia Department of Historic Resources.

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

"Manufactured home" means a structure subject to federal regulations, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single family dwelling, with or without a permanent foundation when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

"Night club" means a place of assembly that provides exhibition, performance or other forms of entertainment; serves food or alcoholic beverages or both; and provides music and space for dancing.

"Plans" means all drawings that together with the specifications, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

# Final Regulations

"Skirting" means a weather-resistant material used to enclose the space from the bottom of a manufactured home to grade.

"Specifications" means all written descriptions, computations, exhibits, test data and other documents that together with the plans, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

## ARTICLE 3. USE GROUP CLASSIFICATION.

(A) Change Section 307.2 to read as follows:

307.2. Use Group I-1. This use group shall include buildings and structures, or parts thereof, which house six or more individuals who, because of age, mental disability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Where accommodating persons of the above description, the following types of facilities shall be classified as I-1 facilities: board and care facilities, half-way houses, group homes, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or less occupants shall be classified as a residential use group.

Exception: Group homes licensed by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services which house no more than eight mentally ill, mentally retarded, or developmentally disabled persons, with one or more resident counselors, shall be classified as Use Group R-3.

(B) Change Section 309.4 to read as follows:

309.4. Use Group R-3 structures. This use group shall include all buildings arranged for the use of one- or two-family dwelling units and multiple single-family dwellings where each unit has an independent means of egress and is separated by a two-hour fire separation assembly (see Section 909.0).

Exception: In multiple single-family dwellings which are equipped throughout with an approved automatic sprinkler system installed in accordance with Section 1004.2.1 or 1004.2.2, the fire-resistance rating of the dwelling unit separation shall not be less than one hour. Dwelling unit separation walls shall be constructed as fire partitions (see Section 910.0).

## ARTICLE 4. TYPES OF CONSTRUCTION CLASSIFICATION.

(A) Add the following to line 5 of Table 401.

Dwelling unit separations for buildings of Type 2C, 3B and

5B construction shall have fire-resistance ratings of not less than one-half hour in buildings sprinklered throughout in accordance with Section 1004.2.1 or 1004.2.2.

## ARTICLE 5. GENERAL BUILDING LIMITATIONS.

(A) Change Section 502.3 to read:

502.3. Automatic sprinkler system. When a building of other than Use Group H is equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2, the area limitation specified in Table 501 shall be increased by 200% for one- and two-story buildings and 100% for buildings more than two stories in height. An approved limited area sprinkler system is not considered as an automatic sprinkler system for the purpose of this section.

(B) Change Section 503.1 to read:

503.1. Automatic sprinkler system. When a building is equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, the building height limitation specified in Table 501 shall be increased one story and 20 feet (6096mm). This increase shall not apply to buildings of Use Group I-2 of Types 2C, 3A, 4 and 5A construction nor to buildings of Use Group H. An approved limited-area sprinkler system is not considered an automatic sprinkler system for the purpose of this section. The building height limitations for buildings of Use Group R specified in Table 501 shall be increased one story and 20 feet, but not to exceed a height of four stories and 60 feet, when the building is equipped with an automatic sprinkler system in accordance with Section 1004.2.2.

(C) Replace Section 512.0, Physically Handicapped and Aged with the following new section:

### SECTION 512.0. ~~ACCESSIBILITY FOR PEOPLE WITH PHYSICAL DISABILITIES.~~

~~512.1. Referenced standard. The following national standard shall be incorporated into this section for use as part of this code:~~

~~American National Standard for Buildings and Facilities - Providing Accessibility and Usability for Physically Handicapped People (ANSI A117.1 - 1986)~~

~~512.2. Amendments to standard. The amendments noted in Addendum 3 of the USBC shall be made to the indicated sections of the ANSI A117.1 standard for use as part of the USBC.~~

### SECTION 512.0. ACCESSIBILITY FOR DISABLED.

512.1. General. This section establishes requirements for accessibility by individuals with disabilities to be applied

uring the design, construction and alteration of buildings and structures.

512.2. Where required. The provisions of this section shall apply to all buildings and structures, including their exterior sites and facilities.

*Exceptions:*

1. Buildings of Use Group R-3 and accessory structures and their associated site and facilities.
2. Buildings and structures classified as Use Group U.
3. Those buildings or structures or portions thereof which are expressly exempted in the standards incorporated by reference in this section.

512.3. Referenced standards. The following standards or parts thereof are hereby incorporated by reference for use in determining compliance with this section:

1. Title 24 Code of Federal Regulations, Chapter 1 - Fair Housing Accessibility Guidelines, Sections 2 through 5, 56 F.R. 9499-9515 (March 6, 1991).
2. Title 28 Code of Federal Regulations, Part 36 - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Subpart A - General, § 36.104 Definitions and Subpart D - New Construction and Alterations, 56 F.R. 35593-35594 and 35599-35602 (July 26, 1991).

ARTICLE 6.

SPECIAL USE AND OCCUPANCY REQUIREMENTS.

(A) Change Section 610.2.1 to read as follows:

610.2.1. Waiting areas. Waiting areas shall not be open to the corridor, except where all of the following criteria are met:

1. The aggregate area of waiting areas in each smoke compartment does not exceed 600 square feet (56 m<sup>2</sup>);
2. Each area is located to permit direct visual supervision by facility staff;
3. Each area is equipped with an automatic fire detection system installed in accordance with Section 1017.0;
4. Each area is arranged so as not to obstruct access to the required exits; and
5. The walls and ceilings of the space are constructed as required for corridors.

(B) Delete Section 610.2.2, Waiting areas on other floors, but do not renumber remaining sections.

(C) Change Section 610.2.3 to read as follows:

610.2.3. Waiting areas of unlimited area. Spaces constructed as required for corridors shall not be open to a corridor, except where all of the following criteria are met:

1. The spaces are not used for patient sleeping rooms, treatment rooms or specific use areas as defined in Section 313.1.4.1;
2. Each space is located to permit direct visual supervision by the facility staff;
3. Both the space and corridors that the space opens into in the same smoke compartment are protected by an automatic fire detection system installed in accordance with Section 1017.0; and
4. The space is arranged so as not to obstruct access to the required exits.

(D) Change Section 610.2.5 to read as follows:

610.2.5. Mental health treatment areas. Areas wherein only mental health patients who are capable of self-preservation are housed, or group meeting or multipurpose therapeutic spaces other than specific use areas as defined in Section 313.1.4.1, under continuous supervision by facility staff, shall not be open to the corridor, except where all of the following criteria are met:

1. Each area does not exceed 1,500 square feet (140 m<sup>2</sup>);
2. The area is located to permit supervision by the facility staff;
3. The area is arranged so as not to obstruct any access to the required exits;
4. The area is equipped with an automatic fire detection system installed in accordance with Section 1017.0;
5. Not more than one such space is permitted in any one smoke compartment; and
6. The walls and ceilings of the space are constructed as required for corridors.

(E) Change Section 610.3 and subsection 610.3.1 to read as follows:

610.3. Corridor walls. Corridor walls shall form a barrier to limit the transfer of smoke. The walls shall extend from the floor to the underside of the floor or roof deck above or to the underside of the ceiling above where the ceiling membrane is constructed to limit the transfer of smoke.

# Final Regulations

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610.3.1. Corridor doors. All doors shall conform to Section 916.0. Corridor doors, other than those in a wall required to be rated by Section 313.1.4.1 or for the enclosure of a vertical opening, shall not have a required fireresistance rating, but shall provide an effective barrier to limit the transfer of smoke.

(F) Change Section 610.5 to read as follows:

610.5. Automatic fire detection. An automatic fire detection system shall be provided in corridors and common spaces open to the corridor as permitted by Section 610.2.

(G) Delete Section 610.5.1, Rooms, and Section 610.5.2, Corridors.

(H) Add new Section 618.10 to read as follows:

## SECTION 618.10. MAGAZINES.

618.10. Magazines. Magazines for the storage of explosives, ammunition and blasting agents shall be constructed in accordance with the Statewide Fire Prevention Code as adopted by the Board of Housing and Community Development.

(I) Change Section 619.1 to read as follows:

619.1. Referenced codes. The storage systems for flammable and combustible liquids shall be in accordance with the mechanical code and the fire prevention code listed in Appendix A.

Exception: Aboveground tanks which are used to store or dispense motor fuels, aviation fuels or heating fuels at commercial, industrial, governmental or manufacturing establishments shall be allowed when in compliance with NFPA 30, 30A, 31 or 407 listed in Appendix A.

(J) Change Section 620.0 to read as follows:

## SECTION 620.0. MOBILE UNITS AND MANUFACTURED HOMES.

620.1. General. Mobile units, as defined in Section 201.0, shall be designed and constructed to be transported from one location to another and not mounted on a permanent foundation. Manufactured homes shall be designed and constructed to comply with the Federal Manufactured Housing Construction and Safety Standards and used with or without a permanent foundation.

620.2. Support and anchorage of mobile units. The manufacturer of each mobile unit shall provide with each unit specifications for the support and anchorage of the mobile unit. The manufacturer shall not be required to provide the support and anchoring equipment with the unit. Mobile units shall be supported and anchored according to the manufacturer's specifications. The

anchorage shall be adequate to buildings and structures, based upon the size and weight of the mobile unit.

620.3. Support and anchorage of manufactured homes. The manufacturer of the home shall provide with each manufactured home printed instructions specifying the location, required capacity and other details of the stabilizing devices to be used with or without a permanent foundation (i.e., tiedowns, piers, blocking, footings, etc.) based upon the design of the manufactured home. Manufactured homes shall be supported and anchored according to the manufacturer's printed instructions or supported and anchored by a system conforming to accepted engineering practices designed and engineered specifically for the manufactured home. Footings or foundations on which piers or other stabilizing devices are mounted shall be carried down to the established frost lines. The anchorage system shall be adequate to resist wind forces, sliding and uplift as imposed by the design loads.

620.3.1. Hurricane zone. Manufactured homes installed or relocated in the hurricane zone shall be of Hurricane and Windstorm Resistive design in accordance with the Federal Manufactured Housing Construction and Safety Standards and shall be anchored according to the manufacturer's specifications for the hurricane zone. The hurricane zone includes the following counties and all cities located therein, contiguous thereto, or to the east thereof. Accomack, King William, Richmond, Charles City, Lancaster, Surry, Essex, Mathews, Sussex, Gloucester, Middlesex, Southampton, Greensville, Northumberland, Westmoreland, Isle of Wight, Northampton, York, James City, New Kent, King & Queen and Prince George.

620.3.2. Flood hazard zones. Manufactured homes and mobile units which are located in a flood hazard zone shall comply with the requirements of Section 2101.6.

Exception: Manufactured homes installed on sites in an existing manufactured home park or subdivision shall be permitted to be placed no less than 36 inches above grade in lieu of being elevated at or above the base flood elevation provided no manufactured home at the same site has sustained flood damage exceeding 50% of the market value of the home before the damage occurred.

620.4. Used mobile/manufactured homes. When used manufactured homes or used mobile homes are being installed or relocated and the manufacturer's original installation instructions are not available, installations complying with the applicable portions of NCSBCS/ANSI A225.1 listed in Appendix A shall be accepted as meeting the USBC.

620.5. Skirting. Manufactured homes installed or relocated after July 1, 1990, shall have skirting installed within 60 days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation

instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of 18 inches in any dimension and not less than three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the USBC.

(K) Add new Section 627.0 to read as follows:

## SECTION 627.0. UNDERGROUND STORAGE TANKS.

627.1. General. The installation, upgrade, or closure of any underground storage tanks containing an accumulation of regulated substances, shall be in accordance with the Underground Storage Tank Regulations adopted by the State Water Control Board. Underground storage tanks containing flammable or combustible liquids shall also comply with the applicable requirements of Section 619.0.

## ARTICLE 7. INTERIOR ENVIRONMENTAL REQUIREMENTS.

(A) Add new Section 706.2.3 as follows:

706.2.3. Insect screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(B) Change Section 714.0 to read as follows:

## SECTION 714.0. SOUND TRANSMISSION CONTROL IN RESIDENTIAL BUILDINGS.

714.1. Scope. This section shall apply to all common interior walls, partitions and floor/ceiling assemblies between adjacent dwellings or between a dwelling and adjacent public areas such as halls, corridors, stairs or service areas in all buildings of Use Group R.

714.2. Airborne noise. Walls, partitions and floor/ceiling assemblies separating dwellings from each other or from public or service areas shall have a sound transmission class (STC) of not less than 45 for airborne noise when tested in accordance with ASTM E90 listed in Appendix A. This requirement shall not apply to dwelling entrance doors, but such doors shall be tight fitting to the frame

and sill.

714.3. Structure borne sound. Floor/ceiling assemblies between dwellings and between a dwelling and a public or service area within the structures shall have an impact insulation class (IIC) rating of not less than 45 when tested in accordance with ASTM E492 listed in Appendix A.

714.4. Tested assemblies. Where approved, assemblies of building construction listed in GA 600, NCMA TEK 69A and BIA TN 5A listed in Appendix A shall be accepted as having the STC and IIC ratings specified therein for determining compliance with the requirements of this section.

(C) Add new Section 715.0 to read as follows:

## SECTION 715.0. HEATING FACILITIES.

715.1. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

715.2. Other structures. Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupant thereof; and every occupant of any structure or part thereof who rents or leases said structure or part thereof on terms, either express or implied, to supply its own heat, shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C), during all working hours in all enclosed spaces or rooms where persons are employed and working. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exceptions:

1. Processing, storage and operations areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

# Final Regulations

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## ARTICLE 8. MEANS OF EGRESS.

(A) Change Exception 6 of Section 813.4.1 to read as follows:

6. Devices such as double cylinder dead bolts which can be used to lock doors to prevent egress shall be permitted on egress doors in Use Groups B, F, M or S. These doors may be locked from the inside when all of the following conditions are met:

a. The building is occupied by employees only and all employees have ready access to the unlocking device.

b. The locking device is of a type that is readily distinguished as locked, or a "DOOR LOCKED" sign with red letters on white background is installed on the locked doors. The letters shall be six inches high and 3/4 of an inch wide.

c. A permanent sign is installed on or adjacent to lockable doors stating "THIS DOOR TO REMAIN UNLOCKED DURING PUBLIC OCCUPANCY." The sign shall be in letters not less than one-inch high on a contrasting background.

(B) Add new Exception 7 to Section 813.4.1 to read as follows:

### Exception

7. Locking arrangements conforming to Section 813.4.5.

(C) Add new Section 813.4.5 to read as follows:

813.4.5. Building entrance doors. In Use Groups A, B, E, M, R-1 and R-2, the building entrance doors in a means of egress are permitted to be equipped with an approved entrance and egress control system which shall be installed in accordance with items 1 through 6 below.

1. A sensor shall be provided on the egress side arranged to detect an occupant approaching the doors. The doors shall be arranged to unlock by a signal from or loss of power to the sensor.

2. Loss of power to that part of the access control system which locks the doors shall automatically unlock the doors.

3. The doors shall be arranged to unlock from a manual exit device located 48 inches (1219 mm) vertically above the floor and within five feet (1524 mm) of the secured doors. The manual exit device shall be readily accessible and clearly identified by a sign. When operated, the manual exit device shall result in direct interruption of power to the lock – independent of the access control system electronics – and the doors shall remain unlocked for a minimum

of 30 seconds.

4. Activation of the building fire protective signaling system, if provided, shall automatically unlock the doors, and the doors shall remain unlocked until the fire protective signaling system has been reset.

5. Activation of the building sprinkler or detection system, if provided, shall automatically unlock the doors. The doors shall remain unlocked until the fire protective signaling system has been reset.

6. The doors shall not be secured from the egress side in Use Groups A, B, E and M during periods when the building is accessible to the general public.

(D) Add new Section 826.0 to read as follows:

## SECTION 826.0. EXTERIOR DOORS.

826.1. Swinging entrance doors. Exterior swinging doors of each dwelling unit in buildings of Use Group R-2 shall be equipped with a dead bolt lock, with a throw of not less than one inch, and shall be capable of being locked or unlocked by key from the outside and by turn-knob from the inside.

826.2. Exterior sliding doors. In dwelling units of Use Group R-2 buildings, exterior sliding doors which are one story or less above grade, or shared by two dwelling unit or are otherwise accessible from the outside, shall be equipped with locks. The mounting screws for the lock case shall be inaccessible from the outside. The lock bolt shall engage the strike in a manner that will prevent its being disengaged by movement of the door.

Exception: Exterior sliding doors which are equipped with removable metal pins or charlie bars.

826.3. Entrance doors. Entrance doors to dwelling units of Use Group R-2 buildings shall be equipped with door viewers with a field of vision of not less than 180 degrees.

Exception: Entrance doors having a vision panel or side vision panels.

## ARTICLE 10. FIRE PROTECTION SYSTEMS.

(A) Delete Section 1000.3.

(B) Change Section 1002.6 to read as follows:

1002.6. Use Group I. Throughout all buildings with a Use Group I fire area.

Exception: Use Group I-2 child care facilities located at the level of exit discharge and which accommodate 100 children or less. Each child care room shall have an exit door directly to the exterior.

(C) Change Section 1002.8 to read as follows:

1002.8. Use Group R-1. Throughout all buildings of Use Group R-1.

Exception: Use Group R-1 buildings where all guestrooms are not more than three stories above the lowest level of exit discharge of the exits serving the guestroom. Each guestroom shall have at least one door opening directly to an exterior exit access which leads directly to the exits.

(D) Change Section 1002.9 to read as follows:

1002.9. Use Group R-2. Throughout all buildings of Use Group R-2.

Exceptions 1.

Use Group R-2 buildings where all dwelling units are not more than one story above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit.

2. Use Group R-2 buildings where all dwelling units are not more than three stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit and every two dwelling units are separated from other dwelling units in the building by fire separation assemblies (see Sections 909.0 and 913.0) having a fire resistance rating of not less than two hours.

(E) Add new Section 1002.12 to read as follows:

1002.12. Use Group B, when more than 50 feet in height. Fire suppression systems shall be installed in buildings and structures of Use Group B, when more than 50 feet in height and less than 75 feet in height according to the following conditions:

1. The height of the building shall be measured from the point of the lowest grade level elevation accessible by fire department vehicles at the building or structure to the floor of the highest occupiable story of the building or structure.

2. Adequate public water supply is available to meet the needs of the suppression system.

3. Modifications for increased allowable areas and reduced fire ratings permitted by Sections 502.3, 503.1, 905.2.2, 905.3.1, 921.7.2, 921.7.2.2, 922.8.1, and any others not specifically listed shall be granted.

4. The requirements of Section 602.0 for high-rise buildings, such as, but not limited to voice alarm systems, central control stations, and smoke control systems, shall not be applied to buildings and

structures affected by this section.

(F) Change Sections 1004.1 through 1004.2.2 to read as follows:

1004.1. General. Automatic sprinkler systems shall be approved and shall be designed and installed in accordance with the provisions of this code.

1004.2. Equipped throughout. Where the provisions of this code require that a building or portion thereof be equipped throughout with an automatic sprinkler system, the system shall be designed and installed in accordance with Section 1004.2.1, 1004.2.2 or 1004.2.3.

Exception: Where the use of water as an extinguishing agent is not compatible with the fire hazard (see Section 1003.2) or is prohibited by a law, statute or ordinance, the affected area shall be equipped with an approved automatic fire suppression system utilizing a suppression agent that is compatible with the fire hazard.

1004.2.1. NFIPA 13 systems. The systems shall be designed and installed in accordance with NFIPA 13 listed in Appendix A.

Exception: In Use Group R fire areas, sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area and are located within individual dwelling units or guestrooms.

1004.2.1.1. Quick response sprinklers. NFIPA 13 systems installed in Use Group I-2 fire areas shall use quick response sprinklers in patient sleeping rooms.

1004.2.2. NFIPA 13R systems. In buildings four stories or less in height, systems designed and installed in accordance with NFIPA 13R listed in Appendix A shall be permitted in Use Group I-1 fire areas in buildings with not more than 16 occupants, and in Use Group R fire areas.

Exception: Sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area and are located within individual dwelling units or guestrooms.

(G) Add new Section 1004.2.3 to read as follows:

1004.2.3. NFIPA 13D systems. In Use Group I-1 fire areas in buildings with not more than eight occupants, systems designed and installed in accordance with NFIPA 13D listed in Appendix A shall be permitted.

Exceptions:

1. Sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area.

2. A single fire protection water supply shall be permitted to serve not more than eight dwelling units.

# Final Regulations

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(H) Add new Section 1018.3.5 to read as follows:

1018.3.5. Smoke detectors for the deaf and hearing impaired. Smoke detectors for the deaf and hearing impaired shall be provided as required by § 36-99.5 of the Code of Virginia.

## ARTICLE 12. FOUNDATION SYSTEMS.

(A) Add new provision to Section 1205.0, Depth of Footings:

1205.4. Small storage sheds. The building official may accept utility sheds without footings when they are used for storage purposes and do not exceed 150 square feet in gross floor area when erected or mounted on adequate supports.

## ARTICLE 13. MATERIALS AND TESTS.

(A) Add new Section 1300.4 to read as follows:

1300.4. Lead based paint. Lead based paint with a lead content of more than 0.5% shall not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

(B) Change Section 1308.1 to read as follows:

1308.1. General. The permit applicant shall provide special inspections where application is made for construction as described in this section. The special inspectors shall be provided by the owner and shall be qualified and approved for the inspection of the work described herein.

Exception: Special inspections are not required for buildings or structures unless the design involves the practice of professional engineering or architecture as required by §§ 54.1-401, 54.1-402 and 54.1-406 of the Code of Virginia.

(C) Delete Section 1308.8, Special cases.

## ARTICLE 17. WOOD.

(A) Change Section 1702.4.1 to read as follows:

1702.4.1. General. Where permitted for use as a structural element, fire-retardant treated wood shall be defined as any wood product which, when impregnated with chemicals by a pressure process in accordance with AWPA C20 or AWPA C27 listed in Appendix A or other means during manufacture, shall have, when tested in accordance with ASTM E84 listed in Appendix A, a flame spread rating not greater than 25 when the test is continued for a period of 30 minutes, without evidence of significant progressive combustion and the flame front shall not

progress more than 10.5 feet (3200 mm) beyond the centerline of the burner at any time during the test. Fire-retardant treated wood shall be dried to a moisture content of 19% or less for lumber and 15% or less for plywood before use.

(B) Add new Sections 1702.4.1.1 and 1702.4.1.2 as follows:

1702.4.1.1. Strength modifications. Design values for untreated lumber, as specified in Section 1701.1, shall be adjusted when the lumber is pressure impregnated with fire-retardant chemicals. Adjustments to the design values shall be based upon an approved method of investigation which takes into consideration the effects of the anticipated temperature and humidity to which the fire-retardant treated wood will be subjected, the type of treatment, and the redrying procedures.

1702.4.1.2. Labeling. Fire-retardant treated lumber and plywood shall bear the label of an approved agency in accordance with Section 1307.3.2. Such label shall contain the information required by Section 1307.3.3.

## ARTICLE 21. EXTERIOR EQUIPMENT AND SYSTEMS.

(A) Delete Section 2101.6.9 Alterations and repairs, but do not renumber remaining sections.

## ARTICLE 25. MECHANICAL EQUIPMENT AND SYSTEMS.

(A) Change Section 2500.2 to read as follows:

2500.2. Mechanical code. All mechanical equipment and systems shall be constructed, installed and maintained in accordance with the mechanical code listed in Appendix A, as amended below:

1. Delete Article 17, Air Quality:
2. Add Note to M-2000.2 to read as follows:

Note: Boilers and pressure vessels constructed under this article shall be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

## ARTICLE 27. ELECTRIC WIRING AND EQUIPMENT.

(A) Add Section 2700.5 to read as follows:

2700.5. Telephone outlets. Each dwelling unit shall be prewired to provide at least one telephone outlet (jack). In multifamily dwellings, the telephone wiring shall terminate inside or outside of the building at a point prescribed by the telephone company.

## ARTICLE 28. PLUMBING SYSTEMS.

A) Change Section 2800.1 to read as follows:

2800.1. Scope. The design and installation of plumbing systems, including sanitary and storm drainage, sanitary facilities, water supplies and storm water and sewage disposal in buildings shall comply with the requirements of this article and the plumbing code listed in Appendix A (BOCA National Plumbing Code/1990) as amended below:

1. Change Section P-303.1 to read as follows:

P-303.1. General. The water distribution and drainage system of any building in which plumbing fixtures are installed shall be connected to public water main and sewer respectively, if available. Where a public water main is not available, an individual water supply shall be provided. Where a public sewer is not available, a private sewage disposal system shall be provided conforming to the regulations of the Virginia Department of Health.

2. Change Section P-303.2 to read as follows:

P-303.2. Public systems available. A public water supply system or public sewer system shall be deemed available to premises used for human occupancy if such premises are within (number of feet and inches as determined by the local government) measured along a street, alley, or easement, of the public water supply or sewer system, and a connection conforming with the standards set forth in the USBC may be made thereto.

3. Change Section P-308.3 to read as follows:

P-308.3. Freezing. Water service piping and sewers shall be installed below recorded frost penetration but not less than (number of feet and inches to be determined by the local government) below grade for water piping and (number of feet and inches to be determined by the local government) below grade for sewers. In climates with freezing temperatures, plumbing piping in exterior building walls or areas subjected to freezing temperatures shall be adequately protected against freezing by insulation or heat or both.

4. Delete Section P-311.0, Toilet Facilities for Workers.

5. Add new Section P-604.2.1 to read as follows:

P-604.2.1. Alarms. Malfunction alarms shall be provided for sewage pumps or sewage ejectors rated at 20 gallons per minute or less when used in Use Group R-3 buildings.

6. Add the following exception to Section P-1001.1:

4. A grease interceptor listed for use as a fixture trap may serve a single fixture or a combination sink of not more than three compartments when the vertical distance of the fixture drain to the inlet of the grease interceptor does not exceed 30 inches and the horizontal distance does not exceed 60 inches.

7. Change Note d of Table P-1202.1 to read:

Note d. For attached one and two family dwellings one automatic clothes washer connection shall be required per 20 dwelling units. Automatic clothes washer connections are not required for Use Group R-4.

8. Revise Table P-1202.1 for Building Use Groups A-1, A-3, A-4 and A-5.

Building Use Group	Water Closets (Urinals see Section P1218.2)	
	Males	Females
A-1 Assembly, theaters	1 per 125	1 per 65
A-2 Assembly, nightclubs	1 per 40	1 per 40
A-3 Assembly, restaurants	1 per 75	1 per 75
A-3 Assembly, halls, museums, etc.	1 per 125	1 per 65
A-4 Assembly, churches(b)	1 per 150	1 per 75
A-5 Assembly, stadiums, pools, etc.	1 per 100	1 per 50

9. Add Note e to Table P-1202.1 to reference Use Group I-2 day nurseries to read as follows:

Note e. Day nurseries shall only be required to provide one bathtub or shower regardless of the number of occupants.

10. Delete Section P-1203.0, Handicap Plumbing Facilities, but do not renumber the remaining sections in the article.

11. Add new Section P-1501.3:

P-1501.3. Public water supply and treatment. The approval, installation and inspection of raw water collection and transmission facilities, treatment facilities and all public water supply transmission mains shall be governed by the Virginia Waterworks Regulations. The internal plumbing of buildings and structures, up to the point of connection to the water meter shall be governed by this code. Where no meter is installed, the point of demarcation shall be at the point of connection to the public water main; or, in the case of an owner of both public water supply system and the building served, the point of demarcation is the point of entry into the building.

Note: See Memorandum of Agreement between the Board of Housing and Community Development and the Virginia Department of Health, signed July 21, 1980.

12. Add Note to P-1506.3 to read as follows:

Note: Water heaters which have a heat input of greater than 200,000 BTU per hour, a water

# Final Regulations

temperature of over 210°F, or contain a capacity of more than 120 gallons shall be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

13. Delete Article 16, Individual Water Supply.

(B) Change Section 2804.3 to read as follows:

2804.3. Private water supply. When public water mains are not used or available, a private source of water supply may be used. The Health Department shall approve the location, design and water quality of the source prior to the issuance of the permit. The building official shall approve all plumbing, pumping and electrical equipment associated with the use of a private source of water.

(C) Change Section 2807.1 to read as follows:

2807.1. Private sewage disposal. When water closets or other plumbing fixtures are installed in buildings which are not located within a reasonable distance of a sewer, suitable provisions shall be made for disposing of the building sewage by some method of sewage treatment and disposal satisfactory to the administrative authority having jurisdiction. When an individual sewage system is required, the control and design of this system shall be as approved by the State Department of Health, which must approve the location and design of the system and septic tanks or other means of disposal. Approval of pumping and electrical equipment shall be the responsibility of the building official. Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of a building. Temporary recreational use buildings shall mean any building occupied intermittently for recreational purposes only.

## ARTICLE 29. SIGNS.

(A) Delete Section 2901.1, Owner's consent.

(B) Delete Section 2901.2, New signs.

(C) Delete Section 2906.0, Bonds and Liability Insurance.

## ARTICLE 30. PRECAUTIONS DURING BUILDING OPERATIONS.

(A) Change Section 3000.1 to read as follows:

3000.1. Scope. The provisions of this article shall apply to all construction operations in connection with the erection, alteration, repair, removal or demolition of buildings and structures. It is applicable only to the protection of the general public. Occupational health and safety protection of building-related workers are regulated by the Virginia Occupational Safety and Health Standards for the Construction Industry, which are issued by the Virginia

Department of Labor and Industry.

## APPENDIX A. REFERENCED STANDARDS.

(A) Add the following standards:

NCSBCS/ANSI A225.1-87

Manufactured Home Installations (referenced in Section 620.4).

NFiPA 13D-89

Installation of Sprinkler Systems in One- and Two-Family Dwellings and Mobile Homes (referenced in Section 1004.2.3)

NFiPA 30A-87

Automotive and Marine Service Station Code (referenced in Section 619.1).

NFiPA 31-87

Installation of Oil Burning Equipment (referenced in Section 619.1)

NFiPA 407-90

Aircraft Fuel Servicing (referenced in Section 619.1)

## ADDENDUM 2. AMENDMENTS TO THE CABO ONE AND TWO FAMILY DWELLING CODE/1989 EDITION AND 1990 AMENDMENTS.

As provided in Section 101.4 of the Virginia Uniform Statewide Building Code, the amendments noted in this addendum shall be made to the CABO One and Two Family Dwelling Code/1989 Edition and 1990 Amendments for use as part of the USBC.

## PART I. ADMINISTRATIVE.

### Chapter 1. Administrative.

(A) Any requirements of Sections R-101 through R-113 that relate to administration and enforcement of the CABO One and Two Family Dwelling Code are superseded by Article 1, Adoption, Administration and Enforcement of the USBC.

## PART II. BUILDING PLANNING.

### Chapter 2. Building Planning.

(A) Add Section R-203.5, Insect Screens:

203.5. Insect Screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(B) Change Section R-207 to read as follows:

## SECTION R-207. SANITATION.

Every dwelling unit shall be provided with a water closet, lavatory and a bathtub or shower.

Each dwelling unit shall be provided with a kitchen area and every kitchen area shall be provided with a sink of approved nonabsorbent material.

All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system.

All plumbing fixtures shall be connected to an approved water supply and provided with hot and cold running water, except water closets may be provided with cold water only.

Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of the building.

(C) Add to Section R-212:

Key operation is permitted from a dwelling unit provided the key cannot be removed when the door is locked from the side from which egress is to be made.

(D) Change Section R-214.2 to read as follows:

R-214.2. Guardrails. Porches, balconies or raised floor surfaces located more than 30 inches above the floor or grade below shall have guardrails not less than 36 inches in height.

Required guardrails on open sides of stairways, raised floor areas, balconies and porches shall have intermediate rails or ornamental closures which will not allow passage of an object six inches or more in diameter.

(E) Change Section R-215.1 to read:

R-215.1. Smoke detectors required. Smoke detectors shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms and on each story of the dwelling, including basements and cellars, but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels, a smoke detector need be installed only on the upper level,

provided the lower level is less than one full story below the upper level, except that if there is a door between levels then a detector is required on each level. All detectors shall be connected to a sounding device or other detectors to provide, when activated, an alarm which will be audible in all sleeping areas. All detectors shall be approved and listed and shall be installed in accordance with the manufacturers instructions. When one or more sleeping rooms are added or created in existing dwellings, the addition shall be provided with smoke detectors located as required for new dwellings.

(F) Add new Section R-221:

## SECTION R-221. TELEPHONE OUTLETS.

Each dwelling unit shall be prewired to provide at least one wall telephone outlet (jack). The telephone wiring shall terminate on the exterior of the building at a point prescribed by the telephone company.

(G) Add new Section R-222:

## SECTION R-222. LEAD BASED PAINT.

Lead Based Paint. Lead based paint with a lead content of more than 0.5% shall not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

## PART III. CONSTRUCTION.

### Chapter 3. Foundations.

(A) Add Section R-301.6 to read as follows:

R-301.6. Floodproofing. All buildings or structures located in areas prone to flooding as determined by the governing body having jurisdiction shall be floodproofed in accordance with the provisions of Section 2101.6 of the 1990 BOCA National Building Code.

### Chapter 9. Chimneys and Fireplaces.

(A) Add Section R-903.10 as follows:

R-903.10. Spark arrestor. Spark arrestor screens shown in Figure R-904 are optional unless specifically required by the manufacturer of the fireplace stove or other appliance utilizing a chimney.

## PART IV. MECHANICAL.

(A) Add new Section M-1101.1:

# Final Regulations

M-1101.1. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

## PART V. PLUMBING.

### Chapter 22.

#### Plumbing, Drainage, Waste and Vent Systems (DWV).

(A) Change Section P-2206.8.2 to read as follows:

P-2206.8.2. Sewage ejectors or sewage pumps. A sewage ejector or sewage pump receiving discharge of water closets shall have a minimum discharge capacity of 20 gallons per minute. The ejector or pump shall be capable of passing a 1 1/2-inch-diameter solid ball, and the discharge piping of each ejector or pump shall have a backwater valve and be a minimum of two inches. Malfunction alarms shall be provided on sewage pumps or sewage ejectors rated at 20 gallons per minute or less.

## PART VI. ELECTRICAL.

(A) Revise Part VI as follows:

The electrical installations shall conform to the Electrical Code for One and Two Family Dwellings (NFPA 70A-1990) published by the National Fire Protection Association.

## PART VII. ENERGY CONSERVATION.

(A) Revise Part VII as follows:

The energy conservation requirements shall conform to Article 31 of the BOCA National Building Code/1990.

## ADDENDUM 3. AMENDMENTS TO THE ANSI A117.1 STANDARD.

As provided in Section 512.2 of the USBC, the amendments noted in this addendum shall be made to the American National Standard for Buildings and Facilities - Providing Accessibility and Usability for Physically Handicapped People (ANSI A117.1 - 1986) for use as part of the USBC.

(A) Change Section 1 to read as follows:

### 1. Purpose.

This standard sets minimum requirements for facility accessibility by people with physical disabilities, which includes those with sight impairment, hearing impairment and mobility impairment.

(B) Change Section 2 to read as follows:

### 2. Application of Standard.

#### 2.1. General.

The number of spaces and elements to be made accessible for each \*\*\* building type shall be established by this section and other applicable portions of this standard.

#### 2.2. Where Required.

All buildings and portions thereof of Use Groups A, B, E, F, H, I, M, R, and S, and their associated exterior sites and facilities shall be made accessible in accordance with applicable provisions of this standard.

#### Exceptions:

1. Building areas and exterior facilities where providing physical access is not practical, such as elevator pits, piping and equipment catwalks, or similar incidental spaces.

2. Floors above or below accessible levels in buildings when the aggregate floor area of the building does not exceed 12,000 square feet.

3. Temporary grandstands and bleachers used for less than 90 days, when accessible seating with equivalent lines of sight are provided.

4. Use Group R-3 buildings and their associated exterior sites and facilities.

5. Those portions of existing buildings which would require modification to the structural system in order to provide accessibility.

2.2.1. Use Group A-1. Use Group A-1 buildings shall provide not less than four wheelchair positions for each assembly area up to 300 seated participants, plus one additional space for each additional 100 seated occupants or fraction thereof. Removable seats shall be permitted in the wheelchair positions.

2.2.2. Use Group A-3. In areas of Use Group A-3 without fixed seating or fixed tables, at least 20% of the total seating shall be accessible. In areas with fixed seating or fixed tables, at least 3% of the total seating shall be accessible. All functional spaces and elements shall be accessible from all accessible seating.

2.2.3. Use Group I-1. In buildings of Use Group I-1, at least 2.0% but not less than one of all patient sleeping rooms or dwelling units shall be accessible in accordance with applicable provisions of this standard.

2.2.4. Use Group I-2. In Use Group I-2 buildings, at least one patient sleeping room and its toilet per nursing unit shall be accessible.

2.2.5. Use Group I-3. In Use Group I-3 buildings, at least one accessible unit shall be provided for each 100 resident units or fraction thereof.

2.2.6. Use Group R-1. Use Group R-1 buildings shall comply with the following:

1. Doors designed to allow passage into a room or space shall provide a minimum 32-inch clear opening width.

2. When 21 or more guest units are provided, 1% shall be accessible.

2.2.6.1. Multiple buildings on single lot. In determining the required number of accessible guest rooms, all buildings of Use Group R-1 on a single lot shall be considered as one building.

2.2.7. Use Group R-2. Buildings of Use Group R-2 containing four or more dwelling units and their associated sites and facilities shall comply with this section and other applicable provisions of this standard. The term "dwelling unit" as used in this section shall be as defined in Article 2 of the BOCA Code, but shall also include other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling. Dwelling units within a single structure separated by firewalls do not constitute separate buildings.

2.2.7.1. Terms defined. The following terms, when used in this section or in provisions for buildings affected by this section shall have the following meaning:

"Entrance" means any exterior access point to a building or portion of a building used by residents for the purpose of entering. For purposes of this standard, an "entrance" does not include a door to a loading dock or a door used primarily as a service entrance, even if nonhandicapped residents occasionally use that door to enter.

"Finished grade" means the ground surface of the site after all construction, leveling, grading, and development has been completed.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance

on an accessible route. This floor will be considered to be a ground floor.

"Loft" means an intermediate level between the floor and ceiling of any story, located within a room or rooms of a dwelling.

"Multistory dwelling unit" means a dwelling unit with a finished living space located on one floor and the floor or floors immediately above or below it.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

"Slope" means the relative steepness of the land between two points and is calculated as follows: The distance and elevation between the two points (e.g., an entrance and a passenger loading zone) are determined from a topographic map. The difference in elevation is divided by the distance and that fraction is multiplied by 100 to obtain a percentage slope figure.

"Undisturbed site" means the site before any construction, leveling, grading, or development associated with the current project.

2.2.7.2. Entrance requirements for buildings with elevators. Every building with an elevator shall have at least one building entrance on an accessible route.

2.2.7.3. Entrance requirements for buildings without elevators. Every building without an elevator shall have at least one building entrance on an accessible route except as provided for in 2.2.7.3.1 through 2.2.7.3.3.

2.2.7.3.1. Single building having common entrance for all units. A single building on a site having a common entrance for all units is not required to have an accessible entrance provided the slopes of the undisturbed site measured between the planned entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance exceed 10% and the slopes of the planned finished grade measured between the entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance also exceed 10%. If there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, the slope is to be measured to the closest vehicular or pedestrian arrival point.

2.2.7.3.2. Multiple buildings or single building with multiple entrances. Where there are multiple buildings on a site or a single building with multiple entrances serving either individual dwelling units or clusters of dwelling units, an accessible entrance shall be provided for accessible dwelling units. The number of dwelling units required to be accessible shall be determined by either 2.2.7.3.1 or

# Final Regulations

shall be at least equal to the percentage of the undisturbed site with a natural slope of less than 10%, but in either case shall be at least 20% of the total ground floor units. In addition to the percentage of dwelling units required to be accessible by this section, all ground floor dwelling units shall be made accessible if the entrances to the units are on an accessible route.

**2.2.7.3.3. Site impracticality due to unusual characteristics.** An accessible route to a building entrance need not be provided where the site is located in a floodplain or coastal high-hazard area where the site characteristics result in a difference in finished grade elevation exceeding 30 inches and 10% measured between the entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance. If there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, the slope is to be measured to the closest vehicular or pedestrian arrival point.

**Exception:** An accessible entrance shall be provided if an elevated walkway is provided between a building entrance and a vehicular arrival point and the walkway has a slope of no greater than 10%.

**2.2.8. Historic buildings.** These standards shall apply to buildings and structures or portions thereof that are designated, or are eligible to be designated, as historic landmarks by the federal, state, or local government, to the extent that the historical character of the building, or its elements, are not impaired.

(C) Delete the following definitions from Section 3.5:

Administrative authority; Assembly area; Authority having jurisdiction; Children; Coverage; Dwelling unit; Means of egress; Multifamily dwelling; and Temporary.

(D) Change Section 4.1 to read as follows:

## 4.1. Basic components.

Accessible sites, facilities, and buildings, including public-use, employee-use, and common-use spaces in housing facilities, shall provide accessible elements and spaces as identified in Table 2 unless modified by other sections of this standard.

(E) The following modifications shall be made to Table 2:

### Accessible Element or Space

#### 8. Elevator

### Section

4.10

### Application

Accessible routes connecting different accessible levels;

except as provided for in 2.2.7.

### Accessible Element or Space

#### 22. Seating, tables or work surfaces

### Section

4.30

### Application

If provided in accessible spaces; or, at least one of each type shall be accessible in public and common use areas in buildings subject to 2.2.7.

### Accessible Element or Space

#### 26. Common-use spaces and facilities

### Section

4.1 through 4.30

### Application

Buildings and facilities; or, at least one of each type shall be accessible if serving buildings subject to 2.2.7.

(F) Add an exception to Section 4.3.2, Location, to read as follows:

**Exception:** Access shall be provided by a vehicular route in cases where the finished grade between a building subject to 2.2.7 and a public or common use facility on the same site exceeds 8.33% or where other physical barriers (natural or manmade) or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route.

(G) Add new Section 4.3.11 to read as follows:

**4.3.11. Modifications for buildings subject to 2.2.7.** Buildings subject to 2.2.7 shall comply with 4.3 and 4.32.3.1. Differences in provisions between 4.3 and 4.32.3.1 shall be controlled by 4.32.3.1.

(H) Change Section 4.6.1 to read as follows:

**4.6.1. General.** Accessible parking spaces shall comply with 4.6.2. Accessible passenger loading zones shall comply with 4.6.3.

When lots or garage facilities are provided, the number of accessible spaces provided shall be in accordance with Table 4.6. In facilities with multiple building entrances on grade, accessible parking spaces shall be dispersed and located near these entrances. The required number of accessible spaces in parking lots and garages which serve multiple family dwellings shall be based on the total

number of spaces provided for visitors and public use facilities.

Table 4.6.

## ACCESSIBLE PARKING SPACES.

Total parking spaces Required minimum no-  
in lots and garages of accessible spaces

1 to 15	1a
16 to 50	1
51 to 100	2
101 to 150	3
151 to 400	2.0%
401 and over	8 plus 1.0 % of all spaces over 401

Note a: The accessible space shall be provided, but need not be designated.

(I) Change Section 4.11.1 to read as follows:

4.11.1. General: Platform lifts shall not be part of a required accessible route in new construction.

Exception: Buildings subject to Section 2.2.7 are permitted to use platform lifts on interior accessible routes.

(J) Add an exception to Section 4.13.1, General, to read as follows:

Exception: Doors intended for user passage within individual dwelling units of buildings subject to 2.2.7 shall only be required to comply with 4.13.5.

(K) Change Section 4.14 to read as follows:

4.14. Entrances and Exits.

4.14.1. General: Entrances to a building or facility that are part of an accessible route shall comply with Section 4.3. At least one entrance to a building or facility or to each separate occupancy or tenancy within a building or facility, and all entrances which normally serve accessible parking facilities, transportation facilities, passenger loading zones, taxi stands, public streets and sidewalks, or accessible interior vertical access, shall be accessible. All required exits shall be accessible.

4.14.2. Entrances in buildings subject to 2.2.7. Entrances in buildings subject to 2.2.7 shall comply with the provisions of 2.2.7 and 4.14. Differences between 2.2.7 and 4.14 shall be controlled by 2.2.7.

(L) Change Section 4.15.1 to read as follows:

4.15.1. General: All drinking fountains and water coolers on an accessible route shall comply with Section 4.4. At least 50% of drinking fountains and water coolers on accessible routes shall be accessible. If only one drinking fountain or water cooler is provided on an accessible route, it shall be accessible. Accessible drinking fountains shall comply with Section 4.15 and shall be on an accessible route.

(M) Change the title of Section 4.22 and the text of Section 4.22.1 to read as follows:

4.22. Toilet and Bathing Facilities.

4.22.1. General: Toilet rooms and bathing facilities shall comply with 4.22 and shall be on an accessible route. At least one of each type fixture or element shall be accessible. When there are 10 or more fixtures of any type, two of that type shall be accessible. Separate rooms for each sex need not be made accessible if an additional accessible room containing the required facilities is provided. Such room shall be lockable from the interior for privacy.

Exceptions:

1. Nonrequired toilet rooms with no more than one fixture of each type which is provided for the convenience of a single employee, and is not generally available to the public.
2. Dwelling units, guest rooms and patient rooms, unless required by other provisions of this standard.

(N) Change Section 4.23.1 to read as follows:

4.23.1. General: Where storage facilities such cabinets, shelves, closets and drawers are provided in required accessible or adaptable spaces, at least one of each type shall contain storage space that complies with Section 4.23.

(O) Change Section 4.28.1 to read as follows:

4.28.1. General: All signs required by 4.28.2 shall comply with Sections 4.28.3, 4.28.4, and 4.28.6. Tactile signage shall also comply with Section 4.28.5.

(P) Add new Section 4.28.2 to read as follows and renumber existing Sections 4.28.2 through 4.28.5:

4.28.2. Where Required: Accessible facilities shall be identified by the International Symbol of Accessibility at the following locations:

1. Parking spaces designated as reserved for physically disabled persons.
2. Passenger loading zones.
3. Accessible building entrances.

# Final Regulations

4. Accessible toilet and bathing facilities.

~~(1,2,5,7,8)~~

5. Exterior accessible routes.

8. 4.32.5.6 - Ranges and Cooktops  
(last sentence only)

(Q) Add new Section 4.28.7 to read as follows:

4.28.7. Sign Height. Accessible parking space signs shall have the bottom edge of the sign no lower than four feet (1219 mm) nor higher than seven feet (2134 mm) above the parking surface.

9. 4.32.5.8 - Refrigerator/Freezers

10. 4.32.5.10(1) - Kitchen Storage

11. 4.32.6.3 - Laundry - Controls

(R) Add new Section 4.20.2 to read as follows, and renumber existing Sections 4.20.2 through 4.20.8:

(W) Change Section 4.32.3 to read as follows:

4.32.3. Basic components. Accessible dwelling units shall provide accessible elements and spaces as identified in Table 4 unless modified by other sections of this standard.

4.20.2. Where required. At least one telephone in each bank of two or more shall have a volume control. Where such telephones are located on an accessible route, at least one shall comply with 4.20.

(X) The following modifications shall be made to Table 4:

(S) Add new Section 4.30.2 to read as follows and renumber existing Sections 4.30.2 through 4.30.4:

Accessible Element or Space

4.30.2. Where required. Fixed tables, counters and work stations provided in a required accessible space shall have at least one station that is accessible.

11. Bathrooms

Section

4.32.4

Application

(T) Change Section 4.31.1 to read as follows:

4.31.1. General. Auditorium and assembly areas shall comply with Section 4.31, with the number of accessible seating to be established by Section 2.2. Such areas with audio-amplification systems shall have a listening system complying with Sections 4.31.6 and 4.31.7 to assist persons with severe hearing loss in listening to audio presentations.

At least one bathroom within the dwelling unit shall be accessible and all other bathrooms and powder rooms shall be on an accessible route with accessible entry doors. Where two or more of the same type of fixture are provided at least one is required to be accessible.

(U) Change Section 4.32.1 to read as follows:

(Y) Add new Section 4.32.3.1 to read as follows:

4.32.1. General. All dwelling units served by an accessible entrance and all dwelling units served by an elevator shall be accessible. Accessible dwelling units shall comply with Section 4.32.

4.32.3.1. Modifications relating to accessible route into and through dwelling unit. The following modifications shall be made to the requirements for an accessible route into and through an accessible dwelling unit:

(V) Add new Section 4.32.2.1 to read as follows:

4.32.2.1. Modifications to adaptable design. Adaptable dwelling units shall not be required to comply with the following sections of this standard:

4.32.3.1.1. Changes in level within one story units. Changes in level within one story units with a height greater than 1/2 inch shall be ramped in accordance with 4.8. Changes in level with heights between 1/4 inch and 1/2 inch shall be beveled with a slope no greater than 1:2.

1. 4.32.4.3(3) - Medicine Cabinets

2. 4.32.4.4(2) - Bathtubs - Seat

3. 4.32.4.4(5) - Bathtubs - Shower Unit

4. 4.32.4.5(5) - Shower - Shower Unit

5. 4.32.5.3 - Kitchen - Controls

6. 4.32.5.4 - Kitchen - Work Surfaces

7. 4.32.5.5 - Kitchen - Sink

Exception: Lofts and design features such as raised or sunken areas are not required to be ramped provided the sunken or raised areas do not interrupt the accessible route through the dwelling unit.

4.32.3.1.2. Multistory units in buildings with elevators. In multistory dwelling units in buildings with elevators, the primary level of the dwelling unit shall be accessible and shall contain at least one accessible bathroom or powder room.

4.32.3.1.3. Thresholds at exterior doors. Thresholds at exterior doors shall be no more than 3/4 inch above the interior floor level and beveled with a slope no greater than 1:2.

Exception: Landing surfaces constructed of impervious material such as concrete, brick or flagstone when located adjacent to the primary entry door shall be no more than 1/2 inch below the floor level of the interior of the dwelling unit.

4.32.3.1.4. Exterior deck, patio or balcony surfaces. Exterior deck, patio or balcony surfaces shall be no more than 1/2 inch below the floor level of the interior of the dwelling unit.

Exception: Landing surfaces constructed of impervious material such as concrete, brick or flagstone shall be permitted to be up to four inches below the interior floor level.

(Z) Add an exception to Section 4.32.4.2, Water Closets (Bathrooms) Item #1, to read as follows:

Exception: Clear floor space at the water closet may be reduced to 15 inches between the nongrab bar side of the fixture and the adjoining wall, vanity or lavatory.

(AA) Add an exception to Section 4.32.5.1, Clearance (kitchens); to read as follows:

Exception: The 60 in (1525 mm) clearance shall not be required in U-shaped kitchens providing the base cabinets are removable to allow knee space for a forward approach.

(BB) Change Section 4.32.5.2 to read as follows:

4.32.5.2. Clear floor space. A clear floor space at least 30 inches by 48 inches complying with 4.2.4 that allows a parallel approach by a person in a wheelchair is provided at the range or cooktop and sink; and either a parallel or forward approach is provided at oven, dish washer, refrigerator/freezer or trash compactor. Laundry equipment located in the kitchen shall comply with 4.32.6.

(CC) Change Section 4.32.6.2 to read as follows:

4.32.6.2. Washing machines and clothes dryers. Washing machines and clothes dryers that are provided in common-use areas shall be front loading unless assistive devices enabling the use of top loading machines are provided upon request.

# Final Regulations

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## COMMONWEALTH of VIRGINIA

JOAN W SMITH  
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION  
General Assembly Building

910 CAPITOL STREET  
RICHMOND, VIRGINIA 23219  
(804) 786-3591

December 4, 1991

Mr. Neal J. Barber, Director  
Dept. of Housing and Community Development  
205 North Fourth Street  
Richmond, Virginia 23219

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

ATTENTION: Mr. Gregory H. Revels, Code Development Office

Dear Mr. Barber:

This will acknowledge receipt of the above-referenced regulations from the Department of Housing and Community Development.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joan W. Smith".

Joan W. Smith  
Registrar of Regulations

JWS:jbc

## 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 400-01-0001. Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority.

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

**Effective Date:** November 15, 1991.

### Summary:

*The amendments to the rules and regulations - general provisions for programs of the Virginia Housing Development Authority ("rules and regulations") eliminate the income limit of seven times annual rent and utilities (except telephone) for units in developments financed by mortgage loans approved by the authority on or after November 15, 1991. Income limits for units in such developments shall be such percentage of the area median income as the authority may establish by resolution or in its other rules and regulations applicable to such developments.*

*The term "area median income" was corrected to "area median gross income" to conform with the federal regulations governing various federally assisted housing programs and the federal tax exemption of the authority's bonds issued to finance multi-family developments.*

VR 400-01-0001. Rules and Regulations - General Provisions for Programs of the Virginia Housing Development Authority.

### § 1. Definitions.

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

**"Act"** means the Virginia Housing Development Authority Act, being Chapter 1.2 (§ 36-55.24, et seq.) of Title 36 of the Code of Virginia.

**"Adjusted family income"** means the total annual income of a person or all members of a family residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings, less the total of the credits applicable to such person or family, computed in accordance with the following: (i) a credit in an amount equal to \$1,000 for each dependent family member other than such a family member qualifying under (vi) below; (ii) a credit in an amount equal to the lesser of \$1,000 or 10% of such total annual income; (iii)

a credit in an amount equal to all income of such person or any such family member of an unusual or temporary nature and not related to such person's or family member's regular employment, to the extent approved by the executive director; (iv) a credit in an amount equal to all earnings of any family member who is a minor under 18 years of age or who is physically or mentally handicapped, as determined on the basis of medical evidence from a licensed physician or other appropriate evidence satisfactory to the executive director; (v) a credit in an amount equal to such person or family's medical expenses, not compensated for or covered by insurance, in excess of 3.0% of such total annual income; and (vi) a credit in an amount equal to 1/2 of the total annual income of all family members over 18 years of age who are secondary wage earners in the family, provided, however, that such credit shall not exceed the amount of \$2,500. If federal law or rules and regulations impose limitations on the incomes of the persons or families who may own or occupy a single family dwelling unit or multi-family residential housing development, the authority may provide in its rules and regulations that the adjusted family income shall be computed, for the purpose of determining eligibility for ownership or occupancy of such single family dwelling unit or the dwelling units in such multi-family residential housing development (or, if so provided in the applicable rules and regulations of the authority, only those dwelling units in such development which are subject to such federal income limitations), in the manner specified by such federal law or rules and regulations (subject to such modifications as may be provided in or authorized by the applicable rules and regulations of the authority) rather than in the manner provided in the preceding sentence.

**"Applicant"** means an individual, corporation, partnership, limited partnership, joint venture, trust, firm, association, public body or other legal entity or any combination thereof, making application to receive an authority mortgage loan or other assistance under the Act.

**"Application"** means a request for an authority mortgage loan or other assistance under the Act.

**"Authority"** means the Virginia Housing Development Authority.

**"Authority mortgage loan" or "mortgage loan"** means a loan which is made or financed or is to be made or financed, in whole or in part, by the authority pursuant to these rules and regulations and is secured or is to be secured by a mortgage.

**"Board"** means the Board of Commissioners of the authority.

**"Dwelling unit" or "unit"** means a unit of living accommodations intended for occupancy by one person or family.

**"Executive director"** means the executive director of the

# Final Regulations

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authority or any other officer or employee of the authority who is authorized to act on his behalf or on behalf of the authority pursuant to a resolution of the board.

*"Family"* means, in the context of the financing of a single family dwelling unit, two or more individuals related by blood, marriage or adoption, living together on the premises as a single nonprofit housekeeping unit. In all contexts other than the financing of a single family dwelling unit, "family" means two or more individuals living together in accordance with law.

*"FHA"* means the Federal Housing Administration and any successor entity.

*"For-profit housing sponsor"* means a housing sponsor which is organized for profit and may be required by the authority to agree to limit its profit in connection with the sponsorship of authority financed housing in accordance with the terms and conditions of the Act and these rules and regulations and subject to the regulatory powers of the authority.

*"Gross family income"* means the combined annualized gross income of all persons residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings. For the purpose of this definition, annualized gross income means gross monthly income multiplied by 12. Gross monthly income is the sum of monthly gross pay; plus any additional income from overtime, part-time employment, bonuses, dividends, interest, royalties, pensions, Veterans Administration compensation, net rental income; plus other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments).

*"Multi-family dwelling unit"* means a dwelling unit in multi-family residential housing.

*"Nonprofit housing sponsor"* means a housing sponsor which is organized not for profit and may be required by the authority to agree not to receive any limited dividend distributions from the ownership and operation of a housing development.

*"Person"* means:

1. An individual who is 62 or more years of age;
2. An individual who is handicapped or disabled, as determined by the executive director on the basis of medical evidence from a licensed physician or other appropriate evidence satisfactory to the executive director; or
3. An individual who is neither handicapped nor disabled nor 62 or more years of age; provided that the board may from time to time by resolution (i) limit the number of, fix the maximum number of

bedrooms contained in, or otherwise impose restrictions and limitations with respect to single family dwelling units that may be financed by the authority for occupancy by such individuals and (ii) limit the percentage of multi-family dwelling units within a multi-family residential housing development that may be made available for occupancy by such individuals or otherwise impose restrictions and limitations with respect to multi-family dwelling units intended for occupancy by such individuals.

*"Rent"* means the rent or other occupancy charge applicable to a dwelling unit within a housing development operated on a rental basis or owned and operated on a cooperative basis.

*"Reservation"* means the official action, as evidenced in writing, taken by the authority to designate a specified amount of funds for the financing of a mortgage loan on a single family dwelling unit.

*"Single family dwelling unit"* means a dwelling unit in single family residential housing.

The foregoing words and terms, when used in any other rules and regulations of the authority, shall have the same meaning as set forth above, unless otherwise defined in such rules and regulations. Terms defined in the Act and used and not otherwise defined herein shall have the same meaning ascribed to them in the Act.

## § 2. Eligibility for occupancy.

A. The board shall from time to time establish, by resolution or by rules and regulations, income limitations with respect to single family dwelling units financed or to be financed by the authority. Such income limits may vary based upon the area of the state, type of program, the size and circumstances of the person or family, the type and characteristics of the single-family dwelling unit, and any other factors determined by the board to be necessary or appropriate for the administration of its programs. Such resolution or rules and regulations shall specify whether the person's or family's income shall be calculated as adjusted family income or gross family income. To be considered eligible for the financing of a single family dwelling unit, a person or family shall not have an adjusted family income or gross family income, as applicable, which exceeds the applicable limitation established by the board. It shall be the responsibility of each applicant for the financing of a single family dwelling unit to report accurately and completely his adjusted family income or gross family income, as applicable, family composition and such other information relating to eligibility for occupancy as the executive director may require and to provide the authority with verification thereof.

B. To be considered eligible for occupancy of a multi-family dwelling unit financed by an authority mortgage loan, a person or family shall not have an

Adjusted family income greater than (i) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan prior to November [ 19 15 ], 1991, seven times the total annual rent, including utilities except telephone, applicable to such dwelling unit; provided, however, that the board may from time to time establish, by resolution or by rules and regulations, lower income limits for occupancy of such dwelling unit; and provided further that in the case of any dwelling unit for which no amounts are payable by or on behalf of such person or family or the amounts payable by or on behalf of such person or family are deemed by the board not to be rent, the income limits shall be established by the board by resolution or by rules and regulations ; or (ii) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan on or after November [ 19 15 ], 1991, such percentage of the area median [ gross ] income as the board may from time to time establish by resolution or by rules and regulations for occupancy of such dwelling unit. In the case of a multi-family dwelling unit described in (i) above, the mortgagor and the authority may agree to apply an income limit established pursuant to (ii) above in lieu of the income limit set forth in (i) above .

C. It shall be the responsibility of the housing sponsor to examine and determine the income and eligibility of applicants for occupancy of multi-family dwelling units, report such determinations to the authority in such form as the executive director may require, reexamine and determine the income and eligibility of all occupants of such dwelling units every two years or at more frequent intervals if required by the executive director, and report such redeterminations to the authority in such form as the executive director may require. It shall be the responsibility of each applicant for occupancy of a multi-family dwelling unit, and of each occupant of such dwelling units, to report accurately and completely his adjusted family's income, family composition and such other information relating to eligibility for occupancy as the executive director may require and to provide the housing sponsor and the authority with verification thereof at the times of examination and reexamination of income and eligibility as aforesaid.

D. With respect to a person or family occupying a multi-family dwelling unit, if a periodic reexamination and redetermination of the adjusted family's income and eligibility as provided in subsection C of this section establishes that such person's or family's adjusted family income then exceeds the maximum limit for occupancy of such dwelling unit applicable at the time of such reexamination and redetermination, such person or family shall be permitted to continue to occupy such dwelling unit; provided, however, that during the period that such person's or family's adjusted family income exceeds such maximum limit, such person or family may be required by the executive director to pay such rent, carrying charges or surcharge as determined by the executive director in accordance with a schedule prescribed or approved by him. If such person's or family's adjusted

family income shall exceed such maximum limit for a period of six months or more, the executive director may direct or permit the housing sponsor to terminate the tenancy or interest by giving written notice of termination to such person or family specifying the reason for such termination and giving such person or family not less than 90 days (or such longer period of time as the authority shall determine to be necessary to find suitable alternative housing) within which to vacate such dwelling unit. If any person or family residing in a housing development which is a cooperative is so required to be removed from the housing development, such person or family shall be discharged from any liability on any note, bond or other evidence of indebtedness relating thereto and shall be reimbursed for all sums paid by such person or family to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy in such cooperative and any additional sums payable to such person or family in accordance with a schedule prescribed or approved by the authority, subject however to the terms of any instrument or agreement relating to such cooperative or the occupancy thereof.

### § 3. Forms.

Forms of documents, instruments and agreements to be employed with respect to the processing of applications, the making or financing of loans under these rules and regulations, the issuance and sale of authority notes and bonds, and any other matters relating to such loans and the implementation and administration of the authority's programs shall be prepared, revised and amended from time to time under the direction and control of the executive director.

### § 4. Interest rates.

The executive director shall establish the interest rate or rates to be charged to the housing sponsor or person or family in connection with any loan made or financed under these rules and regulations. To the extent permitted by the documents relating to the loan, the executive director may adjust at any time and from time to time the interest rate or rates charged on such loan. Without limiting the foregoing, the interest rate or rates may be adjusted if such adjustment is determined to be necessary or appropriate by the executive director as a result of any allocation or reallocation of such loan to or among the authority's note or bond funds or any other funds of the authority. Any interest rate or rates established pursuant to this § 4 shall reflect the intent expressed in subdivision 3 of subsection A of § 36-55.33:1 of the Code of Virginia.

### § 5. Federally assisted loans.

When a housing development or dwelling unit financed by a loan under these rules and regulations or otherwise assisted by the authority is subject to federal mortgage insurance or is otherwise assisted or aided, directly or indirectly, by the federal government or where the authority assists in the administration of any federal

# Final Regulations

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program, the applicable federal law and rules and regulations shall be controlling over any inconsistent provision hereof.

## § 6. Administration of state and federal programs; acceptance of aid and guarantees.

A. The board by resolution may authorize the authority to operate and administer any program to provide loans or other housing assistance for persons and families of low and moderate income and, in furtherance thereof, to enter into agreements or other transactions with the federal government, the Commonwealth of Virginia or any governmental agency thereof, any municipality or any other persons or entities and to take such other action as shall be necessary or appropriate for the purpose of operating and administering, on behalf of or in cooperation with any of the foregoing, any such program.

B. The board by resolution may authorize the acceptance by the authority of gifts, grants, loans, contributions or other aid, including insurance and guarantees, from the federal government, the Commonwealth of Virginia or any agency thereof, or any other source in furtherance of the purposes of the Act, do any and all things necessary in order to avail itself of such aid, agree and comply with such conditions upon which such gifts, grants, loans, contributions, insurance, guarantees or other aid may be made, and authorize and direct the execution on behalf of the authority of any instrument or agreement which it considers necessary or appropriate to implement any such gifts, grants, loans, contributions, insurance guarantees or other aid.

C. Without limitation on the provisions of subsection B of this section, the board by resolution may authorize the acceptance by the authority of any insurance or guarantee or commitment to insure or guarantee its bonds or notes and any grant with respect to such bonds or notes, whether insured, guaranteed or otherwise, and may authorize and direct the execution on behalf of the authority of any instrument or agreement which it considers necessary or appropriate with respect thereto.

## § 7. Assistance of mortgage lenders.

The authority may, at its option, utilize the assistance and services of mortgage lenders in the processing, originating, disbursing and servicing of loans under these rules and regulations. The executive director is authorized to take such action and to execute such agreements and documents as he shall deem necessary or appropriate in order to procure, maintain and supervise such assistance and services. In the case of authority mortgage loans to be financed from the proceeds of obligations issued by the authority pursuant to § 36-55.37:1 of the Code of Virginia, the authority shall be required to utilize such assistance and services of mortgage lenders in the origination and servicing of such authority mortgage loans.

## § 8. Purchase of mortgage loans.

A. The authority may from time to time, pursuant and subject to its rules and regulations, purchase mortgage loans from mortgage lenders. In furtherance thereof, the executive director may request mortgage lenders to submit offers to sell mortgage loans to the authority in such manner, within such time period and subject to such terms and conditions as he shall specify in such request. The executive director may take such action as he shall deem necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to mortgage lenders, advertising in newspapers or other publications and any other methods of public announcement which he may select as appropriate under the circumstances. The executive director may also consider and accept offers for sale of individual mortgage loans submitted from time to time to the authority without any solicitation therefor by the authority.

B. The authority shall require as a condition of the purchase of any mortgage loans from a mortgage lender pursuant to this section that such mortgage lender within 180 days from the receipt of proceeds of such purchase shall enter into written commitments to make, and shall thereafter proceed as promptly as practical to make and disburse from such proceeds, residential mortgage loans in the Commonwealth of Virginia having a stated maturity of not less than 20 years from the date thereof in an aggregate principal amount equal to the amount of such proceeds.

C. At or before the purchase of any mortgage loan pursuant to this section, the mortgage lender shall certify to the authority that the mortgage loan would in all respects be a prudent investment and that the proceeds of the purchase of the mortgage loan shall be invested as provided in subsection B of this section or invested in short-term obligations pending such investment.

D. The purchase price for any mortgage loan to be purchased by the authority pursuant to this section shall be established in accordance with subdivision (2) of § 36-55.35 of the Code of Virginia.

## § 9. Waiver.

The executive director may for good cause in any particular case waive or vary any of the provisions of these rules and regulations to the extent not inconsistent with the Act or with other applicable provisions of law.

## § 10. Amendment.

These rules and regulations may be amended and supplemented by the board at such times and in such manner as it may determine, to the extent not inconsistent with the Act or with other applicable provisions of law.

## § 11. Separability.

If any clause, sentence, paragraph, section or part of these rules and regulations shall be adjudged by any court

If competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

\* \* \* \* \*

**Title of Regulation:** VR 400-02-0001. Rules and Regulations for Multi-Family Housing Developments.

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

**Effective Date:** November 15, 1991

**Summary:**

*The amendments to the rules and regulations for multi-family housing developments ("rules and regulations") of the authority (i) eliminate the income limit of seven times annual rent and utilities, except telephone, for units in multi-family rental housing developments financed by mortgage loans approved by the authority on or after November 15, 1991, (ii) reduce the limit of 150% of area median income on 80% of the units in such a development to 115% of area median gross income, and (iii) provide that the income limit applicable to occupants upon reexamination and redetermination of their adjusted family incomes and eligibility subsequent to their initial occupancy of the units in such a development shall be 115% of area median gross income.*

*The term "area median income" was corrected to "area median gross income" to conform with the federal regulations governing (i) various federally assisted housing programs and (ii) the federal tax exemption of the authority's bonds issued to finance multi-family developments.*

**VR 400-02-0001. Rules and Regulations for Multi-Family Housing Developments.**

**§ 1. Purpose and applicability.**

The following rules and regulations will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the authority to mortgagors to provide the construction and/or permanent financing of multi-family housing developments (including any such developments to be owned and operated on a cooperative basis) intended for occupancy by persons and families of low and moderate income ("development" or "developments"). These rules and regulations shall be applicable to the making of such mortgage loans directly by the authority to mortgagors, the purchase of such mortgage loans, the participation by the authority in such mortgage loans with mortgage lenders and any other manner of financing of such mortgage loans under the Act. These rules and regulations shall not, however, apply to

any developments which are subject to any other rules and regulations adopted by the authority. If any mortgage loan is to provide either the construction or permanent financing (but not both) of a development, these rules and regulations shall be applicable to the extent determined by the executive director to be appropriate for such financing. If any development is subject to federal mortgage insurance or is otherwise assisted or aided, directly or indirectly, by the federal government, the applicable federal rules and regulations shall be controlling over any inconsistent provision. Furthermore, if the mortgage loan on any development is to be insured by the federal government, the provisions of these rules and regulations shall be applicable to such development only to the extent determined by the executive director to be necessary in order to (i) protect any interest of the authority which, in the judgment of the executive director, is not adequately protected by such insurance or by the implementation or enforcement of the applicable federal rules, regulations or requirements or (ii) to comply with the Act or fulfill the authority's public purpose and obligations thereunder. Developments shall include housing intended to be owned and operated on a cooperative basis. The term "construction", as used herein, shall include the rehabilitation, preservation or improvement of existing structures.

Mortgage loans may be made or financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any development to waive or modify any provision herein where deemed appropriated by him for good cause, to the extent not inconsistent with the Act and covenants and agreements with the holders of its bonds.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the mortgagor, the contractor or other members of the development team under the initial closing documents as described in § 7 of these rules and regulations.

These rules and regulations are intended to provide a general description of the authority's processing requirements and not intended to include all actions involved or required in the processing and administration of mortgage loans under the authority's multi-family housing programs. 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 with respect to any particular development or developments or any multi-family housing program or programs.

# Final Regulations

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## § 2. Income limits and general restrictions.

Under the authority's rules and regulations, to be eligible for occupancy of a multi-family dwelling unit, a person or family shall not have an adjusted family income (as defined therein) greater than (i) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan prior to November [ 19 15 ], 1991, seven times the total annual rent, including utilities except telephone, applicable to such dwelling unit ; ~~The ;~~ provided, however, that the authority's rules and regulations authorize its board to establish from time to time by resolution and by rules and regulations lower income limits for initial occupancy ; or (ii) in the case of a multi-family dwelling unit for which the board has approved the mortgage loan on or after November [ 19 15 ], 1991, such percentage of the area median [ gross ] income as the board may from time to time establish by resolution or by rules and regulations for occupancy of such dwelling unit. In the case of a multi-family dwelling unit described in (i) above, the [ ~~mortgagee~~ mortgagor ] and the authority may agree to apply an income limit established pursuant to (ii) above in lieu of the income limit set forth in (i) above. Income limits are established below in these rules and regulations in addition to the limit set forth in (i) above and in implementation of the provisions of (ii) above .

In the case of developments for which the authority has agreed to permit the mortgagor to establish and change rents without the prior approval of the authority (as described in , and subject to the provisions of, §§ 11 and 14 of these rules and regulations), at least 20% of the units in each such development shall be occupied or held available for occupancy by persons and families whose adjusted family incomes (at the time of their initial occupancy) do not exceed 80% of the area median [ gross ] income as determined by the authority, and the remaining units shall be occupied or held available for occupancy by persons and families whose adjusted family incomes (at the time of their initial occupancy) do not exceed (i) in the case of units for which the board has approved the mortgage loan prior to November [ 19 15 ], 1991, 150% of such area median [ gross ] income as so determined or (ii) in the case of units for which the board has approved the mortgage loan on or after November [ 19 15 ], 1991, 115% of such area median [ gross ] income as so determined. The income limits applicable to persons and families at the time of reexamination and redetermination of their adjusted family incomes and eligibility subsequent to their initial occupancy [ ~~of such units~~ ] shall be as set forth in (i) or (ii), as applicable, in the preceding sentence (or, in the case of units described in (i) in the preceding sentence, such lesser income limit equal to seven times the annual rent, including utilities except telephone, applicable to such dwelling units).

The board may establish, in the resolution authorizing any mortgage loan to finance a development under these rules and regulations, income limits lower than those provided herein or in the authority's rules and regulations

for the occupants of the units in such development.

Furthermore, in the case of developments which are subject to federal mortgage insurance or assistance or are financed by notes or bonds exempt from federal income taxation, federal regulations may establish lower income limitations which in effect supersede the authority's income limits as described above.

If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in a development, the adjusted family incomes of applicants for occupancy of all of the units in the development shall be computed, for the purpose of determining eligibility for occupancy thereof hereunder and under the authority's rules and regulations, in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all developments and the processing thereof under the terms hereof must comply with (i) the Act; (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued by the authority to finance such developments; (iii) in the case of developments subject to federal mortgage insurance or other assistance, all applicable federal laws and regulations relating thereto; and (iv) the requirements set forth in the resolutions pursuant to which the notes or bonds are issued by the authority to finance the developments. Copies of the authority's note and bond resolutions are available upon request.

## § 3. Terms of mortgage loans.

The authority may make or finance mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance development intended for occupancy by persons and families of low and moderate income. The term of the mortgage loan shall be equal to (i) if the mortgage loan is to finance the construction of the proposed development, the period determined by the executive director to be necessary to: (1) complete construction of the development, (2) achieve sufficient occupancy to support the development and (3) consummate the final closing of the mortgage loan; plus (ii) if the mortgage loan is to finance the ownership and operation of the proposed development, an amortization period set forth in the mortgage loan commitment but not to exceed 45 years. The executive director may require that such amortization period not extend beyond the termination date of any federal insurance, assistance or subsidy.

Mortgage loans may be made to: (i) for-profit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the mortgage loan commitment or such percentage of the housing development costs of the development as in

established in such commitment, but in no event to exceed 95%; and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the minimum principal amount specified in the mortgage loan commitment or such percentage of the housing development costs of the development as is established in such commitment, but in no event to exceed 100%.

The maximum principal amount and percentage of housing development costs specified or established in the mortgage loan commitment shall be determined by the authority in such manner and based upon such factors as it deems relevant to the security of the mortgage loan and fulfillment of its public purpose. Such factors may include the fair market value of the proposed development as completed, the economic feasibility and marketability of the proposed development at the rents necessary to pay the debt service on the mortgage loan and the operating expenses of the proposed development, and the income levels of the persons and families who would be able to afford to pay such rents.

The categories of cost which shall be allowable by the authority in the acquisition and construction of a development financed under these rules and regulations shall include the following: (i) construction costs, including equipment, labor and materials furnished by the mortgagor, contractor or subcontractors, general requirements for job supervision, an allowance for office overhead of the contractor, building permit, bonds and letters of credit to assure completion, water, sewer and other utility fees, and a contractor's profit or a profit and risk allowance in lieu thereof; (ii) architectural and engineering fees; (iii) interest on the mortgage loan; (iv) real estate taxes, hazard insurance premiums and mortgage insurance premiums; (v) title and recording expenses; (vi) surveys; (vii) test borings; (viii) the authority's financing fees; (ix) legal and accounting expenses; (x) in the case of a nonprofit housing sponsor, organization and sponsor expenses, consultant fees, and a reserve to make the development operational; (xi) off-site costs; (xii) the cost or fair market value of the land and any improvements thereon to be used in the development; (xiii) tenant relocation costs; (xiv) operating reserves to be funded from proceeds of the mortgage loan; (xv) and such other categories of costs which the executive director shall determine to be reasonable and necessary for the acquisition and construction of the development. The extent to which costs in any of such categories shall be allowable in respect of a specific development and includable in the housing development costs thereof as determined by the authority at final closing shall be governed by the terms of the authority's cost certification guide for mortgagors, contractors and certified public accountants (the "cost certification guide"). The executive director is authorized to prepare and from time to time revise the cost certification guide. Copies of such guide shall be available upon request. Upon completion of the acquisition and construction of the development, the total of the housing development costs shall be certified to the authority in accordance with these rules and regulations

and the cost certification guide, subject to the review and determination of the authority. In lieu of such certification of housing development costs, the executive director may require such other assurances of housing development costs as he shall deem necessary to enable the authority to determine with reasonable accuracy the actual amount of such housing development costs.

The interest rate on the mortgage loan shall be established at the initial closing and may be thereafter adjusted in accordance with the authority's rules and regulations and terms of the deed of trust note. The authority shall charge a financing fee equal to 2.5% of the mortgage loan amount, unless the executive director shall for good cause require the payment of a different financing fee. Such fee shall be payable at such times as hereinafter provided or at such other times as the executive director shall for good cause require.

#### § 4. Solicitation of proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals for the financing of developments. 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 proposals and the selection of developments as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available funds of the authority are to be allocated and such other matters as he shall deem appropriate relating to the selection of proposals. The authority may also consider and approve proposals for financing of developments submitted from time to time to the authority without any solicitation therefor on the part of the authority.

#### § 5. Application and acceptance for processing.

Application for a mortgage loan 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, together with such documents and additional information as may be requested by the authority, including, but not limited to: initial site, elevation and unit plans; information with respect to the status of the proposed development site and the surrounding community; any option or sales contract to acquire the site; an evaluation of the need and effective demand for the proposed development in the market area of such site; information regarding the legal, business and financial status and experience of the members of the applicant's proposed development team and of the principals in any entity which is a member thereof, including current financial statements (which shall be audited in the case of

# Final Regulations

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a business entity) for the mortgagor (if existing), the general contractor and the principals therein; information regarding amenities and services proposed to be offered to the tenants; a preliminary estimate of the housing development costs and the individual components thereof; the proposed schedule of rents; a preliminary estimate of the annual operating budget and the individual components thereof; the estimated utility expenses to be paid by the tenants of dwelling units in the proposed development; and the amount of any federal insurance, subsidy or assistance which the applicant is requesting for the proposed development.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;
2. An evaluation of the ability, experience and financial capacity of the applicant and general contractor and the qualifications of the architect, management agent and other members of the proposed development team;
3. A preliminary evaluation of the estimated construction costs and the proposed design and structure of the proposed development;
4. A preliminary review of the estimated operating expenses and proposed rents and a preliminary evaluation of the adequacy of the proposed rents to sustain the proposed development based upon the assumed occupancy rate and estimated construction and financing costs; and
5. A preliminary evaluation of the marketability of the proposed development.

Based on the authority's review of the applications, documents and any additional information submitted by the applicants or obtained from other sources by the authority in its review of the proposed developments, the executive director shall accept for processing those applications which he determines best satisfy the following criteria:

1. The vicinity of the proposed development is and will continue to be a residential area suitable for the proposed development and is not now, nor is it likely in the future to become, subject to uses or deterioration which could cause undue depreciation in the value of the proposed development or which could adversely affect its operation, marketability or

economic feasibility.

2. There are or will be available on or before the estimated completion date (i) direct access to adequate public roads and utilities and (ii) such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks, recreational facilities and major public and private employers) in the area of the proposed development as the executive director determines to be necessary or desirable for use and enjoyment by the contemplated residents.

3. The characteristics of the site (such as its size, topography, terrain, soil and subsoil conditions, vegetation, and drainage conditions) are suitable for the construction and operation of the proposed development, and the site is free from any defects which would have a materially adverse effect on such construction and operation.

4. The location of the proposed development will promote and enhance the marketability of the units to the person and families intended for occupancy thereof.

5. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.

6. The design of the proposed development is attractive and esthetically appealing, will contribute to the marketability of the proposed development, makes use of materials to reduce energy and maintenance costs, provides for a proper mix of units for the residents intended to be benefitted by the authority's program, provides for units with adequate, well-designed space, includes equipment and facilities customarily used or enjoyed in the area by the contemplated residents, and will otherwise provide a safe, habitable and pleasant living environment for such residents.

7. Subject to further review and evaluation by the authority's staff under § 6 of these rules and regulations, the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.

8. Subject to further review and evaluation by the authority's staff under § 6 of these rules and regulations, the proposed rents appear to be at levels which will: (i) be affordable by the persons and families intended to be assisted by the authority; (ii) permit the successful marketing of the units to such persons and families; and (iii) sustain the operation of the proposed development.

9. The applicant and general contractor have the experience, ability and financial capacity necessary to carry out their respective responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development.

10. The architect, management agent and other members of the proposed development team have the qualifications necessary to perform their respective functions and responsibilities.

11. The application and proposed development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these rules and regulations.

12. The proposed development will contribute to the implementation of the policies and programs of the authority in providing decent, safe and sanitary rental housing for low and moderate income persons and families who cannot otherwise afford such housing and will assist in meeting the need for such housing in the market area of the proposed development.

13. It appears that the proposed development and applicant will be able to meet the requirements for feasibility and commitment set forth in § 6 of these rules and regulations and that the proposed development will otherwise continue to be processed through initial closing and will be completed and operated, all in compliance with the Act, the documents and contracts executed at initial closing, applicable federal laws, rules and regulations, and the provisions of these rules and regulations and without unreasonable delay, interruptions or expense.

If only one application is being reviewed for acceptance for processing, the executive director shall accept such application for processing if he determines that such application adequately satisfies the foregoing criteria.

In the selection of an application or applications for processing, the executive director may take into account the desirability of allocating funds to different sponsors throughout the Commonwealth of Virginia.

Nothing contained herein shall require the authority to select any application which, in the judgment of the executive director, does not adequately satisfy the foregoing criteria.

The executive director's determinations with respect to the above criteria shall be based only on the documents and information received or obtained by him at that time and are subject to modification or reversal upon his receipt of additional documents or information at a later time. In addition, the application shall be subject to further review in accordance with § 6 of these rules and regulations.

The executive director may impose such terms and conditions with respect to acceptance for processing as he shall deem necessary or appropriate. If any proposed development is so accepted for processing, the executive director shall notify the sponsor of such acceptance and of any terms and conditions imposed with respect thereto and may require the payment by the sponsor of a nonrefundable processing fee of 0.25% of the estimated mortgage loan amount. Such fee shall be applied at initial closing toward the payment of the authority's financing fee.

If the executive director determines that a proposed development to be accepted for processing does not adequately satisfy one or more of the foregoing criteria, he may nevertheless accept such proposed development for processing subject to satisfaction of the applicable criteria in such manner and within such time period as he shall specify in his notification of acceptance. If the executive director determines not to accept any proposed development for processing, he shall so notify the sponsor.

## § 6. Feasibility and commitment.

In order to continue the processing of the application, the applicant shall file, within such time limit as the executive director shall specify, such forms, documents and information as the executive director shall require with respect to the feasibility of the proposed development, including without limitation the following:

1. Any additions, modifications or other changes to the application and documents previously submitted as may be necessary or appropriate to make the information therein complete, accurate and current;

2. Architectural and engineering plans, drawings and specifications in such detail as shall be necessary or appropriate to determine the requirements for construction of the proposed development;

3. The applicant's (i) best estimates of the housing development costs and the components thereof; (ii) proposed mortgage loan amount; (iii) proposed rents; (iv) proposed annual operating budget and the individual components thereof; (v) best estimates of the monthly utility expenses and other costs for each dwelling unit if paid by the resident; and (vi) amount of any federal insurance, subsidy or assistance that the applicant is requesting for the proposed development. The applicant's estimates shall be in such detail and with such itemization and supporting information as shall be requested by the executive director;

4. The applicant's proposed tenant selection plan which shall include, among other information that the executive director may require from time to time, the following: (i) the proposed rent structure; (ii) the utilization of any subsidy or other assistance from the federal government or any other source; (iii) the

# Final Regulations

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proposed income levels of tenants; (iv) any arrangements contemplated by the applicant for tenant referrals or relocations from federal, state or local government agencies or community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priorities among eligible tenant applicants.

5. The applicant's management and marketing plans, including description and analysis of strategies, techniques and procedures to be followed in marketing and managing the units; and

6. Any documents required by the authority to evidence compliance with all conditions and requirements necessary to acquire, own, construct, operate and manage the proposed development, including local governmental approvals, proper zoning status, availability of utilities, licenses and other legal authorizations necessary to perform requisite functions and any easements necessary for the construction and operation of the development.

The executive director may for good cause permit the applicant to file one or more of the foregoing forms, documents and information at a later time, and any review, analysis, determination or other action by the authority or the executive director prior to such filing shall be subject to the receipt, review and approval by the executive director of such forms, documents and information.

An appraisal of the land and any improvements to be retained and used as a part of the development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected by the authority. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed development.

If at any time the executive director determines that the applicant is not processing the application with due diligence and best efforts or that the application cannot be successfully processed to commitment and initial closing within a reasonable time, he may, in his discretion, terminate the application and retain any fees previously paid to the authority.

The authority staff shall review and evaluate the documents and information received or obtained pursuant to this § 6. Such review and evaluation shall include, but not be limited to, the following:

1. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed development;
2. A market analysis as to the present and projected demand for the proposed development in the market

area, including: (i) an evaluation of existing and future market conditions; (ii) an analysis of trends and projections of housing production, employment and population for the market area; (iii) a site evaluation (such as access and topography of the site, neighborhood environment of the site, public and private facilities serving the site and present and proposed uses of nearby land); and (iv) an analysis of competitive projects;

3. A review of the management, marketing and tenant selection plans, including their effect on the economic feasibility of the proposed development and their efficacy in carrying out the programs and policies of the authority;

4. A final review of the (i) ability, experience and financial capacity of the applicant and general contractor; and (ii) the qualifications of the architect, management agent and other members of the proposed development team.

5. An analysis of the architectural and engineering plans, drawings and specifications, including the functional use and living environment for the proposed residents, the marketability of the units; the amenities and facilities to be provided to the proposed residents; and the management, maintenance and energy conservation characteristics of the proposed development.

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed development, the executive director shall prepare a recommendation to the board that a mortgage loan commitment be issued to the applicant with respect to the proposed development only if he determines that all of the following criteria have been satisfied:

1. Based on the data and information received or obtained pursuant to this § 6, no material adverse change has occurred with respect to compliance with the criteria set forth in § 5 of these rules and regulations.
2. The applicant's estimates of housing development costs: (i) include all costs necessary for the development and construction of the proposed development; (ii) are reasonable in amount; (iii) are based upon valid data and information; and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the mortgagor will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

3. Subject to review by the authority at final closing, the categories of the estimated housing development costs to be funded from the proceeds of the mortgage loan are eligible for such funding under the authority's cost certification guide or under such other requirements as shall be agreed to by the authority.

4. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or other nonhousing facilities to be included in the proposed development are incidental or related to the proposed development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed development.

5. All operating expenses (including replacement and other reserves) necessary or appropriate for the operation of the proposed development are included in the proposed operating budget, and the estimated amounts of such operating expenses are reasonable, are based on valid data and information and are comparable to operating expenses experienced by similar developments.

6. Based upon the proposed rents and projected occupancy level required or approved by the executive director, the estimated income from the proposed development is reasonable. The estimated income may include: (i) rental income from commercial space within the proposed development if the executive director determines that a strong, long-term market exists for such space; and (ii) income from other sources relating to the operation of the proposed development if determined by the executive director to be reasonable in amount and comparable to such income received on similar developments.

7. The estimated income from the proposed development, including any federal subsidy or assistance, is sufficient to pay when due the estimates of the debt service on the mortgage loan, the operating expenses, and replacement and other reserves required by the authority.

8. The units will be occupied by persons and families intended to be served by the proposed development and qualified hereunder and under the Act, the authority's rules and regulations, and any applicable federal laws, rules and regulations. Such occupancy of the units will be achieved in such time and manner that the proposed development will (i) attain self-sufficiency (i.e., the rental and other income from the development is sufficient to pay all operating expenses, debt service and replacement and other required reserves and escrows) within the usual and customary time for a development for its size, nature, location and type, and without any delay in the commencement of amortization; and (ii) will continue to be self-sufficient for the full term of the mortgage loan.

9. The estimated utility expenses and other costs to be paid by the residents are reasonable, are based upon valid data and information and are comparable to such expenses experienced by similar developments, and the estimated amounts of such utility expenses and costs will not have a materially adverse effect on the occupancy of the units in accordance with item 8 above.

10. The architectural drawings, plans and specifications shall demonstrate that: (i) the proposed development as a whole and the individual units therein shall provide safe, habitable, and pleasant living accommodations and environment for the contemplated residents; (ii) the dwelling units of the proposed housing development and the individual rooms therein shall be furnishable with the usual and customary furniture, appliances and other furnishings consistent with their intended use and occupancy; and (iii) the proposed housing development shall make use of measures promoting environmental protection, energy conservation and maintenance and operating efficiency to the extent economically feasible and consistent with the other requirements of this § 6.

11. The proposed development includes such appliances, equipment, facilities and amenities as are customarily used or enjoyed by the contemplated residents in similar developments.

12. The management plan includes such management procedures and requirements as are necessary for the proper and successful operations, maintenance and management of the proposed development in accordance with these rules and regulations.

13. The marketing and tenant selection plans submitted by the applicant shall comply with these rules and regulations and shall provide for actions to be taken such that: (i) the dwelling units in the proposed development will be occupied in accordance with item 8 above and any applicable federal laws, rules and regulations by those eligible persons and families who are expected to be served by the proposed development; (ii) the residents will be selected without regard to race, color, religion, creed, sex or national origin; and (iii) units intended for occupancy by handicapped and disabled persons will be adequately and properly marketed to such persons and such persons will be given priority in the selection of residents for such units. The tenant selection plan shall describe the requirements and procedures (including any occupancy criteria and priorities established pursuant to § 11 of these rules and regulations) to be applied by the mortgagor in order to select those residents who are intended to be served by the proposed development and who are best able to fulfill their obligation and responsibilities as residents of the proposed development.

14. In the case of any development to be insured or

# Final Regulations

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otherwise assisted or aided by the federal government, the proposed development will comply in all respects with any applicable federal laws, rules and regulations, and adequate federal insurance, subsidy, or assistance is available for the development and will be expected to remain available in the due course of processing with the applicable federal agency, authority or instrumentality.

15. The proposed development will comply with: (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued or to be issued by the authority to finance the proposed development; and (ii) all requirements set forth in the resolutions pursuant to which such notes or bonds are issued or to be issued.

16. The prerequisites necessary for the members of the applicant's development team to acquire, own, construct or rehabilitate, operate and manage the proposed development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining: (i) site plan approval; (ii) proper zoning status; (iii) assurances of the availability of the requisite public utilities; (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed development; (v) licenses and other legal authorizations necessary to permit each member to perform his or its duties and responsibilities in the Commonwealth of Virginia; (vi) building permits; and (vii) fee simple ownership of the site, a sales contract or option giving the applicant or mortgagor the right to purchase the site for the proposed development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the authority's security or the construction or operation of the proposed development).

17. The proposed development will comply with all applicable state and local laws, ordinances, regulations, and requirements.

18. The proposed development will provide valid and sound security for the authority's mortgage loan and will contribute to the fulfillment of the public purposes of the authority as set forth in its Act.

19. Subject to a final determination by the board, the financing of the proposed development will meet the applicable requirements set forth in § 36-55.39 of the Code of Virginia.

If the executive director determines that the foregoing criteria are satisfied and that he will recommend approval

of the application and issuance of the commitment, he shall present his analysis and recommendations to the board. If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion recommend to the board that the application be approved and that a mortgage loan commitment be issued subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate. Prior to the presentation of his recommendations to the board, the executive director may require the payment by the applicant of a nonrefundable processing fee in an amount equal to 0.5% of the then estimated mortgage loan amount less any processing fees previously paid by the applicant. Such fee shall be applied at initial closing toward the payment of the authority's financing fee.

The board shall review and consider the analysis and recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize the mortgage loan and the issuance of a commitment therefor, subject to such terms and conditions as the board shall require in such resolution.

The term of the mortgage loan, the amortization period, the estimated housing development costs, the principal amount of the mortgage loan, the terms and conditions applicable to any equity contribution by the applicants, any assurances of successful completion and operational stability of the proposed development, and other terms and conditions of such mortgage loan shall be set forth in the board's resolution authorizing such mortgage loan or in the commitment issued on behalf of the authority pursuant to such resolution. The resolution or commitment shall also include such terms and conditions as the authority considers appropriate with respect to the construction of the proposed development, the marketing and occupancy of the proposed development (including any income limits or occupancy restrictions other than those set forth in these rules and regulations), the disbursement and repayment of the mortgage loan, and other matters related to the construction and the ownership, operation and occupancy of the proposed development. Such resolution or commitment may include a financial analysis of the proposed development, setting forth the initial schedule of rents, the approved initial budget for operation of the proposed development and a schedule of the estimated housing development costs. Such a resolution authorizing a mortgage loan to a for-profit housing sponsor shall prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the development, expressed as a percentage of such for-profit housing sponsor's equity in such development (such equity being established in accordance with § 9 of these rules and regulations), which rate, if any, shall not be inconsistent with the provisions of the Act. In connection with the establishment of any such rates, the board shall not prescribe differing or discriminatory rates with respect to substantially similar developments. The resolution shall specify whether ar

such maximum annual rate of distributions shall be cumulative or noncumulative and shall establish the manner, if any, for adjusting the equity in accordance with § 9 of these rules and regulations.

A mortgage loan shall not be authorized by the board unless the board by resolution shall make the applicable findings required by § 36-55.39 of the Code of Virginia; provided, however, that the board may in its discretion authorize the mortgage loan without making the finding, if applicable, required by subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the board prior to the financing of the mortgage loan.

If the executive director determines not to recommend approval of the application and issuance of a commitment, he shall so notify the applicant. If any application is not so recommended for approval, the executive director may select for processing one or more applications in its place.

## § 7. Initial closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "initial closing documents") required by the commitment within the time period specified. When the initial closing documents have been submitted and approved by the authority staff and all other requirements in the commitment have been satisfied, the initial closing of the mortgage loan shall be held. At this closing, the initial closing documents shall be, where required, executed and recorded, and the mortgagor will pay to the authority the balance owed on the financing fee, will make any initial equity investment required by the initial closing documents and will fund such other deposits, escrows and reserves as required by the commitment. The initial disbursement of mortgage loan proceeds will be made by the authority, if appropriate under the commitment and the initial closing documents.

The actual interest rate on the mortgage loan shall be established by the executive director at the time of the execution of the deed of trust note at initial closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of such note.

The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction, completion, occupancy and operation of the development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of credit, latent construction defect escrows, replacement reserves, and tax and insurance escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

## § 8. Construction.

The construction of the development shall be performed in accordance with the initial closing documents. The authority shall have the right to inspect the development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the initial closing documents and to ascertain the propriety and validity of mortgage loan disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. A disbursement of mortgage loan proceeds may only be made upon a determination by the authority that the terms and conditions of the initial closing documents with respect to any such disbursement have been satisfied; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

## § 9. Completion of construction and final closing.

The initial closing documents shall specify those requirements and conditions that must be satisfied in order for the development to be deemed to have attained final completion. Upon such final completion of the development, the mortgagor, general contractor, and any other parties required to do so by the initial closing documents shall each diligently commence, complete and submit to the authority for review and approval their cost certification in accordance with the authority's cost certification guide or in accordance with such other requirements as shall have been agreed to by the authority.

Prior to or concurrently with final closing, the mortgagor, general contractor and other members of the development team shall perform all acts and submit all contracts and documents required by the initial closing documents in order to attain final completion, make the final disbursement of mortgage loan proceeds, obtain any federal insurance, subsidy or assistance and otherwise consummate the final closing.

At the final closing, the authority shall determine the following in accordance with the initial closing documents:

1. The total development costs, the final mortgage loan amount, the balance of mortgage loan proceeds to be disbursed to the mortgagor, the equity investment of the mortgagor and, if applicable, the maximum amount of annual limited dividend distributions;
2. The interest rate to be applied initially upon commencement of amortization, the date for

# Final Regulations

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commencement and termination of the monthly amortization payments of principal and interest, the amount of such monthly amortization payments, and the amounts to be paid monthly into the escrow accounts for taxes, insurance, replacement reserves, or other similar escrow items; and

3. Any other funds due the authority, the mortgagor, general contractor, architect or other parties that the authority requires to be disbursed or paid as part of the final closing.

Unless otherwise agreed to by the authority, the mortgagor and contractor shall, within such period of time as is specified in the authority's cost certification guide, submit supplemental cost certifications, and the authority shall have the right to make such adjustments to the foregoing determinations as it shall deem appropriate as a result of its review of such supplemental cost certification.

The equity investment of the mortgagor shall be the difference between the total housing development costs of the development as finally determined by the authority and the final principal amount of the mortgage loan as to such development. If the mortgage loan commitment and initial closing documents so provide and subject to such terms and conditions as shall be set forth therein, the equity shall be adjusted subsequent to final closing to an amount equal to the difference, as of the date of adjustment, between the fair market value of the development and the outstanding principal balance of the mortgage loan.

## § 10. Mortgage loan increases.

Prior to initial closing, the principal amount of the mortgage loan may be increased, if such an increase is justified by an increase in the estimated costs of the proposed development, is necessary or desirable to effect the successful construction and operation of the proposed development, can be funded from available proceeds of the authority's notes or bonds, and is not inconsistent with the provisions of the Act or these rules and regulations. Any such increase shall be subject to such terms and conditions as the authority shall require.

Subsequent to initial closing, the authority will consider and, where appropriate, approve a mortgage loan increase to be financed from the proceeds of the authority's notes or bonds in the following instances:

1. Where cost increases are incurred as the direct result of (i) changes in work required or requested by the authority or (ii) betterments to the development approved by the authority which will improve the quality or value of the development or will reduce the costs of operating or maintaining the development;

2. Where cost increases are incurred as a direct result of a failure by the authority during processing of the development to properly perform an act for which the

authority is solely responsible;

3. Where a mortgage loan increase is determined by the authority, in its sole and absolute discretion, to be in the best interests of the authority in protecting its security for the mortgage loan; or

4. Where the authority has entered into an agreement with the mortgagor prior to initial closing to provide a mortgage loan increase if certain cost overruns occur in agreed line items, but only to the extent set forth in such agreement.

In the event that a person or entity acceptable to the authority is prepared to provide financing on a participation basis on such terms and conditions as the authority may require, the authority will consider and, where appropriate, approve an increase in its mortgage loan subsequent to initial closing to the extent of the financing by such person or entity in any of the following instances:

1. One or more of the instances set forth in subdivision 1 through 4 above; or

2. Where costs are incurred which are:

a. In excess of the original total contract sum set forth in the authority's mortgage loan commitment;

b. The direct result of necessary and substantial changes approved by the authority in the original plans and specifications;

c. Evidenced by change orders in accordance with the original contract documents or by other documentation acceptable to the authority; and

d. Approved by the authority for inclusion within the total development cost in accordance with the Act, these rules and regulations and the authority's cost certification guide.

Any such mortgage loan increase to be financed on a participation basis shall be granted only to the extent that such costs cannot be funded from mortgage loan proceeds, any income from the operation of the development approved by the authority for application thereto, and other moneys of the mortgagor available therefor. As used herein, the term "other moneys of the mortgagor" shall include moneys received or to be received as a result of the sale or syndication of limited partnership interest in the mortgagor. In the event that any limited dividend mortgagor shall have sold or syndicated less than 90% of the partnership interests, such term shall include the amount, as determined by the authority, which would have been received upon the sale or syndication of 90% of such interest under usual and customary circumstances.

Any such increase in the mortgage loan subsequent to initial closing may be subject to such terms and conditions

as the authority shall require, including (but not limited to) one or more of the following:

1. The ability of the authority to sell bonds to finance the mortgage loan increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only to a mortgage loan to be financed from the proceeds of the authority's notes or bonds).
2. The obtaining by the owner of additional federal subsidy (if the development is to receive such subsidy) in amounts necessary to fund the additional debt service to be paid as a result of such mortgage loan increase. The provision of such additional subsidy shall be made subject to and in accordance with all applicable federal regulations.
3. A determination by the authority that the mortgage loan increase will have no material adverse effect on the financial feasibility or proper operation and maintenance of the development.
4. A determination by the authority that the mortgage loan, as increased, does not exceed such percentage of the total development cost (as certified in accordance with the authority's cost certification guide and as approved by the authority) as is established in the resolution authorizing the mortgage loan in accordance with § 3 of these rules and regulations.
5. Such terms and conditions as the authority shall require in order to protect the security of its interest in the mortgage loan, to comply with covenants and agreements with the holders of its bonds issued to finance the mortgage loan, to comply with the Act and these rules and regulations, and to carry out its public purpose.

The executive director may, without further action by the board, increase the principal amount of the mortgage loan at any time by an amount not to exceed 2.0% of the maximum principal amount of the mortgage loan set forth in the commitment, provided that such increase is consistent with the Act and these rules and regulations. Any increase in excess of such 2.0% shall require the approval of the board.

Nothing contained in this § 10 shall impose any duty or obligation on the authority to increase any mortgage loan, as the decision as to whether to grant a mortgage loan increase shall be within the sole and absolute discretion of the authority.

## § 11. Operation, management and marketing.

The development shall be subject to a regulatory agreement entered into at initial closing between the authority and the mortgagor. Such regulatory agreement shall govern the rents, operating budget, occupancy, marketing, management, maintenance, operation, use and

disposition of the development and the activities and operation of the mortgagor, as well as the amount of assets or income of the development which may be distributed to the mortgagor. The mortgagor shall execute such other documents with regard to the regulation of the development and the mortgagor as the executive director may determine to be necessary or appropriate to protect the interests of the authority and to permit fulfillment of the authority's duties and responsibilities under the Act and these rules and regulations.

Except as otherwise agreed by the authority pursuant to § 14 hereof, only rents established or approved on behalf of the authority pursuant to the regulatory agreement may be charged for dwelling units in the development. Notwithstanding the foregoing, in the case of any developments financed subsequent to January 1, 1986, the authority may agree with the mortgagor that the rents may be established and changed by the mortgagor without the prior approval of the authority, subject to such restrictions in the regulatory agreement as the authority shall deem necessary to assure that the rents shall be affordable to persons and families intended to be served by the development and subject to compliance by the mortgagor with the provisions in § 2 of these rules and regulations.

Any costs for supportive services not generally included in the rent for similar developments shall not be funded from the rental income of the development.

If the mortgagor is a partnership, the general partner or partners shall be required to retain at least a 10% interest in the net proceeds from any sale, refinancing or other disposition of the development during the life of the mortgage loan.

The mortgagor shall lease the units in the development only to persons and families who are eligible for occupancy thereof as described in § 2 of these rules and regulations. The mortgagor shall comply with the provisions of the authority's rules and regulations regarding: (i) the examination and determination of the income and eligibility of applicants for initial occupancy of the development; and (ii) the periodic reexamination and redetermination of the income and eligibility of residents of the development.

In addition to the eligibility requirements of the authority, the executive director may establish occupancy criteria and priorities based on the following:

1. The age, family size, financial status, health conditions (including, without limitation, any handicaps or disabilities) and other circumstances of the applicants for the dwelling units;
2. The status and physical condition of the housing then occupied by such applicants; and
3. Any other factors or matters which the executive

# Final Regulations

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director deems relevant to the effectuation of the public purposes of the authority.

In selecting eligible residents, the mortgagor shall comply with such occupancy criteria and priorities and with the tenant selection plan approved by the authority pursuant to § 6 of these rules and regulations.

The executive director is authorized to prepare and from time to time revise a housing management handbook which shall set forth the authority's procedures and requirements with respect to the management of developments. Copies of the housing management handbook shall be available upon request.

The management of the development shall also be subject to a management agreement entered into at initial closing between the mortgagor and its management agent, or where the mortgagor and the management agent are the same entity, between the authority and the mortgagor. Such management agreement shall govern the policies, practices and procedures relating to the management, marketing and operation of the development. The mortgagor and its management agent (if any) shall manage the development in accordance with the Act, these rules and regulations, the regulatory agreement, the management agreement, the authority's housing management handbook, and the management plan approved by the authority.

The authority shall have the power to supervise the mortgagor and the development in accordance with § 36-55.34:1 of the Code of Virginia and the terms of the initial closing documents or other agreements relating to the mortgage loans. The authority shall have the right to inspect the development, conduct audits of all books and records of the development and to require such reports as the authority deems reasonable to assure compliance with this § 11.

## § 12. Transfers of ownership.

A. It is the authority's policy to evaluate requests for transfers of ownership on a case-by-case basis. The primary goal of the authority is the continued existence of low and moderate income rental housing stock maintained in a financially sound manner and in safe and sanitary condition. Any changes which would, in the opinion of the authority, detrimentally affect this goal will not be approved.

The provisions set forth in this § 12 shall apply only to transfers of ownership to be made subject to the authority's deed of trust and regulatory agreement. Such provisions shall not be applicable to transfers of ownership of developments subject to FHA mortgage insurance, it being the policy of the authority to consent to any such transfer approved by FHA and permitted by the Act and applicable note or bond resolutions.

For the purposes hereof, the terms "transfer of

ownership" and "transfer" shall include any direct or indirect transfer of a partnership or other ownership interest (including, without limitation, the withdrawal or substitution of any general partner) or any sale, conveyance or other direct or indirect transfer of the development or any interest therein; provided, however, that if the owner is not then in default under the deed of trust or regulatory agreement, such terms shall not include: (i) any sale, transfer, assignment or substitution of limited partnership interests prior to final closing of the mortgage loan or; (ii) any sale, transfer, assignment or substitution of limited partnership interests which in any 12 month period constitute in the aggregate 50% or less of the partnership interests in the owner. The term "proposed ownership entity," as used herein, shall mean: (i) in the case of a transfer of a partnership interest, the owner of the development as proposed to be restructured by such transfer; and (ii) in the case of a transfer of the development, the entity which proposes to acquire the development.

B. The proposed ownership entity requesting approval of a transfer of ownership must initially submit a written request to the authority. This request should contain (i) a detailed description of the terms of the transfer; (ii) all documentation to be executed in connection with the transfer; (iii) information regarding the legal, business and financial status and experience of the proposed ownership entity and of the principals therein, including current financial statements (which shall be audited in the case of a business entity); (iv) an analysis of the current physical and financial condition of the development, including a current audited financial report for the development; (v) information regarding the experience and ability of any proposed management agent; and (vi) any other information and documents requested by the authority relating to the transfer. The request will be reviewed and evaluated in accordance with the following criteria:

1. The proposed ownership entity and the principals therein must have the experience, ability and financial capacity necessary to own, operate and manage the development in a manner satisfactory to the authority.
2. The development's physical and financial condition must be acceptable to the authority as of the date of transfer or such later date as the authority may approve. In order to assure compliance with this criteria, the authority may require any of the following:
  - a. The performance of any necessary repairs and the correction of any deferred or anticipated maintenance work;
  - b. The addition of any improvements to the development which, in the judgment of the authority, will be necessary or desirable for the successful marketing of the development, will reduce the costs of operating or maintaining the development, will benefit the residents or otherwise

improve the liveability of the development, or will improve the financial strength and stability of the development;

c. The establishment of escrows to assure the completion of any required repairs, maintenance work, or improvements;

d. The establishment of such new reserves and/or such additional funding of existing reserves as may be deemed necessary by the authority to ensure or preserve the financial strength and stability or the proper operation and maintenance of the development; and

e. The funding of debt service payments, accounts payable and reserve requirements such that the foregoing are current at the time of any transfer of ownership.

3. The management agent, if any, to be selected by the proposed ownership entity to manage the development on its behalf must have the experience and ability necessary to manage the development in a manner satisfactory to the authority. The management agent must satisfy the qualifications established by the authority for approval thereof.

If the development is subsidized or otherwise assisted by the U.S. Department of Housing and Urban Development or any successor entity ("HUD"), the approval by HUD may be required. Any and all documentation required by HUD must be submitted by the proposed ownership entity in conjunction with its request.

C. The authority will charge the proposed ownership entity a fee of \$5,000 or such higher fee as the executive director may for good cause require. This fee is to be paid at the closing.

D. The amount and terms of any secondary financing (i.e., any portion of the purchase price is to be paid after closing of the transfer of ownership) shall be subject to the review and approval of the authority. Secondary financing which would require a lien on the development is prohibited by the authority's bond resolution and, therefore, will not be permitted or approved. The authority will not provide a mortgage loan increase or other financing in connection with the transfer of ownership. The authority will also not approve a rent increase in order to provide funds for the repayment of any secondary financing. Cash flow (other than dividend distributions) shall not be used to repay the secondary financing. Any proposed secondary financing must not, in the determination of the authority, have any material adverse effect on the operation and management of the development, the security of the mortgage loan, the interests of the authority as lender, or the fulfillment of the authority's public purpose under the Act. The authority may impose such conditions and restrictions (including, without limitation, requirements as to sources of payment

for the secondary financing and limitations on the remedies which may be exercised upon a nonpayment of the secondary financing) with respect to the secondary financing as it may deem necessary or appropriate to prevent the occurrence of any such adverse effect.

E. In the case of a transfer from a nonprofit owner to a proposed for-profit owner, the authority may require the proposed for-profit owner to deposit and/or expend funds in such amount and manner and for such purposes and to take such other actions as the authority may require in order to assure that the principal amount of the mortgage loan does not exceed the limitations specified in the Act and these rules and regulations or otherwise imposed by the authority. No transfer of ownership from a nonprofit owner to a for-profit owner shall be approved if such transfer would, in the judgment of the authority, affect the tax-exemption of the notes or bonds issued by the authority to finance the development. The authority will not approve any such transfer of ownership if any loss of property tax abatement as a result of such transfer will, in the determination of the authority, adversely affect the financial strength or security of the development.

At the closing of the transfer of the ownership, the total development cost and the equity of a proposed for-profit owner shall be determined by the authority. The resolution of the board approving the transfer of ownership shall include a determination of the maximum annual rate, if any, at which distributions may be made by the proposed for-profit owner pursuant to these rules and regulations. The proposed for-profit owner shall execute and deliver such agreements and documents as the authority may require in order to incorporate the then existing policies, requirements and procedures relating to developments owned by for-profit owners. The role of the nonprofit owner in the ownership, operation and management of the development subsequent to the transfer of ownership shall be subject to the review and approval of the authority. The authority may require that any cash proceeds received by the nonprofit owner (after the payment of transaction costs and the funding of any fees, costs, expenses, reserves or escrows required or approved by the authority) be used for such charitable or other purposes as the authority may approve.

F. A request for transfer of ownership shall be reviewed by the executive director. If the executive director determines to recommend approval thereof, he shall present his analysis and recommendation to the board. The board shall review and consider the analysis and recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the request and authorize the executive director to consent thereto, subject to such terms and conditions as the board shall require in such resolution.

Notwithstanding the foregoing, if any proposed transfer of a partnership interest is determined by the executive director to be insubstantial in effect and to have no material detrimental effect on the operation and

# Final Regulations

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management of the development or the authority's interest therein as lender, such transfer may be approved by him without approval of the board.

After approval of the request, an approval letter will be issued to the mortgagor consenting to the transfer. Such letter shall be contingent upon the delivery and execution of any and all closing documents required by the authority with respect to the transfer of ownership and the fulfillment of any special conditions required by the resolution of the board. The partnership agreement of the proposed ownership entity shall be subject to review by the authority and shall contain such terms and conditions as the authority may require.

The authority may require that the proposed ownership entity execute the then current forms of the authority's mortgage loan documents in substitution of the existing mortgage loan documents and/or to execute such amendments to the existing mortgage loan documents as the authority may require in order to cause the provisions of such documents to incorporate the then existing policies, procedures and requirements of the authority. At the closing of the transfer, all documents required by the approval letter shall be, where required, executed and recorded; all funds required by the approval letter will be paid or deposited in accordance therewith; and all other terms and conditions of the approval letter shall be satisfied. If deemed appropriate by the executive director, the original mortgagor shall be released from all liability and obligations which may thereafter arise under the documents previously executed with respect to the development.

In the case of a development which is in default or which is experiencing or is expected by the authority to experience financial, physical or other problems adversely affecting its financial strength and stability or its proper operation, maintenance or management, the authority may waive or modify any of the requirements herein as it may deem necessary or appropriate in order to assist the development and/or to protect the authority's interest as lender.

## § 13. Prepayments.

It shall be the policy of the authority that no prepayment of a mortgage loan shall be made without its prior written consent for such period of time set forth in the note evidencing the mortgage loan as the executive director shall determine, based upon his evaluation of then existing conditions in the financial and housing markets, to be necessary to accomplish the public purpose of the authority. The authority may prohibit the prepayment of mortgage loans during such period of time as deemed necessary by the authority to assure compliance with applicable note and bond resolutions and with federal laws and regulations governing the federal tax exemption of the notes or bonds issued to finance such mortgage loans. Requests for prepayment shall be reviewed by the executive director on a case-by-case basis. In reviewing

any request for prepayment, the executive director shall consider such factors as he deems relevant, including without limitation the following: (i) the proposed use of the development subsequent to prepayment; (ii) any actual or potential termination or reduction of any federal subsidy or other assistance; (iii) the current and future need and demand for low and moderate housing in the market area of the development; (iv) the financial and physical condition of the development; (v) the financial effect of prepayment on the authority and the notes or bonds issued to finance the development; and (vi) compliance with any applicable federal laws and regulations governing the federal tax exemption of such notes or bonds. As a precondition to its approval of any prepayment, the authority shall have the right to impose restrictions, conditions and requirements with respect to the ownership, use, operation and disposition of the development, including without limitation any restrictions or conditions required in order to preserve the federal tax exemption of notes or bonds issued to finance the development. The authority shall also have the right to charge a prepayment fee in an amount determined in accordance with the terms of the resolutions authorizing the notes or bonds issued to finance the development or in such other amount as may be established by the executive director in accordance with the terms of the deed of trust note and such resolutions. The provisions of this § 13 shall not be construed to impose any duty or obligation on the authority to approve any prepayment, as the executive director shall have sole and absolute discretion to approve or disapprove any prepayment based upon his judgment as to whether such prepayment would be in the best interests of the authority and would promote the goals and purposes of its programs and policies. The provisions of this § 13 shall be subject to modification pursuant to § 14 hereof.

## § 14. Modification of regulatory controls and mortgage loan.

If the executive director determines that (i) the mortgagor of any development is not receiving a sufficient financial return from the operation thereof as a result of a reduction in the amount of federal tax benefits available to the development (generally, at least 10 years, in the case of new construction, or five years, in the case of substantial rehabilitation, after the date of initial occupancy), (ii) the reserves of such development are and, after any action taken pursuant to this section, will continue to be adequate to assure its proper operation and maintenance and (iii) the rental and other income is and, after any action taken pursuant to this section, will continue to be sufficient to pay the debt service on the mortgage loan and the operating expenses of the development (including required payments to reserve accounts), then he may agree to one or more of the following modifications to the regulatory controls of the authority:

1. Rents may be thereafter established and changed by the mortgagor without the prior approval of the authority, subject to (i) such restrictions as he sha

deem necessary to assure that the rents shall be affordable to persons and families to be served by the development, (ii) compliance by the mortgagor with the provisions in § 2 of these rules and regulations, and (iii) such limitations on rent increases to existing residents as he shall deem necessary to prevent undue financial hardship to such residents;

2. Subject to prior approval by the board, any limitation on annual dividend distributions may be increased or eliminated, as determined by him to be necessary to provide an adequate financial return to the mortgagor without adversely affecting the financial strength or proper operation and maintenance of the development; and

3. The mortgagor may be given the right to prepay the mortgage loan on the date 20 years after the date of substantial completion of the development as determined by the executive director (or such later date as shall be necessary to assure compliance with federal laws and regulations governing the tax exemption of the notes or bonds issued to finance the mortgage loan), provided that the mortgagor shall be required to pay a prepayment fee in an amount described in § 13 of these rules and regulations, and provided further that such right to prepay shall be granted only if the prepayment pursuant thereto would not, in the determination of the executive director, result in a reduction in the amount or term of any federal subsidy or assistance for the development. The executive director may require that the mortgagor grant to the authority (i) a right of first refusal upon a proposed sale of the development which would result in an exercise by the mortgagor of its right, as described above, to prepay the mortgage loan and (ii) an option to purchase the development upon an election by the mortgagor otherwise to exercise its right, as described above, to prepay the mortgage loan, which right of first refusal and option to purchase shall be effective for such period of time and shall be subject to such terms and conditions as the executive director shall require.

The foregoing modifications shall be made only to the extent permissible under and consistent with applicable federal laws and regulations and any agreements governing federal subsidy, assistance or mortgage insurance.

Upon a determination by the executive director as described in (i), (ii) and (iii) above in this section, the authority may also approve an increase in the principal amount of its mortgage loan or a restructuring of such mortgage loan (such as a modification of the mortgage loan by conversion thereof into an obligation guaranteed by a federal agency or instrumentality), subject to such terms and conditions as the authority shall require, including (but not limited to) one or more of the following:

1. Compliance with the conditions and limitations in

the Act and the authority's rules and regulations and with any applicable federal law and regulations and any agreements governing federal subsidy, assistance or mortgage insurance;

2. The ability of the authority to sell bonds to finance any mortgage loan increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only if any such mortgage loan increase is to be financed by the authority from proceeds of its bonds);

3. A determination by the authority that the rents shall remain affordable to persons and families of low and moderate income to be served by the development and that the mortgage loan increase or restructuring and any increase in debt service will have no material adverse effect on the financial security of its mortgage loan or proper operation and maintenance of the development;

4. If the development receives federal subsidy or assistance or is subject to federal mortgage insurance, assurances satisfactory to the authority that such mortgage loan increase or restructuring and any increase in debt service are permissible under applicable federal law and regulations and will not adversely affect the term or amount of any federal subsidy or assistance or the coverage of any mortgage insurance and that any federal subsidy or assistance may be applied to pay any increase in debt service;

5. Such terms and conditions as the authority shall require in order to protect the security of its mortgage loan; to reimburse the authority for costs and expenses that may result from such mortgage loan increase or restructuring; to comply with covenants and agreements with, and otherwise to protect the interests of, the holders of its bonds issued to finance the mortgage loan or any increase thereof; and to carry out its public purpose.

Upon a determination as described in (i), (ii) and (iii) above in this section, the executive director may also approve a release of moneys held in the reserve funds of the development in such amount as he shall determine to be in excess of the amount required to assure the proper operation and maintenance of the development.

The executive director may require that all or a portion of the proceeds from any increase or restructuring of the mortgage loan or from any release of reserve funds be applied, in such manner and amount and on such terms and conditions as he shall deem necessary or appropriate, for improvements to the development or for providing additional housing for persons and families of low and moderate income.

The authorizations in this section for modifications of regulatory reserve funds shall be cumulative and shall not be exclusive of each other. Accordingly, the authority, in

# Final Regulations

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its discretion, may elect to exercise for any development one or more or all of such authorizations.

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**Title of Regulation:** VR 400-02-0003. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income.

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

**Effective Date:** December 1, 1991.

**Summary:**

*The amendments to the authority's rules and regulations for single family mortgage loans to persons and families of low and moderate income, in order to assure the availability of its single family program in all areas of the state, permit the utilization of redevelopment and housing authorities to originate and process, as originating agents of the authority, single family mortgage loans financed by the authority under the program. The amendments also authorize the use of field originators to accept applications for mortgage loans. The authority expects to use the services of field originators in certain areas of the state in which the authority has determined that program activity should be increased. The foregoing changes are intended to supplement, as needed, the system by which financial institutions originate mortgage loans. Under the amendments, the authority may originate and service the mortgage loans for which loan applications are received by field originators or which originating agents or servicing agents will not service on terms and conditions acceptable to the authority or have agreed to terminate the servicing thereof.*

*The amendments increase the number of geographic areas having maximum sales prices and, in certain geographic areas, increase the maximum sales prices. These increases are intended to assure that the single family program will be available in all geographic areas of the state by reflecting current market conditions for housing for low and moderate income persons and families.*

*The amendments clarify the authority of the executive director in two areas. First, his authority to determine the effective date of any adjustments to income limits and to implement such adjustments on such date or dates as he shall determine to best accomplish the purposes of the single family program is specifically set forth in the amendments. Second, the amendments also authorize the executive director to waive the income limits and maximum sales prices to enable the authority to assist the state in achieving its economic and housing goals and policies, subject to the limits imposed by the federal tax code. The clarification in the foregoing two areas is intended to*

*allow the executive director to implement the income and sales price limitations in a manner so as to achieve the purposes of the program and the goals and objectives of the state.*

*Finally, the amendments eliminate the requirement for prior review of the financial status of the condominium in which a unit is to be financed by a conventional mortgage loan under the program. Because the condominium is required to have the approval of any two of FNMA, FHLMC or VA, the authority has determined that such prior review is no longer necessary. For the same reason, the amendments delete the requirement for annual reporting and review of such condominiums. Furthermore, because of the authority's experience with conventional mortgage loans financing units in condominiums approved by the above referenced federal agencies and instrumentalities, the amendments delete the limitation on the percentage of units which the authority will finance in such condominiums.*

**NOTICE:** As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. The regulation was adopted as it was proposed in 8:2 V.A.R. 150-172 October 21, 1991.

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**Title of Regulation:** VR 400-02-0013. Rules and Regulation for Multi-Family Housing Developments for Mentally Disabled Persons.

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

**Effective Date:** November 15, 1991.

**Summary:**

*The amendments to the rules and regulations for multi-family housing developments for mentally disabled persons ("rules and regulations") reduce the income limit of 150% of area median income to 115% of area median gross income for units in multi-family housing developments financed by mortgage loans approved by the authority on or after November 15, 1991.*

*The term "area median income" was corrected to "area median gross income" to conform with the federal regulations governing various federally assisted housing programs and the federal tax exemption of the authority's bonds issued to finance multi-family developments.*

VR 400-02-0013. Rules and Regulations for Multi-Family Housing Developments for Mentally Disabled Persons.

§ 1. Definitions.

“Closing” means the time of execution by the mortgagor of the documents evidencing the M/D loan, including the deed of trust note, deed of trust and other documents required by the authority. (In the case of a construction loan, “closing” means the initial closing of the M/D loan.)

“Construction” means construction of new structures and the rehabilitation, preservation or improvement of existing structures.

“DMHMR” means the Department of Mental Health, Mental Retardation and Substance Abuse Services of the Commonwealth of Virginia.

“Final closing” means, for a construction loan, the time of final disbursement of the M/D loan proceeds after satisfaction by the mortgagor of all of the authority’s requirements therefor.

“M/D development” means a multi-family housing development intended for occupancy by persons of low and moderate income who are mentally disabled.

“M/D loan” means a mortgage loan made by the authority to finance the development, construction, rehabilitation and/or the ownership and operation of an M/D development.

“Seed loan” means a mortgage loan made by the authority to finance preconstruction or other related costs approved by the authority and the financing of which by the authority is determined by the authority to be necessary to the mortgagor’s ability to obtain an M/D loan for the construction of an M/D development.

## § 2. Purpose and applicability.

The following rules and regulations will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the authority to mortgagors to provide the construction and/or permanent financing of M/D developments. These rules and regulations shall be applicable to the making of such M/D loans directly by the authority to mortgagors, the purchase of such M/D loans, the participation by the authority in such M/D loans with mortgage lenders and any other manner of financing of such M/D loans under the Act. These rules and regulations shall not, however, apply to any M/D developments which are subject to any other rules and regulations adopted by the authority. If any M/D loan is to provide either the construction or permanent financing (but not both) of an M/D development, these rules and regulations shall be applicable to the extent determined by the executive director to be appropriate for such financing. In addition, notwithstanding the foregoing, the executive director may, in his discretion, determine that any M/D loan should be processed under the authority’s Rules and Regulations for Multi-Family Housing Developments, whereupon the application for such M/D loan and any other information related thereto shall be transferred to the authority’s multi-family division for

processing under the aforementioned multi-family rules and regulations.

Mortgage loans may be made or financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any M/D development to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Act and covenants and agreements with the holders of its bonds.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the mortgagor, the contractor or other members of the development team under the closing documents as described in § 8 of these rules and regulations.

These rules and regulations 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 M/D loans under the authority’s multi-family housing programs for M/D developments. 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 with respect to any particular development or developments or any multi-family housing program or programs for M/D developments.

## § 3. Income limits and general restrictions.

The amounts payable, if any, by persons occupying M/D developments are deemed not to be rent. As a result, the authority’s income limit set forth under its rules and regulations limiting a person’s or family’s adjusted family income to an amount not greater than seven times the total annual rent is inapplicable; ~~instead,~~ . In accordance with the authority’s rules and regulations, the income limits for persons occupying such developments shall be as follows: All units of each M/D development, with the sole exception of those units occupied by an employee or agent of the mortgagor, shall be occupied or held available for occupancy by persons *who are mentally disabled and who have adjusted family incomes (as defined in the authority’s rules and regulations and as determined at the time of their initial occupancy of such units and at the time of reexamination and redetermination of such [ person’s persons’ ] adjusted family incomes and eligibility subsequent to their initial occupancy of such units )* which do not exceed (i) in the case of units in a M/D development for which the board approved the mortgage

# Final Regulations

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loan prior to November [ 19 15 ] , 1991, 150% of the applicable area median [ gross ] income as determined by the authority and (ii) in the case of units in a M/D development for which the board approved the mortgage loan on or after November [ 19 15 ] , 1991, 115% of the applicable area median [ gross ] income as determined by the authority and who are mentally disabled .

The board may establish, in the resolution authorizing any mortgage loan to finance an M/D development under these rules and regulations, income limits lower than those provided herein for the occupants of the units in such M/D development.

If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in an M/D development, the occupancy of the M/D development shall comply with such limitations, and the adjusted family incomes (as defined in the authority's rules and regulations) of applicants for occupancy of all of the units in the M/D development shall be computed, for the purpose of determining eligibility for occupancy thereof under these rules and regulations in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all M/D developments and the processing thereof under the terms hereof must comply with (i) the Act and the authority's rules and regulations, (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued by the authority to finance such M/D developments, and (iii) the requirements set forth in the resolutions pursuant to which the notes or bonds, if any, are issued by the authority to finance the M/D developments. Copies of the authority's applicable note and bond resolutions, if any, are available upon request.

## § 4. Terms of mortgage loans.

The authority may make or finance mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance M/D developments. The term of the mortgage loan shall be equal to (i) if the M/D loan is to finance the construction of the proposed M/D development, the period determined by the executive director to be necessary to: (1) complete construction of the M/D development, and (2) consummate the final closing of the M/D loan; plus (ii) if the M/D loan is to finance the ownership and operation of the proposed M/D development, an amortization period set forth in the M/D loan commitment but not to exceed 45 years. The executive director may require that such amortization period not extend beyond the termination date of any assistance or subsidy.

M/D loans may be made to (i) for-profit housing sponsors in original principal amounts not to exceed the

lesser of the maximum principal amount specified in the M/D loan commitment (which amount shall in no event exceed 95% of the fair market value of the property as determined by the authority) or such percentage of the housing development costs of the M/D development as is established in such commitment, but in no event to exceed 95%, and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the M/D loan commitment (which amount shall in no event exceed 100% of the fair market value of the property as determined by the authority in those cases in which the nonprofit sponsor is the Commonwealth of Virginia or any agency or instrumentality thereof, and which shall in no event exceed 95% of the fair market value of the property as determined by the authority in those cases in which the nonprofit sponsor is not the Commonwealth of Virginia or an agency or instrumentality thereof) or such percentage of the housing development costs of the M/D development as is established in such commitment, but in no event to exceed 100%.

The maximum principal amount and percentage of housing development costs specified or established in the M/D loan commitment shall be determined by the authority in such manner and based upon such factors as it deems relevant to the security of the M/D loan and the fulfillment of its public purpose. Such factors may include the economic feasibility of the proposed M/D development in terms of its ability to pay the projected debt service on the M/D loan and the projected operating expenses of the proposed M/D development.

The categories of cost which shall be allowable by the authority in the acquisition and construction of an M/D development financed under these rules and regulations shall include all reasonable, ordinary and necessary costs and expenses (including, without limitations, those categories of costs set forth in the authority's rules and regulations for multi-family housing developments) which are incurred by the mortgagor in the acquisition and construction of the M/D development. Upon completion of the acquisition and construction of the M/D development, the total of housing development costs shall be certified to the authority in accordance with these rules and regulations, subject to the review and determination of the authority. In lieu of such certification of housing development costs, the executive director may require such other assurances of housing development costs as he shall deem necessary to enable the authority to determine with reasonable accuracy the actual amount of such housing development costs.

The interest rate on the M/D loan shall be established at the closing and may be thereafter adjusted in accordance with the authority's rules and regulations and the terms of the deed of trust note. The authority shall charge a financing fee equal to 1.5% of the M/D loan amount, unless the executive director shall for good cause require the payment of a different financing fee. Such fee shall be payable at such times as hereinafter provided or

at such other times as the executive director shall for good cause require.

## § 5. Solicitation of proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals for the financing of M/D developments. 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 proposals and the selection of M/D developments as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available funds of the authority are to be allocated and such other matters as he shall deem appropriate relating to the selection of proposals. The authority may also consider and approve proposals for financing of M/D developments submitted from time to time to the authority without any solicitation therefor on the part of the authority.

## § 6. Application and review.

### A. Information to be submitted.

Application for an M/D loan 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, together with such documents and additional information as may be requested by the authority, including, but not limited to:

1. Information with respect to the status of the proposed development site and the surrounding community;
2. Any option or sales contract to acquire the site;
3. An evaluation of the need and effective demand for the proposed M/D development in the market area of such site;
4. Information regarding the legal, business and financial status and experience of the applicant;
5. Information regarding amenities and services proposed to be offered to the tenants;
6. A determination by DMHMR on such form or forms as the executive director may from time to time prescribe to the effect that (i) the mortgagor has the intent and ability to provide the services deemed necessary by DMHMR for the success of a housing development intended for occupancy by persons of low

and moderate income who are mentally disabled, (ii) that the proposed location and type of housing are suitable for the contemplated residents and that there exists a need in the area of the proposed location for housing for the mentally disabled, and (iii) that the development is economically feasible to the extent that it is projected to have or receive funds in an amount sufficient to pay the debt service on the proposed M/D loan and to pay for all of the requisite services deemed necessary by DMHMR for the success of such a development (for those M/D developments which are to receive funding other than that directly from the mortgagor, a breakdown of the source and amount of such funding upon which DMHMR relied in making its determination must be included);

7. Architectural and engineering plans, drawings and specifications in such detail as shall be necessary or appropriate to determine the requirements for construction of the proposed development.

8. The applicant's (i) best estimates of the housing development costs and the components thereof, (ii) proposed M/D loan amount, (iii) proposed annual operating budget and the individual components thereof, (iv) best estimates of the monthly utility expenses and other costs for each dwelling unit if paid by the resident, and (v) amount of any subsidy or assistance, including any described in item 6 above, that the applicant is requesting for the proposed M/D development. The applicant's estimates shall be in such detail and with such itemization and supporting information as shall be requested by the executive director;

9. The applicant's proposed tenant selection plan which shall include, among other information that the executive director may require from time to time, the following: (i) any proposed fees to be charged to the tenants; (ii) the utilization of any subsidy or other assistance from the federal government or any other source; (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the applicant for tenant referrals or relocations from federal, state or local government agencies or community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priorities among eligible tenant applicants.

10. Any documents required by the authority to evidence compliance with all conditions and requirements necessary to acquire, own, construct, operate and manage the proposed M/D development, including local governmental approvals, proper zoning status, availability of utilities, licenses and other legal authorizations necessary to perform requisite functions and any easements necessary for the construction and operation of the M/D development; and

11. A nonrefundable processing fee equal to 0.5% of the proposed M/D loan amount. Such fee shall be

# Final Regulations

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applied at closing toward the payment of the authority's financing fee.

In the selection of an application or applications for processing, the executive director may take into account the desirability of allocating funds to different sponsors throughout the Commonwealth of Virginia.

The executive director may for good cause permit the applicant to file one or more of the foregoing forms, documents and information at a later time, and any review, analysis, determination or other action by the authority or the executive director prior to such filing shall be subject to the receipt, review and approval by the executive director of such forms, documents and information.

An appraisal of the land and any improvements to be retained and used as a part of the M/D development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected by the authority. Such appraisal shall not be obtained until the authority has received the processing fee required by § 6.A.11 above. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed M/D development.

If at any time the executive director determines that the applicant is not processing the application with due diligence and best efforts or that the application cannot be successfully processed to commitment and closing within a reasonable time, he may, in his discretion, terminate the application and retain any fees previously paid to the authority.

## B. Review of the application.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed M/D development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, recreational opportunities, shopping facilities and other factors affecting the site;
2. An evaluation of the ability, experience and financial capacity of the applicant;
3. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed M/D development;
4. A review of the tenant selection plans, including its effect on the economic feasibility of the proposed

M/D development and its efficacy in carrying out the programs and policies of the authority;

5. An analysis of the drawings and specifications, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management and maintenance characteristics of the proposed M/D development.

## C. Requirement that application satisfy certain criteria.

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed M/D development, the executive director may issue a commitment for an M/D loan to the applicant with respect to the proposed M/D development provided that he has determined that all of the following criteria have been satisfied:

1. The vicinity of the proposed M/D development is and will continue to be a residential area suitable for the proposed M/D development and is not now, nor is it likely in the future to become, subject to uses or deterioration which could cause undue depreciation in the value of the proposed M/D development or which could adversely affect its operation, marketability or economic feasibility.
2. There are or will be available on or before the estimated completion date (i) direct access to adequate public roads and utilities and (ii) such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks and recreational facilities) in the area of the proposed M/D development as the executive director determines to be necessary or desirable for use and enjoyment by the contemplated residents.
3. The applicant either owns or leases the site of the proposed M/D development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.
4. The applicant and general contractor have the experience, ability and financial capacity necessary to carry out their respective responsibilities for the acquisition, construction, ownership, operation, maintenance and management of the proposed M/D development.
5. The application and proposed M/D development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these rules and regulations.
6. The proposed M/D development will assist in meeting the need for such housing in the market area of the proposed M/D development.

7. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed M/D development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the mortgagor will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

8. Subject to review by the authority, in the case of construction loans at final closing or in the case of permanent loans at closing, the categories of the estimated housing development costs to be funded from the proceeds of the mortgage loan are eligible for such funding under the closing documents or under such other requirements as shall be agreed to by the authority.

9. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or other nonhousing facilities to be included in the proposed M/D development are incidental or related to the proposed M/D development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed development.

10. The estimated income from the proposed M/D development, including any estimated subsidy or assistance, is sufficient to pay when due the estimates of the debt service on the mortgage loan, the operating expenses, and replacement and other reserves required by the authority.

11. The drawings and specifications shall demonstrate that the proposed M/D development as a whole and the individual units therein shall provide safe and habitable living accommodations and environment for the contemplated residents.

12. The tenant selection plans submitted by the applicant shall comply with these rules and regulations and shall be satisfactory to the authority.

13. The proposed M/D development will comply with (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued or to be issued by the authority to finance the proposed M/D development and (ii) all requirements set forth in the resolutions, if any, pursuant to which such notes or bonds are issued or to be issued.

14. The prerequisites necessary for the applicant to acquire, own, construct or rehabilitate, operate and

manage the proposed M/D development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed M/D development, (v) building permits, and (vi) fee simple ownership of the site, a sales contract or option giving the applicant or mortgagor the right to purchase the site for the proposed M/D development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the authority's security or the construction or operation of the proposed M/D development).

15. The proposed M/D development will comply with all applicable state and local laws, ordinances, regulations, and requirements.

16. The proposed M/D development will contribute to the fulfillment of the public purposes of the authority as set forth in its Act.

17. Subject to a final determination by the board, the financing of the proposed M/D development will meet the applicable requirements set forth in § 36-55.39 of the Code of Virginia. For the purposes of satisfying subsection B of the aforementioned code section, the term "substantial rehabilitation" means the repair or improvement of an existing housing unit, the value of which repairs or improvements equals at least 25% of the total value of the rehabilitated housing unit.

In addition, the executive director is authorized to make allocations of funds for M/D Loans to various types of housing sponsors and developments as he deems necessary or desirable to promote and accomplish the purposes set forth herein and in the Act. Any such allocation of funds may be made based upon such conditions as the executive director may require, including without limitation, one or both of the following: (i) DMHMR agrees, subject to terms and limitations acceptable to the authority, to provide funds for the developments in an amount sufficient to pay the operating costs thereof, including debt service with respect to the M/D Loan or loans applicable thereto; and (ii) the authority shall be able to finance the developments by the issuance of bonds in such amount and under such terms and conditions as the authority deems satisfactory.

## § 7. Commitment.

If the executive director determines that the foregoing criteria set forth in § 6.C above are satisfied and that he

# Final Regulations

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will recommend approval of the application and issuance of the commitment therefor, he shall either (i) present his recommendations to the board or (ii) if the maximum principal amount of the M/D loan does not exceed \$300,000, issue the commitment subject to the approval and ratification of the board. If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion either (i) in the case of an M/D loan application for which the board's approval is sought in advance of the issuance of the commitment therefor, recommend to the board that the application be approved and that a commitment be issued subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate or (ii) in the case of a commitment to be issued by the executive director subject to ratification by the board all in accordance with these rules and regulations, issue such commitment subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize or ratify, as applicable, the M/D loan and the issuance of a commitment therefor, subject to such terms and conditions as the board shall require in such resolution.

The term of the M/D loan, the amortization period, the estimated housing development costs, the principal amount of the M/D loan, the terms and conditions applicable to any equity contribution by the applicant, any assurances of successful completion and operational stability of the proposed M/D development, and other terms and conditions of such M/D loan shall be set forth in the board's resolution authorizing or ratifying such M/D loan or in the commitment therefor. The resolution or the commitment shall also include such terms and conditions as the authority considers appropriate with respect to the construction of the proposed M/D development, the marketing and occupancy of such M/D development (including any income limits or occupancy restrictions other than those set forth in these rules and regulations), the disbursement and repayment of the loan, and other matters related to the construction and the ownership, operation and occupancy of the proposed M/D development. Such resolution or commitment may include a financial analysis of the proposed M/D development, setting forth the approved initial budget for the operation of the M/D development and a schedule of the estimated housing development costs. Such a resolution authorizing an M/D loan to a for-profit housing sponsor shall prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the M/D development, expressed as a percentage of such for-profit housing sponsor's equity in such M/D development (such equity being established in accordance with § 10 of these rules and regulations), which rate, if any, shall not be inconsistent with the

provisions of the Act. In connection with the establishment of any such rates, the board shall not prescribe differing or discriminatory rates with respect to substantially similar M/D developments. The resolution shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative.

[ *An M/D loan shall not be authorized or ratified by the board unless* ] the board by resolution shall make the applicable findings required by § 36-55.39 of the Code of Virginia; provided, however, that the board may in its discretion authorize or ratify the M/D loan without making the finding, if applicable, required by subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the board prior to the financing of the M/D loan.

If the executive director determines not to recommend approval of the application and issuance of a commitment, he shall so notify the applicant. If any application is not so recommended for approval, the executive director may select for processing one or more applications in its place.

## § 8. Closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "closing documents") required by the commitment within the time period specified. When the closing documents have been submitted and approved by the authority staff, the board has approved or ratified the commitment and has determined that the financing of the proposed M/D development meets all the applicable requirements of § 36-55.39 of the Code of Virginia, and all other requirements in the commitment have been satisfied, the closing of the M/D loan shall be held. At this closing, the closing documents shall be, where required, executed and recorded, and the mortgagor will pay to the authority the balance owed on the financing fee, will make any equity investment required by the closing documents and will fund such other deposits, escrows and reserves as required by the commitment. The initial disbursement of M/D loan proceeds will be made by the authority, if appropriate under the commitment and the closing documents.

The actual interest rate on the M/D loan shall be established by the executive director at the time of the execution of the deed of trust note at closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of such note.

The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction, completion, occupancy and operation of the M/D development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of

credit, latent construction defect escrows, replacement reserves, and tax and insurance escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

## § 9. Construction.

In the case of construction loans, the construction of the M/D development shall be performed in accordance with the closing documents. The authority shall have the right to inspect the M/D development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the closing documents and to ascertain the propriety and validity of M/D loan disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. A disbursement of M/D loan proceeds may only be made upon compliance with the terms and conditions of the closing documents with respect to any such disbursement; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

## § 10. Completion of construction and final closing.

In the case of construction loans, the closing documents shall specify those requirements and conditions that shall be satisfied in order for the M/D development to be deemed to have attained final completion. Upon such final completion of the M/D development, the mortgagor, general contractor, and any other parties required to do so by the closing documents shall each diligently commence, complete and submit to the authority for review and approval their cost certification in accordance with the closing documents or in accordance with such other requirements as shall have been agreed to by the authority.

Prior to or concurrently with final closing, the mortgagor, general contractor and other members of the development team shall perform all acts and submit all contracts and documents required by the closing documents in order to attain final completion, make the final disbursement of M/D loan proceeds, obtain any subsidy or assistance and otherwise consummate the final closing.

At the final closing, the authority shall determine the following in accordance with the closing documents:

1. The total development costs, the final mortgage loan amount, the balance of M/D loan proceeds to be disbursed to the mortgagor, the equity investment of the mortgagor and, if applicable, the maximum

amount of annual limited dividend distributions;

2. The interest rate to be applied initially upon commencement of amortization, the date for commencement and termination of the monthly amortization payments of principal and interest, the initial amount of such monthly amortization payments, and the initial amounts to be paid monthly into the escrow accounts for taxes, insurance, replacement reserves, or other similar escrow items; and

3. Any other funds due the authority, the mortgagor, general contractor, architect or other parties that the authority requires to be disbursed or paid as part of the final closing.

The equity investment of the mortgagor shall be the difference between the total housing development costs of the M/D development as finally determined by the authority and the final principal amount of the M/D loan as to such M/D development.

## § 11. Seed money loans.

Notwithstanding anything herein to the contrary, the executive director may, in his discretion, approve an application on such forms as he may prescribe for a seed money loan and issue a commitment therefor subject to ratification by the board.

## § 12. M/D loan increases.

Prior to closing, the principal amount of the M/D loan may be increased, if such an increase is justified by an increase in the estimated costs of the proposed M/D development, is necessary or desirable to effect the successful construction and operation of the proposed M/D development, can be funded from available proceeds of the authority's notes or bonds or other available funds of the authority, and is not inconsistent with the provisions of the Act or these rules and regulations. Any such increase shall be subject to such terms and conditions as the authority shall require.

Subsequent to closing, the authority will consider and, where appropriate, approve an M/D loan increase to be financed from the proceeds of the authority's notes or bonds in the following instances:

1. Where cost increases are incurred as the direct result of (i) changes in work required or requested by the authority or (ii) betterments to the M/D development approved by the authority which will improve the quality or value of the M/D development or will reduce the costs of operating or maintaining the M/D development;
2. Where cost increases are incurred as a direct result of a failure by the authority during processing of the M/D development to properly perform an act for which the authority is solely responsible;

# Final Regulations

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3. Where an M/D loan increase is determined by the authority, in its sole and absolute discretion, to be in the best interests of the authority in protecting its security for the mortgage loan; or

4. Where the authority has entered into an agreement with the mortgagor prior to closing to provide an M/D loan increase if certain cost overruns occur in agreed line items, but only to the extent set forth in such agreement.

Any such increase in the M/D loan subsequent to closing may be subject to such terms and conditions as the authority shall require, including (but not limited to) one or more of the following:

1. The ability of the authority to sell bonds to finance the M/D loan increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only to an M/D loan to be financed from the proceeds of the authority's notes or bonds).

2. The obtaining by the owner of additional subsidy (if the M/D development is to receive such subsidy) in amounts necessary to fund the additional debt service to be paid as a result of such M/D loan increase. The provision of such additional subsidy shall be made subject to and in accordance with all applicable federal regulations.

3. A determination by the authority that the M/D loan increase will have no material adverse effect on the financial feasibility or proper operation and maintenance of the M/D development.

4. A determination by the authority that the M/D loan, as increased, does not exceed such percentage of the total development cost (as certified in accordance with the closing documents as approved by the authority) as is established in the resolution authorizing the M/D loan in accordance with § 4 of these rules and regulations.

5. Such terms and conditions as the authority shall require in order to protect the security of its interest in the M/D loan, to comply with covenants and agreements with the holders of its bonds issued to finance the mortgage loan, to comply with the Act and these rules and regulations, and to carry out its public purpose.

The executive director may, without further action by the board, increase the principal amount of the M/D loan at any time by an amount not to exceed 2.0% of the maximum principal amount of the M/D loan set forth in the commitment, provided that such increase is consistent with the Act and these rules and regulations. Any increase in excess of such 2.0% shall require the approval of the board.

Nothing contained in this § 12 shall impose any duty or

obligation on the authority to increase any M/D loan, a decision as to whether to grant an M/D loan increase shall be within the sole and absolute discretion of the authority.

## § 13. Operation and management.

The M/D development shall be subject to certain regulatory covenants in closing documents entered into at closing between the authority and the mortgagor. Such regulatory covenants shall govern the occupancy, maintenance, operation, use and disposition of the M/D development and the activities and operation of the mortgagor. The mortgagor shall execute such other documents with regard to the regulation of the M/D development as the executive director may determine to be necessary or appropriate to protect the interests of the authority and to permit the fulfillment of the authority's duties and responsibilities under the Act and these rules and regulations.

The mortgagor shall lease the units in the M/D development only to persons who are eligible for occupancy thereof as described in § 3 of these rules and regulations. The mortgagor shall comply with the provisions of the authority's rules and regulations regarding (i) the examination and determination of the income and eligibility of applicants for initial occupancy of the M/D development and (ii) the periodic reexamination and redetermination of the income and eligibility of residents of the M/D development.

In selecting eligible residents, the mortgagor shall comply with such occupancy criteria and priorities and with the tenant selection plan approved by the authority pursuant to § 6 of these rules and regulations.

The authority shall have the power to supervise the mortgagor and the M/D development in accordance with § 36-55.34:1 of the Code of Virginia and the terms of the closing documents or other agreements relating to the M/D loans. The authority shall have the right to inspect the M/D development, conduct audits of all books and records of the M/D development and to require such reports as the authority deems reasonable to assure compliance with this § 13.

## § 14. Transfers of ownership.

A. It is the authority's policy to evaluate requests for transfers of ownership on a case-by-case basis. The primary goal of the authority is the continued existence of low and moderate income rental housing stock maintained in a financially sound manner and in safe and sanitary condition. Any changes which would, in the opinion of the authority, detrimentally affect this goal will not be approved.

The provisions set forth in this § 14 shall apply only to transfers of ownership to be made subject to the authority's deed of trust.

For the purposes hereof, the terms "transfer of ownership" and "transfer" shall include any direct or indirect transfer of a partnership or other ownership interest (including, without limitation, the withdrawal or substitution of any general partner) or any sale, conveyance or other direct or indirect transfer of the M/D development or any interest therein; provided, however, that if the owner is not then in default under the deed of trust or regulatory agreement, such terms shall not include (i) any sale, transfer, assignment or substitution of limited partnership interests prior to final closing of the M/D loan or, (ii) any sale, transfer, assignment or substitution of limited partnership interests which in any 12-month period constitute in the aggregate 50% or less of the partnership interests in the owner. The term "proposed ownership entity," as used herein, shall mean (i) in the case of a transfer of a partnership interest, the owner of the M/D development as proposed to be restructured by such transfer, and (ii) in the case of a transfer of the M/D development, the entity which proposes to acquire the M/D development.

B. The proposed ownership entity requesting approval of a transfer of ownership must initially submit a written request to the authority. This request should contain (i) a detailed description of the terms of the transfer, (ii) all documentation to be executed in connection with the transfer, (iii) information regarding the legal, business and financial status and experience of the proposed ownership entity and of the principals therein, including current financial statements (which shall be audited in the case of a business entity), (iv) an analysis of the current physical and financial condition of the M/D development, including a current audited financial report for the M/D development, (v) information regarding the experience and ability of any proposed management agent, and (vi) any other information and documents requested by the authority relating to the transfer. The request will be reviewed and evaluated in accordance with the following criteria:

1. The proposed ownership entity and the principals therein must have the experience, ability and financial capacity necessary to own, operate and manage the M/D development in a manner satisfactory to the authority.
2. The M/D development's physical and financial condition shall be acceptable to the authority as of the date of transfer or such later date as the authority may approve. In order to assure compliance with this criteria, the authority may require any of the following:
  - a. The performance of any necessary repairs and the correction of any deferred or anticipated maintenance work;
  - b. The addition of any improvements to the M/D development which, in the judgment of the authority, will be necessary or desirable for the

successful marketing of the M/D development, will reduce the costs of operating or maintaining the M/D development, will benefit the residents or otherwise improve the liveability of the M/D development, or will improve the financial strength and stability of the M/D development;

c. The establishment of escrows to assure the completion of any required repairs, maintenance work, or improvements;

d. The establishment of such new reserves and/or such additional funding of existing reserves as may be deemed necessary by the authority to ensure or preserve the financial strength and stability or the proper operation and maintenance of the M/D development; and

e. The funding of debt service payments, accounts payable and reserve requirements such that the foregoing are current at the time of any transfer of ownership.

3. The management agent, if any, to be selected by the proposed ownership entity to manage the M/D development on its behalf must have the experience and ability necessary to manage the M/D development in a manner satisfactory to the authority. The management agent must satisfy the qualifications established by the authority for approval thereof.

C. The authority will charge the proposed ownership entity a fee of \$5,000 or such higher fee as the executive director may for good cause require. This fee is to be paid at the closing.

D. In the case of a transfer from a nonprofit owner to a proposed for-profit owner, the authority may require the proposed for-profit owner to deposit and/or expend funds in such amount and manner and for such purposes and to take such other actions as the authority may require in order to assure that the principal amount of the M/D loan does not exceed the limitations specified in the Act and these rules and regulations or otherwise imposed by the authority. No transfer of ownership from a nonprofit owner to a for-profit owner shall be approved if such transfer would, in the judgment of the authority, affect the tax-exemption of the notes or bonds, if any, issued by the authority to finance the development. The authority will not approve any such transfer of ownership if any loss of property tax abatement as a result of such transfer will, in the determination of the authority, adversely affect the financial strength or security of the M/D development.

The authority may require that any cash proceeds received by the nonprofit owner (after the payment of transaction costs and the funding of any fees, costs, expenses, reserves or escrows required or approved by the authority) be used for such charitable or other purposes as the authority may approve.

# Final Regulations

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E. A request for transfer of ownership shall be reviewed by the executive director and may be approved by him subject to such terms and conditions as he may require.

After approval of the request, an approval letter will be issued to the mortgagor consenting to the transfer. Such letter shall be contingent upon the delivery and execution of any and all closing documents required by the authority with respect to the transfer of ownership and the fulfillment of any special conditions required by the executive director.

The authority may require that the proposed ownership entity execute the then current forms of the authority's M/D loan documents in substitution of the existing M/D loan documents and/or to execute such amendments to the existing M/D loan documents as the authority may require in order to cause the provisions of such documents to incorporate the then existing policies, procedures and requirements of the authority. At the closing of the transfer, all documents required by the approval letter shall be, where required, executed and recorded; all funds required by the approval letter will be paid or deposited in accordance therewith; and all other terms and conditions of the approval letter shall be satisfied. If deemed appropriate by the executive director, the original mortgagor shall be released from all liability and obligations which may thereafter arise under the documents previously executed with respect to the M/D development.

In the case of an M/D development which is in default or which is experiencing or is expected by the authority to experience financial, physical or other problems adversely affecting its financial strength and stability or its proper operation, maintenance or management, the authority may waive or modify any of the requirements herein as it may deem necessary or appropriate in order to assist the M/D development and/or to protect the authority's interest as lender.

## § 15. Prepayments.

It shall be the policy of the authority that no prepayment of an M/D loan shall be made without its prior written consent for such period of time set forth in the note evidencing the M/D loan as the executive director shall determine, based upon his evaluation of then existing conditions in the financial and housing markets, to be necessary to accomplish the public purpose of the authority. The authority may also prohibit the prepayment of M/D loans during such period of time as deemed necessary by the authority to assure compliance with applicable note and bond resolutions and with federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued to finance such mortgage loans. Requests for prepayment shall be reviewed by the executive director on a case-by-case basis. In reviewing any request for prepayment, the executive director shall consider such factors as he deems relevant, including without limitation the following (i) the proposed use of the

M/D development subsequent to prepayment, (ii) an actual or potential termination or reduction of any subsidy or other assistance, (iii) the current and future need and demand for low and moderate housing for mentally disabled persons in the market area of the development, (iv) the financial and physical condition of the M/D development, (v) the financial effect of prepayment on the authority and the notes or bonds, if any, issued to finance the M/D development, and (vi) compliance with any applicable federal laws and regulations governing the federal tax exemption of such notes or bonds. As a precondition to its approval of any prepayment, the authority shall have the right to impose restrictions, conditions and requirements with respect to the ownership, use, operation and disposition of the M/D development, including without limitation any restrictions or conditions required in order to preserve the federal tax exemption of notes or bonds issued to finance the M/D development. The authority shall also have the right to charge a prepayment fee in an amount determined in accordance with the terms of the resolutions authorizing the notes or bonds issued to finance the M/D development or in such other amount as may be established by the executive director in accordance with the terms of the deed of trust note and such resolutions. The provisions of this § 15 shall not be construed to impose any duty or obligation on the authority to approve any prepayment, as the executive director shall have sole and absolute discretion to approve or disapprove any prepayment based upon his judgment as to whether such prepayment would be in the best interests of the authority and would promote the goals and purposes of its programs and policies.

\* \* \* \* \*

**Title of Regulation:** VR 400-02-0014. Rules and Regulations for the Acquisition of Multi-Family Housing Developments.

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

**Effective Date:** November 15, 1991.

### Summary:

*The amendments to the rules and regulations for the acquisition of multi-family housing developments ("rules and regulations") (i) eliminate the income limit of seven times annual rent and utilities, except telephone, for units in multi-family rental housing developments for which the board of the authority has approved the acquisition on or after November 15, 1991, (ii) reduce the limit of 150% of area median income on 80% of the units in such a development to 115% of area median gross income, and (iii) provide that the income limit applicable to occupants upon reexamination and redetermination of their adjusted family incomes and eligibility subsequent to their initial occupancy of the units in such a development shall be 115% of area median gross income.*

The term "area median income" was corrected to "area median gross income" to conform with the federal regulations governing (i) various federally assisted housing programs and (ii) the federal tax exemption of the authority's bonds issued to finance multi-family developments.

VR 400-02-0014. Rules and Regulations for the Acquisition of Multi-Family Housing Developments.

## § 1. Purpose and applicability.

The following rules and regulations will be applicable to the acquisition, ownership and operation by the authority or by any entity formed by the authority, on its own behalf or in conjunction with other parties, of multi-family housing developments intended for occupancy by persons and families of low and moderate income ("development" or "developments"). The developments to be acquired pursuant to these rules and regulations may be existing developments or may be developments to be constructed prior to acquisition. If the authority is to acquire an existing development, the provision of these rules and regulations relating to construction shall, to the extent determined by the executive director, not be applicable to such development. These rules and regulations shall also be applicable to the making of mortgage loans by the authority (i) to finance the construction of such developments prior to the acquisition thereof by the authority (such mortgage loans are referred to herein as construction loans) and (ii) to finance the acquisition and ownership of such developments by entities formed by the authority as described herein. If any development is to be subject to federal mortgage insurance or is otherwise to be assisted or aided, directly or indirectly, by the federal government, the applicable federal rules and regulations shall be controlling over any inconsistent provision herein. Furthermore, if the development is to be subject to mortgage insurance by the federal government, the provisions of these rules and regulations shall be applicable to such development only to the extent determined by the executive director to be necessary in order to (i) protect any interest of the authority which, in the judgment of the executive director, is not adequately protected by such insurance or by the implementation or enforcement of the applicable federal rules, regulations or requirements or (ii) to comply with the Act or fulfill the authority's public purpose and obligations thereunder. The term "construct" or "construction," as used herein, shall include the rehabilitation, preservation or improvement of existing structures.

Developments may be acquired pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any development to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Act and covenants and

agreements with the holders of its bonds.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the applicant, any mortgagor, or any contractor or other members of the development team under the initial closing documents as described in § 7 of these rules and regulations.

These rules and regulations 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 proposals for the authority to acquire developments or to provide financing for such developments under the authority's multi-family housing acquisition program. 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.

## § 2. Income limits and general restrictions.

In order to be eligible for occupancy of a multi-family dwelling unit, a person or family shall not have an adjusted family income (as defined in the authority's rules and regulations) greater than (i) in the case of a multi-family dwelling unit for which the board has approved the acquisition prior to November [ 15 ], 1991, seven times the annual rent, including utilities except telephone, applicable to such dwelling unit; provided, however, that the foregoing shall not be applicable if no amounts are payable by or on behalf of such person or family or if amounts payable by such person or family are deemed by the board not to be rent or (ii) in the case of a multi-family dwelling unit for which the board has approved the acquisition on or after November [ 15 ], 1991, such percentage of the area median [ gross ] income as the board may from time to time establish in these rules and regulations or by resolution for occupancy of such dwelling unit. In the case of a multi-family dwelling unit described in (i) above, the authority may, subsequent to November [ 15 ], 1991, determine to apply an income limit established pursuant to (ii) above in lieu of the income limit set forth in (i) above. The income limits established below in these rules and regulations are in addition to the limit set forth in (i) above and in implementation of the provisions of (ii) above.

In addition to the foregoing, At least 20% of the units in each development shall be occupied or held available for occupancy by persons and families whose annual adjusted family incomes (at the time of their initial occupancy of such units) do not exceed 80% of the area median [ gross ] income as determined by the authority, and the remaining units shall be occupied or held available for occupancy by persons and families whose annual adjusted

# Final Regulations

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family incomes (at the time of their initial occupancy of such units) do not exceed (i) in the case of units for which the board has approved the acquisition prior to November [ 19 15 ], 1991, 150% of such area median [ gross ] income as so determined or (ii) in the case of units for which the authority has approved the acquisition on or after November [ 19 15 ], 1991, 115% of such area median [ gross ] income as so determined. The income limits applicable to persons and families at the time of reexamination and redetermination of their adjusted family incomes and eligibility subsequent to their initial occupancy [ of such units ] shall be as set forth in (i) and (ii), as applicable, in the preceding sentence (or, in the case of units described in (i) in the preceding sentence, such lesser income limit, if applicable, equal to seven times the annual rent, including utilities except telephone, applicable to such dwelling units) .

The board may establish, in the resolution authorizing the acquisition of any development under these rules and regulations, income limits lower than those provided herein for occupancy of the units in such development.

Furthermore, in the case of developments which are subject to federal mortgage insurance or assistance or are financed by notes or bonds exempt from federal income taxation, federal regulations may establish lower income limitations which in effect supersede the authority's income limits as described above. If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in a development, the adjusted family incomes (as defined in the authority's rules and regulations) of applicants for occupancy of all of the units in the development shall be computed, for the purpose of determining eligibility for occupancy thereof under these rules and regulations, in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all developments and the processing thereof under the terms hereof must comply with (i) the Act, (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued by the authority to finance such developments, (iii) in the case of developments subject to federal mortgage insurance or other assistance, all applicable federal laws and regulations relating thereto and (iv) the requirements set forth in the resolutions pursuant to which the notes or bonds are issued by the authority to finance the developments. Copies of the authority's note and bond resolutions are available upon request.

### § 3. Terms of acquisition and construction loan.

The purchase price for a development to be acquired by the authority pursuant hereto shall be determined by the authority in such manner and shall be based upon such

factors (including the fair market value of the development based on an appraisal thereof as well as on the estimated costs of the construction of the development, if applicable) as it deems relevant to the security of its ownership interest in the development and the fulfillment of its public purpose. The terms and conditions of such acquisition shall be contained in the commitment described in § 6 hereof and in the contract, if any, to acquire the development described in § 7 hereof.

With respect to any development which the authority contracts to acquire, the authority may assign all of its right, title and interest under such contract to acquire such developments to an entity (a "successor entity") formed by the authority, on its own behalf or in conjunction with other parties, to serve as the housing sponsor for such development pursuant to § 36-55.33:2 of the Code of Virginia and may provide a mortgage loan to such entity to finance the acquisition and ownership of the development.

In addition to the acquisition of developments, the authority may make or finance construction mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance the construction of such developments. The term of such a construction loan shall be equal to the period determined by the executive director to be necessary to complete construction of the development and to consummate the acquisition thereof by the authority. Such construction loans shall be made on such other terms and conditions as the authority shall prescribe in (i) the commitment described in § 6 hereof and (ii) any other applicable initial closing documents, described in § 7 hereof. Such construction loans may be made to: (i) for-profit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the commitment or such percentage of the estimated housing development costs of the development as is established in such commitment, but in no event to exceed 95%, and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the commitment or such percentage of the estimated housing development costs of the development as is established in such commitment, but in no event to exceed 100%. The maximum principal amount and percentage of estimated housing development costs specified or established in the commitment shall be determined by the authority in such manner and based upon such factors as it deems relevant to the security of the mortgage loan and the fulfillment of its public purpose. Such factors may include the fair market value of the proposed development as completed. In determining the estimated housing development costs, the categories of costs which shall be includable therein shall be those set forth in the authority's rules and regulations for multi-family housing developments to the extent deemed by the executive director to be applicable to the proposed development. The interest rate on the construction loan shall be established at the initial closing and may be thereafter adjusted in accordance with the

Authority's rules and regulations and the terms of the deed of trust note. The authority shall charge a financing fee equal to 1.0% of the construction loan amount, unless the executive director shall for good cause require the payment of a different financing fee. Such fee shall be payable at initial closing or at such other times as the executive director shall for good cause require.

#### § 4. Solicitation of proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals for the authority's acquisition and, if applicable, construction financing of developments. 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 proposals and the selection of developments for acquisition and, if applicable, construction financing as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available funds of the authority are to be allocated for such acquisitions and financings and such other matters as he shall deem appropriate relating to the selection of proposals. The authority may also consider and approve proposals for acquisition and, if applicable, construction financing of developments submitted from time to time to the authority without any solicitation therefor on the part of the authority.

#### § 5. Application and acceptance for processing.

Application for consideration of each proposal for the authority to acquire a development and, if applicable, to finance the construction thereof 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, together with such documents and additional information as may be requested by the authority, including, but not limited to: initial site, elevation and unit plans; information with respect to the status of the proposed development site and the surrounding community; any option or sales contract to acquire the site; an evaluation of the need and effective demand for the proposed development in the market area of such site; information regarding the legal, business and financial status and experience of the members of the applicant's proposed development team and of the principals in any entity which is a member thereof, including current financial statements (which shall be audited in the case of a business entity) for the owner (if existing), the general contractor and the principals therein; information regarding amenities and services proposed to be offered to the tenants; a preliminary estimate of the housing development costs and the individual components thereof; the proposed schedule of rents; a preliminary estimate of

the annual operating budget and the individual components thereof; the estimated utility expenses to be paid by the tenants of dwelling units in the proposed development; and the amount of any federal insurance, subsidy or assistance which the applicant is requesting for the proposed development.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia, if applicable, and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;
2. An evaluation of the ability, experience and financial capacity of the applicant and general contractor and the qualifications of the architect, management agent and other members of the proposed development team;
3. A preliminary evaluation of the estimated construction costs and the proposed design and structure of the proposed development;
4. A preliminary review of the estimated operating expenses and proposed rents and a preliminary evaluation of the adequacy of the proposed rents to sustain the proposed development based upon the assumed occupancy rate and estimated purchase price and financing costs; and
5. A preliminary evaluation of the marketability of the proposed development.

Based on the authority's review of the applications, documents and any additional information submitted by the applicants or obtained from other sources by the authority in its review of the proposed developments, the executive director shall accept for processing those applications which he determines best satisfy the following criteria:

1. The vicinity of the proposed development is and will continue to be a residential area suitable for the proposed development and is not now, nor is it likely in the future to become, subject to uses or deterioration which could cause undue depreciation in the value of the proposed development or which could adversely affect its operation, marketability or economic feasibility.
2. There are or will be available on or before the estimated completion date (i) direct access to adequate public roads and utilities and (ii) such public and private facilities (such as schools, churches,

# Final Regulations

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transportation, retail and service establishments, parks, recreational facilities and major public and private employers) in the area of the proposed development as the executive director determines to be necessary or desirable for the use and enjoyment by the contemplated residents.

3. The characteristics of the site (such as its size, topography, terrain, soil and subsoil conditions, vegetation, and drainage conditions) are suitable for the construction and operation of the proposed development, and the site is free from any defects which would have a materially adverse effect on such construction and operation.

4. The location of the proposed development will promote and enhance the marketability of the units to the persons and families intended for occupancy thereof.

5. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.

6. The design of the proposed development is functional and appropriate for its intended use, will contribute to the marketability of the proposed development, makes use of materials to reduce energy and maintenance costs, provides for a proper mix of units for the residents intended to be benefited by the authority's program, provides for units with adequate, well-designed space, includes equipment and facilities customarily used or enjoyed in the area by the contemplated residents, and will otherwise provide a safe, habitable and pleasant living environment for such residents.

7. Subject to further review and evaluation by the authority's staff under § 6 of these rules and regulations, the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.

8. Subject to further review and evaluation by the authority's staff under § 6 of these rules and regulations, the proposed rents appear to be at levels which will (i) be affordable by the persons and families intended to be assisted by the authority, (ii) permit the successful marketing of the units to such persons and families, and (iii) sustain the operation of the proposed development.

9. The applicant and general contractor have the experience, ability and financial capacity necessary to carry out their respective responsibilities for the construction and, prior to acquisition thereof by the authority, the ownership, operation, marketing, maintenance and management of the proposed

development.

10. The architect, management agent and other members of the proposed development team have the qualifications necessary to perform their respective functions and responsibilities.

11. The application and proposed development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these rules and regulations.

12. The proposed development will contribute to the implementation of the policies and programs of the authority in providing decent, safe and sanitary rental housing for low and moderate income persons and families who cannot otherwise afford such housing and will assist in meeting the need for such housing in the market area of the proposed development.

13. It appears that the proposed development and applicant will be able to meet the requirements for feasibility and commitment set forth in § 6 of these rules and regulations and that the proposed development will otherwise continue to be processed through initial closing and will be completed and conveyed to the authority all in compliance with the Act, the documents and contracts executed at initial closing, applicable federal laws, rules and regulations, and the provisions of these rules and regulations and without unreasonable delay, interruptions or expense.

If only one application is being reviewed for acceptance for processing, the executive director shall accept such application for processing if he determines that such application adequately satisfies the foregoing criteria.

In the selection of an application or applications for processing, the executive director may take into account the desirability of acquiring developments from different sponsors throughout the Commonwealth of Virginia.

Applications shall be selected only to the extent that the authority has or expects to have funds available from the sale of its notes or bonds to finance the acquisition of and, if applicable, the construction loan for the proposed developments.

Nothing contained herein shall require the authority to select any application which, in the judgment of the executive director, does not adequately satisfy the foregoing criteria.

The executive director's determinations with respect to the above criteria shall be based only on the documents and information received or obtained by him at that time and are subject to modification or reversal upon his receipt of additional documents or information at a later time. In addition, the application shall be subject to further review in accordance with § 6 of these rules and regulations.

The executive director may impose such terms and conditions with respect to acceptance for processing as he shall deem necessary or appropriate. If any proposed development is so accepted for processing, the executive director shall notify the sponsor of such acceptance and of any terms and conditions imposed with respect thereto.

If the executive director determines that a proposed development to be accepted for processing does not adequately satisfy one or more of the foregoing criteria, he may nevertheless accept such proposed development for processing subject to satisfaction of the applicable criteria in such manner and within such time period as he shall specify in his notification of acceptance. If the executive director determines not to accept any proposed development for processing, he shall so notify the sponsor.

## § 6. Feasibility and commitment.

In order to continue the processing of the application, the applicant shall file, within such time limit as the executive director shall specify, such forms, documents and information as the executive director shall require with respect to the feasibility of the proposed development, including without limitation the following:

1. Any additions, modifications or other changes to the application and documents previously submitted as may be necessary or appropriate to make the information therein complete, accurate and current;
2. Architectural and engineering plans, drawings and specifications in such detail as shall be necessary or appropriate to determine the requirements for construction of the proposed development;
3. The applicant's best estimates of (i) the housing development costs and the components thereof, (ii) proposed construction loan amount (if applicable), (iii) proposed rents, (iv) proposed annual operating budget and the individual components thereof, (v) best estimates of the monthly utility expenses and other costs for each dwelling unit if paid by the resident, and (vi) amount of any federal insurance, subsidy or assistance that the applicant is requesting for the proposed development. The applicant's estimates shall be in such detail and with such itemization and supporting information as shall be requested by the executive director;
4. The proposed tenant selection plan which shall include, among other information that the executive director may require from time to time, the following: (i) the proposed rent structure; (ii) the utilization of any subsidy or other assistance from the federal government or any other source; (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the applicant for tenant referrals or relocations from federal, state or local governmental agencies of community organizations; and (v) any criteria to be used for disapproving tenant applications

and for establishing priority among eligible tenant applicants for occupancy of the proposed development.

5. The applicant's marketing plan, including description and analysis of strategies, techniques and procedures to be followed in marketing the units prior to acquisition of the development by the authority; and

6. Any documents required by the authority to evidence compliance with all conditions and requirements necessary to construct, and, prior to the acquisition by the authority of the development, to own, operate and manage the proposed development, including local governmental approvals, proper zoning status, availability of utilities, licenses and other legal authorizations necessary to perform requisite functions and any easements necessary for the construction and operation of the development.

The executive director may for good cause permit the applicant to file one or more of the foregoing forms, documents and information at a later time, and any review, analysis, determination or other action by the authority or the executive director prior to such filing shall be subject to the receipt, review and approval by the executive director of such forms, documents and information.

An appraisal of the proposed development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected by the authority. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed development.

If at any time the executive director determines that the applicant is not processing the application with due diligence and best efforts or that the application cannot be successfully processed to commitment and initial closing within a reasonable time, he may, in his discretion, terminate the application and retain any fees previously paid to the authority.

The authority staff shall review and evaluate the documents and information received or obtained pursuant to this § 6. Such review and evaluation shall include, but not be limited to, the following:

1. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed development;
2. A market analysis as to the present and projected demand for the proposed development in the market area, including: (i) an evaluation of existing and future market conditions; (ii) an analysis of trends and projections of housing production, employment and population for the market area; (iii) a site evaluation (such as access and topography of the site,

# Final Regulations

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neighborhood environment of the site, public and private facilities serving the site and present and proposed uses of nearby land); and (iv) an analysis of competitive projects;

3. A review of the marketing and tenant selection plans, including their effect on the economic feasibility of the proposed development and their efficacy in carrying out the programs and policies of the authority;

4. A final review of the (i) ability, experience and financial capacity of the applicant and general contractor and (ii) the qualifications of the architect, management agent and other members of the proposed development team.

5. An analysis of the architectural and engineering plans, drawings and specifications, including the functional use and living environment for the proposed residents, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management, maintenance and energy conservation characteristics of the proposed development.

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed development, the executive director shall prepare a recommendation to the board that a commitment of the authority to enter into a contract with the applicant for the acquisition of the development by the authority and, if applicable, to make a construction loan for the development be issued to the applicant only if he determines that all of the following criteria have been satisfied:

1. Based on the data and information received or obtained pursuant to this § 6, no material adverse change has occurred with respect to compliance with the criteria set forth in § 5 of these rules and regulations.

2. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the applicant will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

3. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or

other nonhousing facilities to be included in the proposed development are incidental or related to the proposed development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed development.

4. All operating expenses (including replacement and other reserves) necessary or appropriate for the operation of the proposed development are included in the proposed operating budget, and the estimated amounts of such operating expenses are reasonable, are based on valid data and information and are comparable to operating expenses experienced by similar developments.

5. Based upon the proposed rents and projected occupancy level required or approved by the executive director, the estimated income from the proposed development is reasonable. The estimated income may include (i) rental income from commercial space within the proposed development if the executive director determines that a strong, long-term market exists for such space and (ii) income from other sources relating to the operation of the proposed development if determined by the executive director to be reasonable in amount and comparable to such income received on similar developments.

6. The estimated income from the proposed development, including any federal subsidy or assistance, is sufficient to pay when due the estimate of the debt service on the notes or bonds issued by the authority to acquire the development (plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development), the operating expenses, and replacement and other reserves required by the authority.

7. The units will be occupied by persons and families intended to be served by the proposed development and eligible under the Act, these rules and regulations, and under any applicable federal laws, rules and regulations. Such occupancy of the units will be achieved in such time and manner that the proposed development (i) will attain self-sufficiency (i.e., the rental and other income from the development is sufficient to pay all operating expenses, replacement and other reserves required by the authority, and debt service on the notes or bonds issued by the authority to acquire the development, plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development) within the usual and customary time for a development for its size, nature, location and type and (ii) will continue to be self-sufficient for the full term of such notes or bonds.

8. The estimated utility expenses and other costs to be paid by the residents are reasonable, are based upon

valid data and information and are comparable to such expenses experienced by similar developments, and the estimated amounts of such utility expenses and costs will not have a materially adverse effect on the occupancy of the units in accordance with paragraph 7 above.

9. The architectural drawings, plans and specifications shall demonstrate that: (i) the proposed development as a whole and the individual units therein shall provide safe, habitable, and pleasant living accommodations and environment for the contemplated residents; (ii) the dwelling units of the proposed housing development and the individual rooms therein shall be furnishable with the usual and customary furniture, appliances and other furnishings consistent with their intended use and occupancy; and (iii) the proposed housing development shall make use of measures promoting environmental protection, energy conservation and maintenance and operating efficiency to the extent economically feasible and consistent with the other requirements of this § 6.

10. The proposed development includes such appliances, equipment, facilities and amenities as are customarily used or enjoyed by the contemplated residents in similar developments.

11. The marketing and tenant selection plans submitted by the applicant shall comply with these rules and regulations and shall provide for actions to be taken prior to acquisition of the development by the authority such that (i) the dwelling units in the proposed development will be occupied in accordance with paragraph 7 above and any applicable federal laws, rules and regulations by those eligible persons and families who are expected to be served by the proposed development, (ii) the residents will be selected without regard to race, color, religion, creed, sex or national origin and (iii) units intended for occupancy by handicapped and disabled persons will be adequately and properly marketed to such persons and such persons will be given priority in the selection of residents for such units. The tenant selection plan shall describe the requirements and procedures (including any occupancy criteria and priorities established pursuant to § 11 of these rules and regulations ) to be applied by the owner in order to select those residents who are intended to be served by the proposed development and who are best able to fulfill their obligation and responsibilities as residents of the proposed development.

12. In the case of any development to be subject to mortgage insurance or otherwise to be assisted or aided by the federal government, the proposed development will comply in all respects with any applicable federal laws, rules and regulations, and adequate federal insurance, subsidy, or assistance is available for the development and will be expected to remain available in the due course of processing with

the applicable federal agency, authority or instrumentality.

13. The proposed development will comply with: (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued or to be issued by the authority to finance the acquisition and, if applicable, the construction of the proposed development and (ii) all requirements set forth in the resolutions pursuant to which such notes or bonds are issued or to be issued.

14. The prerequisites necessary for the members of the applicant's development team to construct and, prior to the acquisition thereof by the authority, to operate and manage the proposed development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining: (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed development, (v) licenses and other legal authorizations necessary to permit each member to perform his or its duties and responsibilities in the Commonwealth of Virginia, (vi) building permits, and (vii) fee simple ownership of the site, a sales contract or option giving the applicant the right to purchase the site for the proposed development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the construction or the authority's ownership or operation of the proposed development).

15. The proposed development will comply with all applicable state and local laws, ordinances, regulations and requirements.

16. The proposed development will provide valid and sound security for the authority's notes or bonds and will contribute to the fulfillment of the public purposes of the authority as set forth in its Act.

17. Subject to a final determination by the board, the acquisition and financing of the proposed development will meet the requirements set forth in §§ 36-55.33:2 and 36-55.39 of the Code of Virginia, as applicable.

If the executive director determines that the foregoing criteria are satisfied and that he will recommend approval of the application and issuance of a commitment to acquire the development and, if applicable, to finance the construction of the development, he shall present his analysis and recommendations to the board. If the executive director determines that one or more of the

# Final Regulations

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foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion recommend to the board that the application be approved and that a commitment be issued subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

The board shall review and consider the analysis and recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize the issuance of a commitment to acquire the development and, if applicable, to finance the construction thereof, subject to such terms and conditions as the board shall require in such resolution.

If the development is to be acquired by a successor entity formed by the authority as described in § 9 hereof, the resolution shall authorize (i) the assignment to such successor entity of the authority's interest in the contract to acquire the development and (ii), if applicable, the making of a permanent loan to such successor entity in an amount set forth therein to finance the acquisition cost of the development and such other costs relating to the acquisition and ownership of the development and to the financing thereof as the authority shall deem necessary or appropriate.

The purchase price for the development, the term and principal amount of any construction loan, the terms and conditions applicable to any equity contribution by the applicant for any construction loan, any assurances of successful completion of the development, and other terms and conditions of the acquisition and construction loan shall be set forth in the board's resolution or in the commitment issued pursuant to the resolution. The resolution or commitment shall also include such terms and conditions as the authority considers appropriate with respect to the development and construction, if applicable, and the acquisition of the proposed development, the disbursement and repayment of the construction loan, if applicable, and other matters related to the development and construction, if applicable, and, prior to the acquisition thereof by the authority, the ownership, operation, marketing and occupancy (including any income limits or occupancy restrictions other than those set forth in these rules and regulations) of the proposed development. Such resolution or commitment may include a financial analysis of the proposed development, setting forth the initial schedule of rents, the approved initial budget for operation of the development and a schedule of the estimated housing development costs.

If the development is to be acquired by a successor entity which is a for-profit housing sponsor, the board may in its resolution prescribe, in accordance with the authority's rules and regulations for multi-family housing developments, the maximum annual rate at which distributions may be made.

Neither an acquisition by the authority of a development

nor a construction or permanent loan for such development pursuant to these rules and regulations shall be authorized unless the board by resolution shall make the applicable findings required by §§ 36-55.33:2 and 35-55.39, as applicable, of the Code of Virginia; provided, however, that the board may in its discretion authorize the acquisition or the construction or permanent loan in advance of the issuance of the commitment therefor in accordance herewith without making the finding, if applicable, required by subsection A of § 36-55.33:2 and subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the board prior to the authority's acquisition of the development and, if applicable, the financing of the construction or permanent loan for such development.

If the executive director determines not to recommend approval of an application and issuance of a commitment, he shall so notify the applicant. If any application is not so recommended for approval, the executive director may select for processing one or more applications in its place.

## § 7. Initial closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "initial closing documents") required by the commitment within the time period specified. When the initial closing documents have been submitted and approved by the authority staff and all other requirements in the commitment have been satisfied, the authority shall execute and deliver to the applicant a contract to acquire the development; provided, however, that in the case of the acquisition of any existing development, the applicant shall convey the development to the authority at the initial closing, and the authority shall pay the purchase price therefor to the applicant, all in accordance with the terms of the commitment. Also at the initial closing, the initial closing documents (including, in the case of an existing development, a housing management agreement between the authority and the management agent proposed by the authority or, in the case of a development to be constructed, an agreement between the authority and such agent to enter into a housing management agreement at final closing) shall be, where required, executed and recorded, and the applicant will make any initial equity investment required by the commitment and the initial closing documents and will fund such other deposits, escrows and reserves as required by the commitment. If the authority is to provide construction financing for the development, the closing of the construction loan shall also be held at this time, the financing fee of 1.0% of the construction loan amount shall be paid to the authority, and the initial disbursement of construction loan proceeds will be made by the authority, if appropriate under the commitment and the initial closing documents. The actual interest rate on the construction loan shall be established by the executive director at initial closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of the deed of trust note.

If a successor entity as described in § 9 hereof is to acquire an existing development, the sale and conveyance of such development and the making of any permanent mortgage loan to such entity by the authority, all as set forth in § 9 hereof, shall be consummated at the initial closing.

The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction and, prior to acquisition by the authority, completion, occupancy and operation of the development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of credit and latent construction defect escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

## § 8. Construction.

The construction of the development shall be performed in accordance with the initial closing documents. The authority shall have the right to inspect the development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the initial closing documents and to ascertain the propriety and validity of any construction or disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. If the authority is providing construction financing, a disbursement of construction loan proceeds may only be made upon a determination by the authority that the terms and conditions of the initial closing documents with respect to any such disbursement have been satisfied; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement by the authority shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

## § 9. Completion of construction and final closing.

The initial closing documents shall specify those requirements and conditions that must be satisfied in order for the development to be deemed to have attained final completion.

Prior to or concurrently with final closing, the applicant, the owner, the general contractor, the management agent and other members of the development team shall perform all acts and submit all contracts and documents required by the initial closing documents (including the contract to acquire the development) in order to attain final completion, obtain any federal insurance, subsidy or

assistance and otherwise consummate the acquisition and the final closing. The owner shall deliver to the authority a fully executed deed conveying to the authority fee simple title to the development in accordance with the contract and shall execute and deliver such other final closing documents as the authority may prescribe. The authority shall pay to the owner the purchase price specified in the contract to acquire the development. The management agreement shall be executed by the authority and the management agent at the final closing. If the authority had provided the construction loan, such loan shall be repaid in full at final closing.

Prior to or concurrently with final closing, the executive director shall, if authorized by the resolution, assign its interest in the contract to acquire the development to a successor entity formed by the authority, on its own behalf or in conjunction with other parties, pursuant to the Act. Any reference to the authority in these rules and regulations with respect to the conveyance to or the acquisition, ownership or operation by the authority of a development shall be deemed to refer also to any such successor entity of the authority. Such successor entity shall purchase the development at final closing and otherwise perform the obligations of the authority as purchaser under the contract. The applicant shall convey title to the development to such successor entity and shall perform all of its other obligations as seller under such contract. Furthermore, if authorized by the resolution, the authority shall at final closing provide to such successor entity a permanent mortgage loan secured by a first lien on the development to finance the acquisition and ownership thereof. The making of such permanent mortgage loan shall take place at final closing upon the execution, delivery and recordation of such documents as the executive director shall require. Such permanent loan shall bear such interest rate and shall be subject to such terms and conditions as the executive director shall prescribe pursuant to and in accordance with the commitment. For the purpose of determining any maximum annual dividend distributions by any such successor entity and the maximum principal amount of the permanent mortgage loan to such successor entity permissible under the Act, the total development costs shall be the cost of the acquisition as determined by the authority and such other costs relating to such acquisition, the financing of the permanent mortgage loan and the ownership and operation of the development as the authority shall determine to be reasonable and necessary. The equity investment of any such successor entity shall be the difference between such total development costs and the principal amount of the permanent mortgage loan.

At the final closing, the authority shall determine in accordance with the initial closing documents any funds due the authority, the applicant, the owner, general contractor, the architect or other parties that the authority requires to be disbursed or paid as part of the final closing.

## § 10. Construction loan and purchase price increases.

# Final Regulations

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Prior to initial closing, the purchase price or the principal amount of any construction loan or both may be increased, if such an increase is justified by an increase in the estimated costs of the proposed development, is necessary or desirable to effect the successful construction of the proposed development, will not have a material adverse effect on the financial feasibility or proper operation and maintenance of the development or on the security of the authority's construction loan or ownership interest in the development, can be funded from available proceeds of the authority's notes or bonds, and will not result in noncompliance with the provisions of the Act or these rules and regulations (including, without limitation, the criteria set forth in § 6 hereof). Any such increase shall be subject to such terms and conditions as the authority shall require.

Subsequent to initial closing, the authority will consider and, where appropriate, approve an increase in the purchase price or principal amount of the construction loan or both in the following instances:

1. Cost increases are incurred as the direct result of (i) changes in work required or requested by the authority or (ii) betterments to the development approved by the authority which will improve the quality or value of the development or will reduce the costs of operating or maintaining the development;
2. An increase is determined by the authority, in its sole and absolute discretion, to be in the best interests of the authority in protecting its security for the construction loan or its ownership interest to be acquired in the development; or
3. The authority has entered into an agreement with the mortgagor prior to initial closing to provide an increase if certain cost overruns occur, but only to the extent set forth in such agreement.

Any such increase in the construction loan or purchase price subsequent to initial closing may be subject to such terms and conditions as the authority shall require, including (but not limited to) one or more of the following, as applicable:

1. The ability of the authority to sell bonds to finance the increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only to an increase to be financed from the proceeds of the authority's notes or bonds).
2. The obtaining by the owner of additional federal subsidy (if the development is to receive such subsidy) in amounts necessary to fund the additional debt service on the authority's notes and bonds to be paid as a result of any such increase in the purchase price, plus such additional amounts as the authority shall determine to be appropriate as compensation for its administrative costs and its risks as owner of the development. The provision of such additional subsidy

shall be made subject to and in accordance with any applicable federal regulations.

3. A determination by the authority that the increase in the purchase price will have no material adverse effect on the financial feasibility or proper operation and maintenance of the development or on the security of the authority's ownership interest to be acquired in the development.

4. A determination by the authority that the construction loan, as increased, does not exceed such percentage of the estimated total development cost as is established in the resolution authorizing the construction loan, as applicable, in accordance with § 3 of these rules and regulations.

5. Such terms and conditions as the authority shall require in order to protect the security of its interest in the construction loan and its ownership interest to be acquired in the development, to comply with covenants and agreements with the holders of its bonds, if any, issued to finance the construction loan or the acquisition of the development, to comply with the Act and these rules and regulations, and to carry out its public purpose.

In the event of any increase in the purchase price pursuant hereto, the authority may also increase the principal amount of any permanent mortgage loan to be provided to any successor entity.

The executive director may, without further action by the board, increase the purchase price, the principal amount of the construction loan or the principal amount of the permanent loan at any time by an amount not to exceed 2.0% thereof, provided that such increase is consistent with the Act and these rules and regulations. Any increase in excess of such 2.0% shall require the approval of the board.

Nothing contained in this § 10 shall impose any duty or obligation on the authority to increase any purchase price or the principal amount of any construction loan or permanent loan, as the decision as to whether to grant a purchase price, construction loan or permanent loan increase shall be within the sole and absolute discretion of the authority.

## § 11. Operation, management and marketing.

The authority shall establish the rents to be charged for dwelling units in the development. Units in the development shall only be leased to persons and families who are eligible for occupancy thereof as described in § 2 of these rules and regulations. The authority (or any successor entity acquiring the development pursuant to § 9 hereof) shall examine and determine the income and eligibility of applicants for their initial occupancy of the dwelling units of the development and shall reexamine and redetermine the income and eligibility of all occupants

such dwelling units every two years following such initial occupancy or at more frequent intervals if required by the executive director. It shall be the responsibility of each applicant for occupancy of such a dwelling unit, and of each occupant thereof, to report accurately and completely his adjusted family's income, family composition and such other information relating to eligibility for occupancy as the executive director may require and to provide the authority (or any such successor entity) with verification thereof at the times of examination and reexamination of income and eligibility as aforesaid.

With respect to a person or family occupying a multi-family dwelling unit, if a periodic reexamination and redetermination of the adjusted family's income and eligibility as provided in this section establishes that such person's or family's adjusted family income then exceeds the maximum limit for occupancy of such dwelling unit applicable at the time of such reexamination and redetermination, such person or family shall be permitted to continue to occupy such dwelling unit; provided, however, that during the period that such person's or family's adjusted family income exceeds such maximum limit, such person or family may be required by the executive director to pay such rent, carrying charges or surcharge as determined by the executive director in accordance with a schedule prescribed or approved by him. If such person's or family's adjusted family income shall exceed such maximum limit for a period of six months or more, the authority (or any such successor entity) may terminate the tenancy or interest by giving written notice of termination to such person or family specifying the reason for such termination and giving such person or family not less than 90 days (or such longer period of time as the authority shall determine to be necessary to find suitable alternative housing) within which to vacate such dwelling unit.

In addition to the eligibility requirements of the authority, the executive director may establish occupancy criteria and priorities based on the following:

1. The age, family size, financial status, health conditions (including, without limitation, any handicaps or disabilities) and other circumstances of the applicants for the dwelling units;
2. The status and physical condition of the housing then occupied by such applicants; and
3. Any other factors or matters which the executive director deems relevant to the effectuation of the public purposes of the authority.

The authority (or any successor entity as described in § 9 hereof) shall develop a tenant selection plan for tenants eligible to occupy the development. Such tenant selection plan shall include, among other information that the executive director may require from time to time, the following: (i) the proposed rent structure; (ii) the utilization of any subsidy or other assistance from the

federal government or any other source, (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the authority or such successor entity for tenant referrals or relocations from federal, state or local governmental agencies of community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priority among eligible tenant applicants for occupancy of the proposed development. In selecting eligible residents, the authority (or any such successor entity) shall comply with such occupancy criteria and priorities and with the tenant selection plan.

The executive director is authorized to prepare and from time to time revise a housing management handbook which shall set forth the authority's procedures and requirements with respect to the management of developments by management agents. Copies of the housing management handbook shall be available upon request.

The management of the development shall also be subject to a management agreement by and between the management agent and the authority (or any successor entity). Such management agreement shall govern the policies, practices and procedures relating to the management, marketing and operation of the development. The term of the management agreement shall be as prescribed by the executive director, and upon the expiration of such term the authority may renew or extend such management agreement or may contract with a different management agent on such terms and conditions as the executive director shall require. The development shall be managed in accordance with the Act, these rules and regulations, the management agreement and the authority's housing management handbook, if applicable.

If any successor entity formed pursuant to § 9 hereof is not within the exclusive control of the authority, the executive director may require that such entity and the development owned by and mortgage loan made to such entity be subject to such of the provisions of the authority's rules and regulations for multi-family housing developments as he shall require to protect its security for the mortgage loan, to protect its interest in such entity and to fulfill its public purpose under the Act.

# EMERGENCY REGULATIONS

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

**Title of Regulation:** State Plan for Medical Assistance Relating to Disproportionate Share Payment Adjustments. VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates - In-Patient Hospital Care.

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

**Effective Date:** December 1, 1991, through November 30, 1992.

### Summary:

1. **REQUEST:** The Governor's approval is hereby requested to adopt the emergency regulation entitled *Disproportionate Share Payment Adjustments*. This policy will increase reimbursement to Virginia's two state-owned teaching hospitals, in recognition of the large numbers of low income and Medicaid patients they serve.

2. **RECOMMENDATION:** Recommend approval of the Department's request to take an emergency adoption action regarding *Disproportionate Share Payment Adjustments*. 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: November 18, 1991

### 3. CONCURRENCES:

/s/ Howard M. Cullum  
Secretary of Health and Human Resources  
Date: November 20, 1991

### 4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder  
Governor  
Date: November 21, 1991

### 5. FILED WITH:

/s/ Joan W. Smith  
Registrar of Regulations  
Date: November 21, 1991

## DISCUSSION

6. **BACKGROUND:** The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended § 1923(c) of the Social Security Act to give states greater flexibility in making required payment adjustments to hospitals which serve a disproportionate number of low income patients with special needs. This flexibility permits the payment to vary according to the type of hospital. The Commonwealth's current methodology acknowledges

only one type of hospital, and does not appropriately recognize the extraordinary costs, volume or proportion of services which the large state-owned teaching hospitals provide to low-income patients and patients eligible for medical assistance.

The emergency regulation will provide for two types of hospitals (state-owned teaching hospitals and all other hospitals), and will vary the payment adjustment for disproportionate share hospitals by type of hospital. Hospitals other than state-owned teaching hospitals will continue to receive an adjustment equal to (i) their Medicaid utilization in excess of 8%, times (ii) the lower of the prospective operating cost rate or ceiling. State-owned teaching hospitals will receive (i) eleven times their Medicaid utilization in excess of 8%, times (ii) the lower of the prospective operating cost rate or ceiling.

7. **AUTHORITY TO ACT:** The Code of Virginia (1950), as amended, § 32.1-324 authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in the Administrative Process Act (APA), § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

Section 1902(a)(13)(A) of the Social Security Act is implemented by Title 42 of the Code of Federal Regulations Part 447 Subpart C. This section "requires that the State Plan provide for payment for hospital and long-term care facility services through the use of rates that the state finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations and quality and safety standards and assure that individuals eligible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time) to [care] of adequate quality."

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the December 1, 1991, effective date desired to maximize reimbursement to the two state-owned teaching hospitals.

8. **FISCAL/BUDGETARY IMPACT:** Only two state-owned teaching hospitals are affected. The estimated fiscal impact for this Plan amendment is as

increase in expenditures for inpatient hospital services for \$290.4 million to \$354.4 million during fiscal year 1993. The estimated savings to the General Fund during fiscal years 1992 and 1993 are approximately \$18 million and \$32 million, respectively.

9. **RECOMMENDATION:** Recommend approval of this request to take an emergency adoption action to become effective December 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 an effective emergency regulation, the Department would lack the authority to vary the disproportionate share payment adjustment according to the type of hospital.

10. **Approval Sought for VR 460-02-4.1910.** 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:

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

[items V.(1) - (6) remain in effect]

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

Disproportionate share hospitals defined.

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

#### A. Criteria.

1. A Medicaid inpatient utilization rate in excess of 8.0% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

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

hospital to perform nonemergency obstetric procedures.

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

a. At which the inpatients are predominantly individuals under 18 years of age; or

b. Which does not offer nonemergency obstetric services as of December 21, 1987.

#### B. Payment adjustment.

1. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the type of hospital and on the individual hospital's Medicaid utilization. There shall be two types of hospitals: (i) Type One, consisting of state-owned teaching hospitals, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization shall be determined by dividing the total number of Medicaid inpatient days by the number of inpatient days. Each hospital with a Medicaid utilization of over 8.0% shall receive a disproportionate share payment adjustment.

2. For Type One hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8%, times eleven, times (ii) the lower of the prospective operating cost rate or ceiling. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times (ii) the lower of the prospective operating cost rate or ceiling.

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

[item V.(8) remains in effect]

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# STATE CORPORATION COMMISSION

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## BUREAU OF INSURANCE

October 31, 1991

ADMINISTRATIVE LETTER 1991 - 12

TO: All Property and Casualty Insurers

RE: Unfair Trade Practices Concerning Automobile Glass Claims

It has recently come to the attention of the Bureau of Insurance that many insurers are directing insureds with glass claims to particular glass shops or glass networks for repairs or glass replacement. Some insurers have instructed their agents and adjusters to require policyholders to use certain glass shops or networks.

Discounts historically have been given by glass shops on insurance claims, but recently closer affiliations have developed between insurance companies and certain glass repairers or glass networks to reduce claim costs. Reductions in claim costs are reflected in premiums and obviously benefit policyholders.

Insurers should not, however, overlook the fact that policyholders cannot be required to utilize the services of a certain glass repairer or network of repair shops. Automobile standard forms approved for use in Virginia by the State Corporation Commission do not contain provisions which allow the insurer to select the repair facility. Policy provisions only address the cost of repair or replacement. If a policyholder chooses a glass repairer whose charges are competitive, the insurer may not refuse to pay for the repairs solely because the repairer is not on the insurer's list of preferred shops or a member of a certain glass network.

Insurers who take reasonable steps to reduce claim costs by arrangements with preferred shops or glass networks will not be subjected to criticism. Those insurers unreasonably refusing to honor competitive repair bills, however, may be considered in violation of Virginia Code Section 38.2-510 relating to unfair claim settlement practices.

/s/ Steven T. Foster  
Commissioner of Insurance

## BUREAU OF INSURANCE

November 21, 1991

Administrative Letter 1991-13

TO: All Insurance Companies Licensed to Write Life Insurance in Virginia

RE: Preneed Funeral Contracts Funded by Life Insurance or Annuities

The 1991 Virginia General Assembly adopted an amendment to Section 54.1-2820.B. of the Code of Virginia, as amended. As shown in the amendment, a copy of which is attached hereto, those engaged in the business of offering preneed funeral contracts funded by life insurance or annuities must comply with the requirements of Section 54.1-2820.B. with regard to life insurance or annuity contracts used in this situation. Title 54.1 of the Code of Virginia is administered by the Board of Funeral Directors and Embalmers. Since this is the case, insurers issuing contracts to fund preneed funeral contracts should immediately contact the Board of Funeral Directors and Embalmers for instructions as to the Board's requirements for these contracts. Failure of an insurer to follow the requirements of the Board could result in disciplinary action against those licensed by the Board who are involved in the sale of these products.

Only insurance forms approved by the Bureau of Insurance should be used to fund preneed funeral contracts. The Bureau of Insurance will approve these forms in accordance with its usual procedures and will not be involved in the administration of the requirements of Title 54.1.

Insurers wishing to market products to be used to fund preneed funeral contracts should contact the Board of Funeral Directors at the following address:

Ms. Meredyth Partridge  
Executive Director  
Board of Funeral Directors and Embalmers  
1601 Rolling Hills Drive  
Richmond, Virginia 23229

/s/ Steven T. Foster  
Commissioner of Insurance

1991 SESSION  
VIRGINIA ACTS OF ASSEMBLY - CHAPTER 721

An Act to amend and reenact § 54.1-2820 of the Code of Virginia, relating to burial life insurance.

[H 1906]

Approved APR 30 1991

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2820 of the Code of Virginia is amended and reenacted as follows:
  - § 54.1-2820. Requirements of preneed funeral contracts.—A. It shall be unlawful for any person residing or doing business within this Commonwealth, to make, either directly or indirectly by any means, a preneed funeral contract unless the contract:
    1. Is made on forms prescribed by the Board and is written in clear, understandable language and printed in easy-to-read type, size and style;
    2. Identifies the seller, seller's license number and contract buyer and the person for whom the contract is purchased if other than the contract buyer;
    3. Contains a complete description of the supplies or services purchased;
    4. Clearly discloses whether the price of the supplies and services purchased is guaranteed;
    5. States if funds are required to be trusted pursuant to § 54.1-2822, the amount to be trusted, the name of the trustee, the disposition of the interest, the fees, expenses and taxes which may be deducted from the interest and a statement of the buyer's responsibility for taxes owed on the interest;
    6. Contains the name, address and telephone number of the Board and lists the Board as the regulatory agency which handles consumer complaints;
    7. Provides that any person who makes payment under the contract may terminate the agreement at any time prior to the furnishing of the services or supplies contracted for; if the purchaser terminates the contract within thirty days of execution, the purchaser shall be refunded all consideration paid or delivered, together with any interest or income accrued thereon; if the purchaser terminates the contract after thirty days, the purchaser shall be refunded any amounts required to be deposited under § 54.1-2822, together with any interest or income accrued thereon;
    8. Provides that if the particular supplies and services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship and the representative of the deceased shall have the right to choose the supplies or services to be substituted;
    9. Discloses any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or prearrangement guarantee; and
    10. Complies with all disclosure requirements imposed by the Board.

If the contract seller will not be furnishing the supplies and services to the purchaser, the contract seller must attach to the preneed funeral contract a copy of the seller's agreement with the provider.

  - B. If a life insurance or annuity contract is used to fund the preneed funeral contract, the life insurance or annuity contract shall provide either that the face value thereof shall be adjusted annually by a factor equal to the Consumer Price Index as published by the Office of Management and Budget of the United States, or a benefit payable at death under such contract that will equal or exceed the sum of all premiums paid for such contract plus interest thereon at the annual rate of at least five percent, compounded annually. In addition, the following must also be disclosed as prescribed by the Board:
    1. The fact that a life insurance policy or annuity contract is involved or being used to fund the preneed contract;
    2. The nature of the relationship among the soliciting agent, the provider of the supplies or services, the prearranger and the insurer;
    3. The relationship of the life insurance policy or annuity contract to the funding of the preneed contract and the nature and existence of any guarantees relating to the preneed contract; and
    4. The impact on the preneed contract of (i) any changes in the life insurance policy or annuity contract including but not limited to changes in the assignment, beneficiary designation or use of the proceeds, (ii) any penalties to be incurred by the policyholder as

a result of failure to make premium payments, (iii) any penalties to be incurred or moneys to be received as a result of cancellation or surrender of the life insurance policy or annuity contract, and (iv) all relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the preneed contract.

C. When the consideration consists in whole or in part of any real estate, the contract shall be recorded as an attachment to the deed whereby such real estate is conveyed, and the deed shall be recorded in the clerk's office of the circuit court of the city or county in which the real estate being conveyed is located.

D. If any funeral supplies are sold and delivered prior to the death of the subject for whom they are provided, and the seller or any legal entity in which he or a member of his family has an interest thereafter stores these supplies, the risk of loss or damage shall be upon the seller during such period of storage.

2. That the provisions of this act shall become effective on January 1, 1992.

\_\_\_\_\_  
President of the Senate

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Speaker of the House of Delegates

Approved:

\_\_\_\_\_  
Governor

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# STATE LOTTERY DEPARTMENT

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## DIRECTOR'S ORDER NUMBER TWENTY-EIGHT (91)

### "LUCKY GAME SHOW SWEEPSTAKES"; FINAL RULES FOR GAME OPERATION

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Lucky Game Show Sweepstakes" game rules for the Virginia Lottery's commercial television consortium promotional program to be conducted from Monday, November 4, 1991 through Saturday, November 16, 1991. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson  
Director  
Date: October 25, 1991

## DIRECTOR'S ORDER NUMBER TWENTY-NINE (91)

### "CASH EXPLOSION"; VIRGINIA LOTTERY RETAILER CASHING PROMOTIONAL PROGRAM AND RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Cash Explosion" Virginia Lottery Retailer Cashing Promotional Program and Rules for the lottery retailer incentive program which will be conducted from Thursday, October 24, 1991 through Tuesday, December 31, 1991. These rules amplify and conform to the duly adopted State Lottery Board regulations.

These rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson  
Director  
Date: October 21, 1991

## DIRECTOR'S ORDER NUMBER THIRTY (91)

### "LUCKY GAME SHOW SWEEPSTAKES"; FINAL RULES FOR GAME OPERATION; REVISED.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the revised "Lucky Game Show Sweepstakes" game rules for the Virginia Lottery's commercial television consortium promotional program to be conducted from Monday, November 4, 1991 through Saturday, November 16, 1991. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order supersedes Director's Order Number Twenty-Eight (91), issued October 25, 1991. The order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson  
Director  
Date: November 18, 1991

## DIRECTOR'S ORDER NUMBER THIRTY-ONE (91)

### CERTAIN DIRECTOR'S ORDERS RESCINDED

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby rescind the following Director's Orders:

Order Number	Date Issued	Subject
15(89)	08/14/89	Virginia's Seventh Instant Game Lottery; "Lucky Draw," Final Rules for Game Operation.
33(90)	11/15/90	Virginia's Fifteenth Instant Game Lottery; "First and \$10,000," Final Rules for Game Operation.
37(90)	12/21/90	Virginia's Seventh Instant Game Lottery; "Lucky Draw," End of Game.
04(91)	02/10/91	Special On-Line Licensing Program for Northern Virginia Retailers.
10(91)	04/10/91	Virginia's Fifteenth Instant Game Lottery; "First and \$10,000,"

End of Game.

- 13(91) 05/21/91 "See Red"; Virginia Lottery Retailer Sales Promotion Program and Rules
- 14(91) 06/05/91 "Joker's Wild"; Promotional Game and Drawing Rules.
- 16(91) 06/28/91 Virginia's Nineteenth Instant Game Lottery; "Joker's Wild," Final Rules for Game Operation. [revised as 18(91)]
- 17(91) 06/24/91 "Joker's Wild"; Virginia Lottery Retailer Sales Promotional Program and Rules.
- 19(91) 08/14/91 "Double Take"; Promotional Game and Drawing Rules.
- 24(91) 09/17/91 Virginia State Fair Raffle Drawing Rules.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson  
Director

Date: November 13, 1991

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# GOVERNOR

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

**Title of Regulation: VR 130-01-2. Board for Architects,  
Professional Engineers, Land Surveyors and Landscape  
Architects Rules and Regulations.**

Governor's Comment:

The proposed regulations would add certification standards to the regulations governing the Board for Architects, Professional Engineers, Land Surveyors, and Landscape Architects and, in accordance with the Callahan Act, would enable the agency to cover administrative expenses. Pending public comment and revisions to the regulations suggested by the Department of Planning and Budget, I recommend approval.

/s/ Lawrence Douglas Wilder  
Governor  
Date: November 25, 1991

## **DEPARTMENT OF SOCIAL SERVICES (BOARD OF)**

**Title of Regulation: VR 615-01-37. Aid to Dependent  
Children (ADC) Program - Elimination of Monthly  
Reporting.**

Governor's Comment:

I concur with the form and content of this proposal. My final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: November 21, 1991

## **DEPARTMENT OF SOCIAL SERVICES (BOARD OF) AND CHILD DAY-CARE COUNCIL**

**Title of Regulation: VR 615-30-01, VR 175-03-01. General  
Procedures and Information for Licensure.**

Governor's Comment:

I concur with the form and the content of this proposal. My final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder  
Governor  
Date: November 21, 1991

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# GENERAL NOTICES/ERRATA

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<b>Symbol Key †</b>
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† Indicates entries since last publication of the Virginia Register
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## GENERAL NOTICES

### NOTICE

Notices of Intended Regulatory Action are being published as a separate section of the Register beginning with the October 7, 1991, issue. The new section appears at the beginning of each issue.

### **VIRGINIA COASTAL RESOURCES MANAGEMENT PROGRAM**

#### **Request for Review of Draft Document**

The 1990 reauthorization of the Coastal Zone Management Act (CZMA), as amended, established under § 309 a new Coastal Zone Enhancement Grants Program which sets aside from 10% to 20% of the states' federally-approved Coastal Zone Management funds to encourage the states to seek to achieve one or more of eight legislatively defined coastal management objectives. The states are to achieve these objectives by implementing changes to their coastal management programs; for instance, by amending their laws, regulations, or boundaries or by other means that improve management of their coastal resources.

As part of this process, the Council on the Environment is completing an assessment of the eight management objectives identified in the legislation, specifically:

- The protection, enhancement, or creation of coastal wetlands;
- The prevention or significant reduction of threats to life and property through the control of coastal development and redevelopment in hazardous areas, and the anticipation and management of sea level rise;
- The development of increased opportunities for public access;
- The reduction of marine debris by managing uses and activities contributing to marine debris;
- The development and adoption of procedures to address the cumulative and secondary impacts of coastal growth and development;
- The preparation and implementation of special area management plans;

- The development of plans for the use of ocean resources; and
- The adoption of procedures and policies to facilitate the siting of energy facilities and government facilities as well energy-related facilities and government activities which may be of greater than local significance.

The Council is requesting public comment on a draft of the assessment which will be made available for public review in mid-November, 1991. The public comment period will extend for 30 days. Written comments may be sent to the Council at the address shown below. In addition, the Council will accept oral comments at its upcoming quarterly meeting.

Copies of the assessment may be obtained at the Council on the Environment offices, located at 202 N. 9th Street, Suite 900, Richmond, Virginia. Copies may also be obtained by contacting, Lee Tetrault, Chesapeake Bay and Coastal Programs, Council on the Environment, 202 N. 9th Street, Suite 900, Richmond, Virginia 23219, telephone (804) 786-4500.

Following consideration of public comments, a final assessment will be produced by January 10, 1992. A multi-year strategy, addressing priority state concerns identified in the assessment, will be developed by the end of February 1992. The assessment and strategy will provide the basis by which the Council will apply for § 309 grant funds from the National Oceanic and Atmospheric Administration for use under Virginia's Coastal Resources Management Program.

### **DEPARTMENT OF CRIMINAL JUSTICE SERVICES**

#### **† Public Notice**

In accord with the Anti-Drug Abuse Act of 1988 (Public Law 100-690, Title VI, Subtitle C), the Department of Criminal Justice Services announces its intention to submit an application for federal funds to the Bureau of Justice Assistance, U.S. Department of Justice.

The application will be submitted no later than December 27, 1991, and will request \$9,996,000 in federal funds, which is Virginia's allocation for federal fiscal year 1992 under the Drug Control and System Improvement Formula Grant Program. The funds will be used by the Department to make grants to localities and state agencies to support drug control and criminal justice system improvement projects.

# General Notices/Errata

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In addition to the Standard Form 424, "Application for Federal Assistance," the Department's submission to the Bureau of Justice Assistance contains a statewide drug and violent crime strategy which analyzes the state's drug and violent crime problems, identifies needs and priorities, and indicates ways the Department proposes to use the federal funds to address the needs and priorities.

Public review of the application and comment on it are invited. Single copies may be obtained by contacting Richard Hall-Sizemore, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219, telephone (804) 371-6507.

## COUNCIL ON THE ENVIRONMENT

### Public Notice

#### Notice of Availability for Public Review

#### An Environmental Impact Assessment for an Exploratory Oil or Gas Well to be Drilled in Essex County, Virginia

**Purpose of Notice:** This notice informs the public of the availability of an environmental impact assessment for an oil or gas well drilling operation as required by Virginia Code § 62.1-195.1(D). The public is invited to review and comment on the environmental impact assessment. A general description of the proposed activity, its location, and the content of the environmental impact assessment follow.

**Location:** Texaco, Inc. has proposed locating an exploratory oil or gas well in Essex County. The site for the exploratory well is to be located about two miles from the town of Supply, Virginia, on a tract of land bordered by state route 639 on the west and state route 675 on the north. The proposed project can be located on the Supply Quadrangle, USGS topographic map, 7.5 minute series. The proposed well site and associated lease boundaries are generally described in the accompanying map.

**Project Description:** The proposed exploratory well drilling operation will be conducted to evaluate the potential for marketable quantities of oil or gas resources to exist in the Taylorsville Basin located in Tidewater, Virginia. The proposed drilling operation would require 3 to 4 weeks for site preparation, 12 to 14 weeks for drilling, 4 to 6 weeks for completion and testing as warranted, and 3 to 4 weeks for site restoration. The area to be directly affected by exploratory drilling operations is approximately 3.5 acres. The site will be located in an agricultural field currently planted in soybeans. Employees will live on-site during operations, water will be provided by a groundwater well, and there will be on-site sewage treatment facilities. The well site will be designed to contain the discharge of all fluids generated within the drill site. The drilling operations will be conducted 24 hours per day.

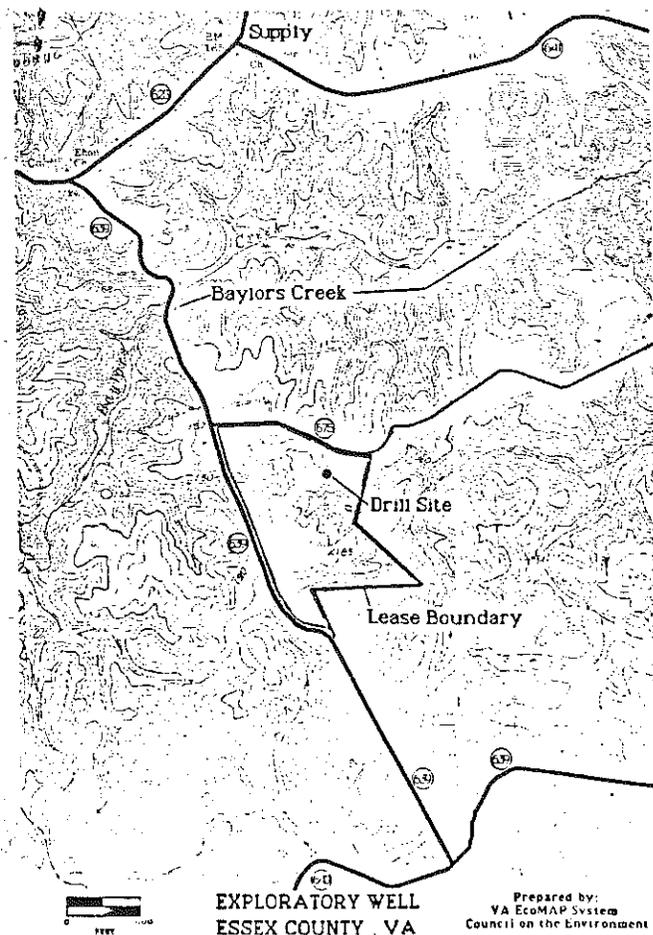
The environmental impact assessment submitted for the proposed project includes a description of the proposed well drilling site and the vicinity, a description and evaluation of the potential environmental impacts that may result if the exploratory well is constructed, an assessment of the potential environmental impact that may result from accidental release events, and control measures designed to minimize impacts from proposed drilling operations. A discussion of the types and magnitude of environmental impacts which may occur as a result of the longer-term production activities is included in the assessment should the exploratory well prove successful.

**Location of the Assessment:** A copy of the environmental impact assessment may be reviewed during regular business hours at the offices of the Council on the Environment, 202 North Ninth Street, 9th Floor, Suite 900, Richmond, Virginia. Another copy of the assessment will be available for review at the Essex County Public Library located in Tappahannock, Virginia, on Route 17. The library hours are 9:30 a.m. to 5 p.m. on Monday, Tuesday, and Friday; 9:30 a.m. to 7 p.m. on Wednesday and Thursday; and 10 a.m. to 1 p.m. on Saturday.

**Deadline for Public Comment:** Written comments on the environmental impact assessment may be submitted until 5 p.m. January 10, 1992. Comments must be addressed to:

Keith J. Buttleman  
Virginia Council on the Environment  
202 North Ninth Street  
Richmond, Virginia 23219

**Contact:** For additional information, contact Jay Roberts at the address indicated above or call (804) 786-4500, SCATS 786-4500, or (804) 371-7604/TDD ☎



subject to a post-construction inspection and approval by the local health department.

Comments on these proposals should be submitted to Gary L. Hagy, Assistant Director, Bureau of Sewage and Water Services, Virginia Department of Health, P.O. Box 2448, Richmond, VA 23218. Comments should be received by January 3, 1992.

## DEPARTMENT OF LABOR AND INDUSTRY

### Notice to the Public

The Virginia State Plan for the enforcement of occupational safety and health laws (VOSH) commits the Commonwealth to adopt regulations identical to, or as effective as, those promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the Federal level. Therefore, the Virginia Department of Labor and Industry is issuing the following notice:

#### U.S. Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910

Docket No. H-122

RIN 1218-AB37

Occupational Exposure to Indoor Air Pollutants; Request for Information

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Request for Information.

SUMMARY: In the September 20, 1991 issue of the Federal Register, the Occupational Safety and Health Administration (OSHA) published a notice of request for information on issues pertinent to indoor air quality in occupational environments (56 FR 47892). This notice raises major issues which OSHA needs to consider in determining whether regulatory action is appropriate and feasible to control health problems related to poor indoor air quality. The issues on which comment is requested are organized into five broad categories: (1) Definition of and Health Effects Pertaining to Indoor Air Quality; (2) Monitoring and Exposure Assessment; (3) Controls; (4) Local Policies and Practices; and (5) Potential Content of Regulations.

In addition to seeking information regarding Indoor Air Quality concerns in general, issues addressed in this notice

## DEPARTMENT OF HEALTH (STATE BOARD OF)

### Public Notice

The State Board of Health has received a request from a group composed of well drillers and other individuals from Tidewater to amend the Private Well Regulations pertaining to Class IV (non-drinking water) wells. They propose two major changes:

1. Reduce the minimum separation distance between Class IV wells and building foundations treated by a chemical termiticide to 10 feet. The proposed minimum separation distance in the regulations is 25 feet if certain well construction and site conditions exist.

2. Allow the issuance of a well construction permit for Class IV wells immediately upon filing an application with a site plan and payment of the application fee. This permit would be issued without the local health department conducting a site visit to determine the proposed well site suitability. The well site would be

## General Notices/Errata

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also focus on specific indoor air contaminants, such as passive tobacco smoke (PTS), radon and bioaerosols. With respect to these particular contaminants, information is requested on their relative contribution to the overall degradation of indoor air quality as well as associated health effects and methods of exposure assessment and mitigation. The information received in response to this notice will assist OSHA to determine whether it is necessary and appropriate to pursue regulatory action concerning occupational exposures to indoor air contaminants.

**DATES:** Written comments concerning this notice of request for information on issues pertinent to occupational exposure to indoor air pollutants must be postmarked on or before January 21, 1992.

**ADDRESSES:** Comments should be submitted in quadruplicate to the Docket Officer, Docket No. H-122, room N-2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 523-7894.

An additional copy of your comments should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, 13 South Thirteenth Street, Richmond, VA 23219.

**FOR FURTHER INFORMATION CONTACT:** James F. Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N-3649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone (202) 423-8151.

### VIRGINIA CODE COMMISSION

#### NOTICE TO STATE AGENCIES

**Change of Address:** Our new mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed in copy. Our FAX number is: 371-0169.

#### FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01  
NOTICE of COMMENT PERIOD - RR02  
PROPOSED (Transmittal Sheet) - RR03  
FINAL (Transmittal Sheet) - RR04  
EMERGENCY (Transmittal Sheet) - RR05  
NOTICE of MEETING - RR06  
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08  
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

## ERRATA

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

Title of Regulation: VR 460-03-4.1921. Methods and Standards for Other Types of Services: Obstetric and Pediatric Payments.

Publication: 7:18 V.A.R. 2634-2637 June 3, 1991

Correction to Final Regulation:

Page 2635, under Established Patient, line 6, change 27.00 to 28.00.

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# CALENDAR OF EVENTS

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<b>Symbols Key</b>	
†	Indicates entries since last publication of the Virginia Register
☒	Location accessible to handicapped
☎	Telecommunications Device for Deaf (TDD)/Voice Designation

## NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

## VIRGINIA CODE COMMISSION

### EXECUTIVE

#### BOARD FOR ACCOUNTANCY

**December 16, 1991 - 10 a.m. – Open Meeting**  
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A meeting to (i) review November 1991 Uniform CPA Examination; (ii) conduct routine board business; (iii) review old business; and (iv) review new business.

**Contact:** Roberta L. Banning, Assistant Director, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590.



## DEPARTMENT FOR THE AGING

### Governor's Advisory Board on Aging

† **January 14, 1992 - 10 a.m. – Open Meeting**  
† **January 15, 1992 - 9:30 a.m. – Open Meeting**  
The Jefferson Hotel, Franklin and Adams Street, Richmond, Virginia. ☒ (interpreter for deaf provided upon

request)

The sessions will consist of committee meetings, business meetings and joint meetings with the Virginia Association of Area Agencies on Aging.

**Contact:** Cathy Saunders, Special Assistant to the Commissioner, 700 E. Franklin Street, 10th Floor, Richmond, VA 23219, telephone (804) 225-2272, toll-free 1-800-552-3402 or (804) 225-2271/TDD ☎

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Pesticide Control Board

† **January 16, 1992 - 10 a.m. – Open Meeting**

† **January 17, 1992 - 9 a.m. – Open Meeting**

Virginia Department of Agriculture and Consumer Services, Board Room No. 204, 1100 Bank Street, Richmond, Virginia. ☒

Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the Pesticide Control Board's agenda at 9 a.m., January 17, 1992. The board anticipates hearing a presentation on pesticides by a speaker, yet to be determined, at 8 p.m., January 16, 1992, following their dinner, at the Commonwealth Park Suites Hotel, Ninth and Bank Streets, Richmond, VA.

**Contact:** Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Room 401, Richmond, VA 23219, telephone (804) 371-6558.

### Virginia Apple Board

† **February 20, 1992 - 10 a.m. – Open Meeting**

1219 Stoneburner Street, Staunton, Virginia. (Interpreter for deaf provided upon request)

The board convenes to conduct matters of business affecting the Virginia Apple Industry. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

**Contact:** Clayton O. Griffin, Director, P.O. Box 24401, Staunton, VA 24401, telephone (703) 332-7790.

# Calendar of Events

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## STATE AIR POLLUTION CONTROL BOARD

### NOTE: CHANGE IN MEETING DATE

† **December 18, 1991 - 9 a.m.** – Open Meeting  
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ☒

Business to be conducted at this meeting has yet to be decided. Agenda will be available two weeks before the meeting date.

**Contact:** Dr. Kathleen Sands, Policy Analyst, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 225-2722.

**December 18, 1991 - 1 p.m.** – Public Hearing  
**December 18, 1991 - 7 p.m.** – Public Hearing  
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ☒

The State Air Pollution Control Board is seeking public comment on air quality issues arising from medical waste incineration, specifically the following: (1) What level of public health protection should be afforded during the burning of medical waste? (2) What technology should be used to control air pollution in the burning of medical waste? (3) Should Virginia burn medical waste at all? The board is not seeking comment on specific proposed incinerators. Anyone wishing to address the board on this matter is encouraged to sign up in advance of the meeting by contacting the person named below. Groups should designate a single spokesperson to address the board on behalf of the group. Speakers will be limited to 10 minutes each so that the board can hear all speakers. Speakers are encouraged to provide the board with six written copies of their comments as far in advance of the hearing as possible.

## BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

**January 16, 1992 - 9:30 a.m.** – Open Meeting  
1601 Rolling Hills Drive, Richmond, Virginia. ☒

A regularly scheduled board meeting.

**Contact:** Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-7390.

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

**January 30, 1992 - 10 a.m.** – Open Meeting  
Virginia Housing Development Authority, Conference Room #1, 601 South Belvidere Street, Richmond, Virginia. ☒  
(Interpreter for deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area

programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by January 23, 1992.

**Contact:** Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☒

**February 27, 1992 - 10 a.m.** – Open Meeting  
Virginia Housing Development Authority, Conference Room #1, 601 South Belvidere Street, Richmond, Virginia. ☒  
(Interpreter for deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by February 20, 1992.

**Contact:** Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☒

## INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

### Coordinating Committee

**December 20, 1991 - 8:30 a.m.** – Open Meeting  
Office of Coordinator, Interdepartmental Regulation, 1603 Santa Rosa Road, Tyler Building, Suite 208, Richmond, Virginia. ☒

A regularly scheduled meeting to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

**Contact:** John J. Allen, Jr., Coordinator, Interdepartmental Regulation, Office of the Coordinator, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-7124.

## BOARD OF COMMERCE

**February 24, 1992 - 10 a.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A regular quarterly meeting. Agenda will likely consist of briefings from staff on the status of bills in the General Assembly that can have an impact upon agency operations, and agency regulatory programs.

**Contact:** Alvin D. Whitley, Secretary/Policy Analyst, Department of Commerce, 3600 W. Broad Street

Richmond, VA 23230, telephone (804) 367-8564.

## COMPENSATION BOARD

**December 19, 1991 - 5 p.m.** – Open Meeting  
Room 913/913A, 9th Floor, Ninth Street Office Building,  
202 North Ninth Street, 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 23206-3886, telephone (804)  
786-3886/TDD ☎

## DEPARTMENT OF CONSERVATION AND RECREATION

### Goose Creek Scenic River Advisory Board

† **January 8, 1992 - 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 Program  
Manager, Department of Conservation and Recreation, 203  
Governor St., Suite 326, Richmond, VA 23219, telephone  
(804) 786-4132 or (804) 786-2121/TDD ☎

## BOARD OF CORRECTIONS

† **January 8, 1992 - 10 a.m.** – Open Meeting  
† **February 12, 1992 - 10 a.m.** – Open Meeting  
6900 Atmore Drive, Board of Corrections Board Room,  
Richmond, Virginia. ☒

A regular monthly meeting to consider such matters  
as may be presented to the board.

**Contact:** Mrs. Vivian Toler, Secretary to the Board, 6900  
Atmore Drive, Richmond, VA 23225, telephone (804)  
674-3235.

### Liaison Committee

† **January 9, 1992 - 9:30 a.m.** – Open Meeting  
† **February 13, 1992 - 9:30 a.m.** – Open Meeting  
6900 Atmore Drive, Board of Corrections Board Room,  
Richmond, Virginia. ☒

A meeting to address criminal justice issues.

**Contact:** Louis E. Barber, Sheriff, Montgomery County, P.O.  
Drawer 149, Christiansburg, VA 24073, telephone (703)  
32-2951.

## DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

**NOTE: CHANGE IN PUBLIC HEARING DATE**  
**February 12, 1992 - 10 a.m.** – Public Hearing  
6900 Atmore Drive, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the State Board of  
Corrections intends to amend regulations entitled: **VR**  
**230-30-006. Work/Study Release Standards for Local**  
**Facilities.** The proposed regulations establish the  
minimum operational standards for work or study  
release programs in local correctional facilities.

Statutory Authority: §§ 53.1-5 and 53.1-131 of the Code of  
Virginia.

Written comments may be submitted until January 3, 1992.

**Contact:** Mike Howerton, Chief of Operations, 6900 Atmore  
Drive, Richmond, VA 23225, telephone (804) 674-3041.

## DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

**March 6, 1992 - 1 p.m.** – Public Hearing  
Virginia Housing Development Authority, 601 South  
Belvidere Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Board of Criminal  
Justice Services intends to adopt regulations entitled:  
**VR 240-04-3. Rules Relating to the Court-Appointed**  
**Special Advocate Program (CASA).** The purpose of  
the proposed regulation is to regulate the operation of  
local Court-Appointed Special Advocate programs.

Statutory Authority: §§ 9-173.7 and 9-173.8 of the Code of  
Virginia.

Written comments may be submitted until February 3,  
1992, to Francine Ecker, Department of Criminal Justice  
Services, 805 East Broad Street, Richmond, Virginia 23219.

**Contact:** Paula J. Scott, Executive Assistant, Department of  
Criminal Justice Services, 805 East Broad Street,  
Richmond, Virginia 23219, telephone (804) 786-8730.

## DEPARTMENT FOR THE DEAF AND HARD OF HEARING

**January 21, 1992 - 4 p.m.** – Public Hearing  
Virginia School for the Deaf-Blind, 700 Shell Road,  
Hampton, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Department for the  
Deaf and Hard of Hearing intends to amend  
regulations entitled: **VR 245-02-01. Regulations**

# Calendar of Events

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**Governing Eligibility Standards and Application Procedures for the Distribution of Telecommunications Equipment.** The regulations are used to (i) screen individuals with hearing losses and speech problems who apply for telecommunications equipment through the Telecommunications Assistance Program; (ii) determine contributions, if any; and (iii) ensure confidentiality. It also ensures that the department retains ownership of equipment costing \$5,000 or more. Consideration is being given to expanding range of telecommunications equipment.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until February 2, 1992.

**Contact:** Kathy E. Vesley, Deputy Director, Department for the Deaf and Hard of Hearing, Washington Building, Capitol Square, 1100 Bank Street, 12th Floor, Richmond, Virginia 23219, telephone (804) 225-2570/Voice/TDD ☎ or toll-free 1-800-552-7917/Voice/TDD ☎

## BOARD OF DENTISTRY

† **December 18, 1991 - 8 a.m. - Open Meeting**  
Medical College of Virginia, Lyons Building, Richmond, Virginia. ☒

Regulatory Committee to discuss possible changes in regulations. This is a public meeting and the public is invited to observe. No public testimony will be received by the board at this meeting. Please contact the board office prior to the meeting to make sure it is scheduled.

† **December 18, 1991 - 1 p.m. - Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

Informal conferences beginning at 1 p.m. Budget committee at 5:30 p.m. This is a public meeting and the public is invited to observe. No public testimony will be received by the board at this meeting. Please contact the board office prior to the meeting to make sure it is scheduled.

† **January 18, 1992 - 10 a.m. - Open Meeting**  
Northern Virginia Community College, 8333 Little River Turnpike, Annadale, Virginia. ☒

† **January 22, 1992 - 11:30 a.m. - Open Meeting**  
Alcoholic Beverage Commission, 4907 Mercury Boulevard, Hampton, Virginia. ☒

Informal conferences.

† **January 29, 1992 - 1 p.m. - Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

Informal conferences beginning at 1 p.m. Legislative committee meeting at 5:30 p.m. Examination committee meeting at 7:30 p.m. Endorsement committee meeting at 8:30 p.m. Advertising committee meeting at 9 p.m. This is a public meeting and the public is invited to observe. No public testimony will be received by the board at this meeting. Please contact the board office prior to the meeting to make sure it is scheduled.

† **January 30, 1992 - 8:30 a.m. - Open Meeting**

† **January 31, 1992 - 8:30 a.m. - Open Meeting**

A meeting to receive committee reports, conduct regular board business and conduct formal hearings. This is a public meeting and the public is invited to observe. No public testimony will be received by the board at this meeting. Please contact the board office prior to the meeting to make sure it is scheduled.

**Contact:** Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Drive, Richmond, VA, telephone (804) 662-9906.

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

**January 6, 1992 - 9 a.m. - Public Hearing**  
Monroe Building, 101 North 14th Street, Rooms C and D, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to adopt regulations entitled: **VR 270-01-0054. Regulations Governing Reporting of Acts of Violence and Substance Abuse in Schools.** The proposed regulations will establish a format and timelines for local school divisions to report to the Department of Education certain acts of violence and substance abuse.

Statutory Authority: § 22.1-280.1 of the Code of Virginia.

Written comments may be submitted until January 6, 1992.

**Contact:** H. Douglas Cox, Principal Specialist, Virginia Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2871.

## LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

**January 2, 1992 - 5:30 p.m. - Open Meeting**  
**February 6, 1992 - 5:30 p.m. - Open Meeting**  
Chesterfield County Administration Building, 10001 Ironbridge Road, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

**Contact:** Linda G. Furr, Assistant Emergency Services, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

## LOCAL EMERGENCY PLANNING COMMITTEE - NEW KENT COUNTY

† **January 16, 1992 - 7:30 p.m.** – Open Meeting  
New Kent County Administration Building, New Kent, Virginia. ☒

An annual meeting to review the New Kent County Hazardous Materials Response Plan as required by SARA Title III.

**Contact:** J. Lawrence Gallaher, Director of Public Safety, P.O. Box 50, New Kent, VA 23124, telephone (804) 966-9680.

## LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF PRINCE WILLIAM, CITY OF MANASSAS, AND CITY OF MANASSAS PARK

**December 16, 1991 - 1:30 p.m.** – Open Meeting  
1 County Complex Court, Potomac Conference Room, Prince William, Virginia. ☒

A multi-jurisdictional Local Emergency Planning Committee to discuss issues related to hazardous substances in the jurisdictions. SARA Title III provisions and responsibilities for hazardous material emergency response planning.

**Contact:** John E. Medici, Hazardous Materials Officer, 1 County Complex Court, Prince William, VA 22192-9201, telephone (703) 792-6800.

## DEPARTMENT OF GENERAL SERVICES

**January 31, 1992** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of General Services intends to adopt regulations entitled: **VR 330-05-01. Regulations for the Approval of Field Tests for Detection of Drugs.** The purpose of the proposed regulation is to establish requirements for approval of field tests for drugs by the Division of Forensic Science, Department of General Services.

Statutory Authority: §§ 2.1-424 and 19.2-188.1 of the Code of Virginia.

Written comments may be submitted until January 31, 1992.

**Contact:** Paul B. Ferrara, Division Director, Division of

Forensic Science, 1 North 14th Street, Richmond, VA 23219, telephone (804) 786-2281.

## BOARD FOR GEOLOGY

**December 16, 1991 - 9:30 a.m.** – Open Meeting  
Virginia Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A general board meeting and examination workshop.

**Contact:** Nelle P. Hotchkiss, Assistant Director, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595.



## DEPARTMENT OF HEALTH (STATE BOARD OF)

**December 16, 1991 - 7 p.m.** – Public Hearing  
Old Board Chambers, 9250 Lee Avenue, Lee and Grant Avenues, Manassas, Virginia.

**December 18, 1991 - 7 p.m.** – Public Hearing  
City Council Chambers, Municipal Center, Princess Anne & North Landing Roads, Virginia Beach, Virginia.

**December 19, 1991 - 7 p.m.** – Public Hearing  
James City County Human Services Building, Auditorium, 5249 Olde Towne Road, Williamsburg, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **VR 355-34-100 (formerly 355-34-01). Private Well Regulations.** The proposed regulations establish minimum location and construction standards for private wells and establish a permitting process for all private wells.

Statutory Authority: § 32.1-176 of the Code of Virginia.

Written comments may be submitted until January 3, 1992.

**Contact:** Gary L. Hagy, Assistant Director, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

**December 17, 1991 - 9:30 a.m.** – Open Meeting  
Blue Cross/Blue Shield, Virginia Room, 2015 Staples Mill Road, Richmond, Virginia. ☒

# Calendar of Events

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The council will conduct its 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 ☎

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January 15, 1992 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The proposed regulation will amend regulations to require health care institutions to file certified audited financial statements with the council no later than 120 days after the end of the institutions's fiscal year. A 30-day extension could be granted for extenuating circumstances. A late charge of \$10 per working day would be assessed for filings submitted past the due date.

Statutory Authority: §§ 9-158, 9-159 and 9-164(2) of the Code of Virginia.

Written comments may be submitted until January 15, 1992.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☎

† January 27, 1992 - 7 p.m. - Open Meeting  
Medical College of Hampton Roads, Hofeimer Hall, 358 Mowbray Arch, Norfolk, Virginia. ☒

The council will conduct its monthly meeting. Public comment is welcome. Public comments must be limited to three minutes; written statements requested.

Contact: Kim Schulte Barnes, Information Officer, 805 East Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☎

## VIRGINIA HISTORIC PRESERVATION FOUNDATION

† January 8, 1992 - 9:30 a.m. - Open Meeting  
James Monroe Building, Conference Room B, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A general business meeting.

Contact: Hugh C. Miller, Director, 221 Governor Street, Richmond, VA, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

January 7, 1992 - 9 a.m. - Open Meeting

February 4, 1992 - 9 a.m. - Open Meeting

Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for deaf provided if requested)

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

December 17, 1991 - 11 a.m. - Open Meeting

601 South Belvidere Street, Richmond, Virginia. ☒

A regular meeting of the Board of Commissioners to (i) review, and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as they may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available one week prior to the date of the meeting.

Contact: J. Judson McKellar, General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

## DEPARTMENT OF LABOR AND INDUSTRY

January 14, 1992 - 7 p.m. - Public Hearing

Fourth Floor Conference Room, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Labor and Industry intends to adopt regulations entitled: **VR 425-01-81. Regulations Governing the Employment of Minors on Farms, in Gardens, and in Orchards.** Provision of regulations concerning child labor in agriculture.

Statutory Authority: §§ 40.1-6(3), 40.1-100 A 9, and 40.1-114 of the Code of Virginia.

Written comments may be submitted until October 28, 1991.

Contact: John J. Crisanti, Director, Office of Enforcemer

Policy, Powers-Taylor Building, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 786-2384.

## LIBRARY BOARD

**January 21, 1992 - 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 Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

## COMMISSION ON LOCAL GOVERNMENT

**January 14, 1992 - 10 a.m. – Open Meeting**  
Department of Planning and Budget, Ninth Street Office Building, Room 409, Richmond, Virginia.

A regular meeting to consider such matters as may be presented.

Persons desiring to participate in the Commission's oral presentations and requiring special accommodations or interpreter services should contact the Commission's offices by January 7, 1992.

**Contact:** Barbara W. Bingham, Administrative Assistant, 702 Eighth Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

## LONGWOOD COLLEGE

### Executive Committee

**December 17, 1991 - 9 a.m. – Open Meeting**  
Longwood College, Board Room, East Ruffner, Farmville, Virginia. ☒

A meeting to conduct routine business.

**Contact:** William F. Dorrill, President, President's Office, Longwood College, Farmville, VA 23901, telephone (804) 395-2001.

## STATE LOTTERY DEPARTMENT

† **December 18, 1991 - 10 a.m. – Open Meeting**  
State Lottery Department, 2201 West Broad Street, Richmond, Virginia. ☒

A regular monthly meeting. Business will be conducted according to items listed on the agenda which has not

yet been determined. Two periods for public comment are scheduled.

**Contact:** Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2210 W. Broad Street, Richmond, VA 23901, telephone (804) 367-9433.

## MARINE RESOURCES COMMISSION

† **December 18, 1991 - 9:30 a.m. – Open Meeting**

† **January 28, 1992 - 9:30 a.m. – Open Meeting**

2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☒

The commission will hear and decide marine environmental matters at 9:30 a.m.: permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues.

The commission will hear and decide fishery management items at approximately 2 p.m.: regulatory proposals, fishery management plans, fishery conservation issues, licensing, shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues, and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

**Contact:** Cathy W. Everett, Secretary to the Commission, P.O. Box 756, Room 1006, Newport News, VA 23607, telephone (804) 594-7933.

## BOARD OF MEDICAL ASSISTANCE SERVICES

**December 16, 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.

The board's Policy Committee will meet prior to the board meeting at 10 a.m. in the board room to review background information on Title XIX and to discuss the board's by-laws.

**Contact:** Patricia A. Sykes, Policy Analyst, Suite 1300, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-7958, toll-free 1-800-552-8627 or 1-800-343-0634/TDD ☎

# Calendar of Events

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## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

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**January 3, 1992** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **State Plan for Medical Assistance Relating to Case Management for the Elderly. VR 460-03-3.1102. Case Management Services.** This regulation proposes to make permanent policies which are substantially the same as the existing emergency regulation.

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

Written comments may be submitted until 4:30 p.m., January 3, 1992, to Ann E. Cook, Eligibility and Regulatory Consultant, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23229, telephone (804) 786-7933.

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**January 17, 1992** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **Fee-for-Service Reimbursement for Home Health Services. VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates—Other Types of Care. VR 460-03-4.1923. Establish Rate Per Visit.** This regulation proposes to make permanent the policy providing for the fee for service reimbursement to home health agencies which is currently in place with an emergency regulation.

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

Written comments may be submitted until 4:30 p.m., January 3, 1992, to Betty Cochran, Director, Division of Quality Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23229, telephone (804) 786-7933.

**January 17, 1992** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1100. Amount, Duration, and Scope of Services: State Plan for Medical Assistance Relating to Reduction of Threshold Days for Hospital UR and Second Surgical Opinion Program.** The purpose of the proposed regulation is to promulgate permanent regulations to supersede the existing emergency regulations which provide for substantially the same policies.

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

Written comments may be submitted until 4:30 p.m., January 17, 1992, to Mack Brankley, Director, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23229, telephone (804) 786-7933.

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**January 31, 1992** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1940:1. Nursing Home Payment System (PIRS).** This regulation proposes to promulgate permanent regulations to supersede three existing emergency regulations providing for mortgage debt refinancing, nursing facility rate change, and technical language changes.

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

Written comments may be submitted until 4:30 p.m., January 31, 1992, to William R. Blakely, Jr., Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23229, telephone (804) 786-7933.

**BOARD OF MEDICINE**

**February 3, 1992** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-03-01. Regulations Governing the Practice of Physical Therapy.** The board proposes to further define supervisory responsibilities of the licensed physical therapist for traineeship, on-site supervision of the physical therapy assistant in the work area, and further define the work settings of patient care.

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

Written comments may be submitted until February 3, 1992, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

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**February 3, 1992** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-05-01. Regulations Governing the Practice of Physician's Assistants.** The board proposes to amend §§ 3.4 and 5.1 B to require biennial renewal of license in each odd numbered year on the licensee's birth month and substitute the term "license" for "certification" to conform with the Code of Virginia, throughout the regulations.

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

Written comments may be submitted until February 3, 1992, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

**Advisory Board on Physical Therapy**

**January 17, 1992 - 9 a.m.** – Open Meeting  
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) review and discuss regulations, bylaws, procedure manuals; (ii) receive reports; and (iii) discuss other items which may come before the advisory board. Public comments will not be received.

**Contact:** Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9925.

**DEPARTMENT OF MOTOR VEHICLES**

**January 3, 1992** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to repeal existing regulations entitled **VR 485-10-8401. Public Participation Guidelines** and adopt new regulations entitled: **VR 485-10-9101. Public Participation Guidelines for Regulation Development and Promulgation.** The board proposes to repeal the existing regulation 7nd establish new guidelines for receiving input and participation from interested citizens in the development of any regulation which the department proposes.

Statutory Authority: § 46.2-203 of the Code of Virginia.

Written comments may be submitted until January 3, 1992.

**Contact:** Peggy S. McCrerey, Planning Director, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-0429.

**Medical Advisory Board**

† **January 8, 1992 - 1:15 p.m.** – Open Meeting  
DMV, 2300 West Broad Street, Richmond, Virginia. ☒

A regular business meeting open to the public.

**Contact:** Dan Byers, DSA Administrator, DMV, 2300 W. Broad Street, Richmond, VA 23220, telephone (804) 367-1836.

**VIRGINIA MUSEUM OF NATURAL HISTORY**

**Board of Trustees**

† **January 15, 1992 - 9 a.m.** – Open Meeting  
The Jefferson 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 Avenue, Martinsville, VA 24112, telephone (703) 666-8616, SCATS (703) 857-6959/857-6951 or (703) 666-8638/TDD ☎

# Calendar of Events

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## BOARD OF NURSING HOME ADMINISTRATORS

**January 9, 1992 - 9 a.m. – Open Meeting**  
1601 Rolling Hills Drive, Richmond, Virginia. ☒

National and state examinations for nursing home administrators.

**January 21, 1992 - 8:30 a.m. – Open Meeting**  
**January 22, 1992 - 8:30 a.m. – Open Meeting**  
1601 Rolling Hills Drive, Richmond, Virginia. ☒

A board meeting to review continuing education submittals regarding licensure renewal.

**Contact:** Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9111.

## BOARD OF OPTOMETRY

**December 18, 1991 - 9 a.m. – Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room 4, Richmond, Virginia.

The board will conduct informal conferences.

**Contact:** Lisa J. Russell, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9910.

## VIRGINIA OUTDOORS FOUNDATION

**December 16, 1991 - 10:30 a.m. – Open Meeting**  
Monticello, Charlottesville, Virginia. ☒

A general business meeting.

**Contact:** Tyson B. Van Auken, Executive Director, 221 Governor Street, Richmond, VA 23219, telephone (804) 786-5539.

## BOARD OF PHARMACY

† **January 22, 1992 - 9 a.m. – Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive, Conference Room #3, Richmond, Virginia.

A board meeting. Public comments will be accepted at the beginning of the meeting or any appropriate occasion during the meeting.

**Contact:** Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9911.

### Regulatory Review Committee

† **January 7, 1992 - 9 a.m. – Open Meeting**

Department of Health Professions, 1601 Rolling Hills Drive, Conference Room #2, Richmond, Virginia.

Regulatory review committee meeting.

**Contact:** Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9911.

## POLYGRAPH EXAMINERS ADVISORY BOARD

**December 17, 1991 - 9 a.m. – Open Meeting**  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

This meeting is for the purpose of administering the polygraph examiners licensing examination to eligible polygraph examiner interns and to consider other matters which require board action.

**Contact:** Geralde W. Morgan, Administrator, Department of Commerce, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

## BOARD OF PSYCHOLOGY

**December 19, 1991 - 9 a.m. – Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia.

A meeting to conduct general board business and review regulatory comments. Public comment will not be received.

**Contact:** Evelyn B. Brown, Executive Director, Department of Health Professions, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9913 or (804) 662-7197/TDD ☒

## REAL ESTATE APPRAISER BOARD

**January 18, 1992 – Written comments may be submitted until this date.**  
Department of Commerce, 3600 West Broad Street, 3rd Floor, Room 395, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Appraiser Board is withdrawing the proposed regulation published in 8:2 V.A.R. 206-226 October 21, 1991 and will adopt new regulations entitled: **VR 583-01-03. Real Estate Appraiser Board Regulations.** The purpose of the proposed regulations is to establish the qualifications for licensure and standards of practice for real estate appraisers.

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Written comments may be submitted until January 18, 1992.

**Contact:** Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2175.

## REAL ESTATE BOARD

**January 5, 1992** – Written comments may be submitted until this date.

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 Real Estate Board intends to amend regulations entitled: **VR 585-01-1. Virginia Real Estate Board Licensing Regulations.** The proposed regulations relate to the licensing and conducting of real estate business in accordance with established standards.

Statutory Authority: §§ 9-6.14:1, 54.1-201 and 54.1-2105 of the Code of Virginia.

Written comments may be submitted until January 5, 1992.

**Contact:** Joan L. White, Assistant Director, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8552.

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

**January 4, 1992** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to amend regulations entitled: **VR 615-33-01. Fee Requirements for Processing Applications.** This regulation contains the requirements and procedures for licensees to follow in submitting the application processing fee which is to be submitted with all new and renewal applications. It also includes a provision for a \$15 fee to be charged for checks which must be returned to the applicant because of insufficient funds.

Statutory Authority: §§ 63.1-25, 63.1-174.01 and 63.1-196.5 of the Code of Virginia.

Written comments may be submitted until January 4, 1992.

**Contact:** Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

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**January 17, 1992** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to amend regulations entitled: **VR 615-01-36. General Relief (GR) Program - Locality Options.** The purpose of the proposed amendment is to allow local departments of Social Services to continue options for assistance provided from the General Relief Program.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until January 17, 1992, to Ms. Diana Salvatore, Program Manager, Medical Assistance Unit, Virginia Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229.

**Contact:** Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 8007 Discovery Drive, Richmond, VA 23229-8699, telephone (804) 662-9217.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS

**December 19, 1991 - 10 a.m.** – Open Meeting  
Virginia Department of Commerce, Conference Room 2, 3600 West Broad Street, Richmond, Virginia. ☐

Grade examinations.

**January 6, 1992 - 11 a.m.** – Open Meeting  
Virginia Department of Commerce, Conference Room 1, 3600 West Broad Street, Richmond, Virginia. ☐

A general board meeting.

**Contact:** Nelle P. Hotchkiss, Assistant Director, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595.

## VIRGINIA SWEET POTATO BOARD

**March 11, 1992 - 7:30 p.m.** – Open Meeting  
Eastern Shore Agriculture Experiment Station, Route 1, Box 133, Research Drive, Painter, Virginia. ☐

A meeting to discuss marketing, promotion, research and education programs for the state's sweet potato industry and to develop the board's annual budget. At the conclusion of other business, the board will entertain public comments for a period not to exceed 30 minutes.

**Contact:** J. William Mapp, Program Director, Box 26, Onley, VA 23418, telephone (804) 787-5867.

# Calendar of Events

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## DEPARTMENT OF TAXATION

† **January 24, 1992 - 9 a.m.** – Public Hearing  
Department of Taxation, Training Room, 2220 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-10-74.1. Nonprescription Drugs and Proprietary Medicines.** This regulation explains the exemption from the retail sales and use tax for nonprescription drugs and proprietary medicines.

### STATEMENT

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The 1990 General Assembly enacted legislation (1990 Acts of Assembly, Chapter 117) creating an exemption from the retail sales and use tax for “nonprescription drugs” and “proprietary medicines” and requiring the Department of Taxation to promulgate regulations defining the above terms.

Purpose: This regulation sets forth the exemption from the retail sales and use tax for nonprescription drugs and proprietary medicines when purchased for the cure, mitigation, treatment, or prevention of disease in human beings.

Substance: Drugs or a substance or mixture of substances containing medicines, pharmaceuticals, or over-the-counter drugs, which are generally sold for use in the cure, mitigation or treatment of disease, or are intended to affect the structure or function of the human body, may be purchased exempt from the sales tax. Cosmetics and toiletry items generally are taxable unless they contain medicinal ingredients and are principally used for medical treatment.

This exemption is applicable regardless of the nature of the purchaser. Thus, nonprescription drugs and proprietary medicines may be purchased exempt by individuals, physicians, profit and nonprofit hospitals, and other entities.

Various categories and examples of taxable and exempt items are provided.

Issues: Regulatory provisions are required in order to comply with the General Assembly’s mandate to define, by regulation, the terms “nonprescription drugs” and “proprietary medicines.” While the statute specifies that cosmetics are not covered by the exemption, some cosmetics contain medicinal ingredients and are principally used for medical treatment, and thus may be nontaxable under this exemption.

Impact: The exemption will have an impact on retailers

and purchasers of nonprescription drugs and proprietary medicines in the Commonwealth.

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

Written comments may be submitted until February 14, 1992.

**Contact:** Janie E. Bowen, Director, Tax Policy, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010.

## COMMONWEALTH TRANSPORTATION BOARD

**December 18, 1991 - 2 p.m.** – Open Meeting  
Sheraton Inn, Fredericksburg Conference Center, Fredericksburg, Virginia. ☒ (Interpreter for deaf provided upon request)

† **January 15, 1992 - 2 p.m.** – Open Meeting  
Virginia Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

Work session of the Commonwealth Transportation Board and the Department of Transportation staff.

**December 19, 1991 - 10 a.m.** – Open Meeting  
Sheraton Inn, Fredericksburg Conference Center, Fredericksburg, Virginia. ☒ (Interpreter for deaf provided upon request)

† **January 16, 1992 - 10 a.m.** – Open Meeting  
Virginia Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request)

A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.

Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

**Contact:** John G. Milliken, Secretary of Transportation, 1491 East Broad Street, Richmond, VA 23219, telephone (804) 786-6670.

## TRANSPORTATION SAFETY BOARD

NOTE: CHANGE IN MEETING TIME

**January 23, 1992 - 10:30 a.m.** – Open Meeting  
Department of Motor Vehicles, Room 702, 2300 West Broad Street, Richmond, Virginia. ☒

A meeting to discuss various transportation safety topics and issues.

**Contact:** William H. Leighty, Deputy Commissioner, 2300 West Broad Street, Richmond, VA 23269, telephone (804) 367-6614 or (804) 367-1752/TDD ☎

## TREASURY BOARD

**December 18, 1991 - 9 a.m. - Open Meeting**  
James Monroe Building, 3rd Floor, 101 North 14th Street, Richmond, Virginia. ☒

A regular meeting.

**Contact:** Belinda Blanchard, Assistant Investment Officer, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-2142.

## COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

**December 19, 1991 - 1 p.m. - Open Meeting**  
**December 20, 1991 - 9 a.m. - Open Meeting**  
Virginia Beach Resort Center, Virginia Beach, Virginia.

A scheduled commission meeting.

**Contact:** William T. McCollum, Executive Director, Commission on the Virginia Alcohol Safety Action Program, Old City Hall, Richmond, Virginia, telephone (804) 786-5895.

## VIRGINIA RACING COMMISSION

**December 18, 1991 - 9:30 a.m. - Open Meeting**  
VSRS Building, 1200 East Main Street, Richmond, Virginia. ☒

A regular commission meeting including a review of the application procedures for participants as well as a review of the drafts of proposed regulations relating to medication and the Virginia Breeders Fund.

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

## VIRGINIA RESOURCES AUTHORITY

**January 14, 1992 - 9 a.m. - Open Meeting**  
**February 11, 1992 - 9 a.m. - Open Meeting**  
The Mutual Building, 909 East Main Street, Suite 707, Conference Room A, Richmond, Virginia.

The board will meet to (i) approve minutes of its previous meeting; (ii) review the Authority's operations

for the prior months; and (iii) consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the Authority one week prior to the date of the meeting.

Public comments will be received at the beginning of the meeting.

**Contact:** Mr. Shockley D. Gardner, Jr., 909 East Main Street, Suite 707, Mutual Building, Richmond, VA 23219, telephone (804) 644-3100 or FAX number (804) 644-3109.

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

### Advisory Committee on Services

**January 11, 1992 - 11 a.m. - Open Meeting**  
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☒ (f interpreter for deaf provided upon request)

A quarterly meeting to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth.

**Contact:** Barbara G. Tyson, Executive Secretary, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

## VIRGINIA VOLUNTARY FORMULARY BOARD

**January 9, 1992 - 10:30 a.m. - Open Meeting**  
Washington Building, 2nd Floor Board Room, 1100 Bank Street, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor Street, Room B1-9, Richmond, Virginia 23219, telephone (804) 786-4326.

## STATE WATER CONTROL BOARD

† **January 14, 1992 - 7 p.m. - Public Hearing**  
Virginia Military Institute, Room 507, Nichols Engineering Building, Lexington, Virginia. ☒

A public hearing to receive comments on the proposed Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0086967 for Young Life-Jump Mountain Sewage Treatment Plant, 120 Coles Cove Road, Weaverville, North Carolina 28787. The purpose of the hearing is to receive comments on the proposed issuance or denial of the permit and the effect of the

# Calendar of Events

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discharge on water quality or beneficial uses of state waters.

**Contact:** Lori Freeman Jackson, Hearings Reporter, Office of Policy Analysis, State Water Control Board, P.O. Box 11143, 4900 Cox Road, Richmond, Virginia 23230-1143, telephone (804) 527-5163.

\* \* \* \* \*

† **January 27, 1992 - 7:30 p.m.** – Public Hearing  
Virginia Beach City Council Chambers, City Hall Building,  
Second Floor, Courthouse Drive, Virginia Beach, Virginia.

† **January 28, 1992 - 7:30 p.m.** – Public Hearing  
State Water Control Board, Board Room, Innsbrook  
Corporate Center, 4900 Cox Road, Richmond, Virginia.

† **January 29, 1992 - 7:30 p.m.** – Public Hearing  
Roanoke County Administration Center, Community Room,  
3738 Brambleton Avenue, S.W., Roanoke, Virginia.

† **February 3, 1992 - 7:30 p.m.** – Public Hearing  
Spotsylvania County Board of Supervisors Room, County  
Administration Building, Route 208 at Spotsylvania  
Courthouse, Spotsylvania, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-15-02. Virginia Water Protection Permit Regulation.** The proposed regulation delineates the procedures and requirements to be followed for issuance of a Virginia Water Protection Permit. An informal question and answer period has been scheduled before each hearing. At that time, staff will answer questions from the public on the proposal. The questions and answer period will begin at 6:30 p.m. on the same day and at the same location as the public hearings.

## STATEMENT

**Basis:** Under the authority of § 62.1-44.15:5 of the Code of Virginia the State Water Control Board (SWCB) is authorized to adopt regulations to issue permits for an activity requiring § 401 certification under the Federal Clean Water Act, 33 USC 1251 et seq.

**Substance and purpose of proposed regulation:** The proposed regulations delineate the procedures and requirements to be followed for issuance of a Virginia Water Protection Permit (VWP). The proposed regulations would require a permit to be issued for activities that result in a discharge to surface waters, that require a federal permit or license and are not permitted under the Virginia Pollutant Discharge Elimination System. Conditions of the permit would be designed to protect the beneficial uses of surface waters.

**Impact:** Approximately 1,000 applicants per year currently

apply for permits under the joint permit application system used by the Virginia Marine Resources Commission, the Army Corps of Engineers and the State Water Control Board. Of these, approximately 50 applications per year are for activities covered by Nationwide Permit No. 26 involving the filling of one to 10 acres of headwaters. Approximately two per year are for a hydroelectric facility in the process of obtaining their federal license. Approximately 120 are for state highway projects.

All of the above are currently required to obtain a water quality certification under § 401 of the Clean Water Act. However, some impacts on the regulated community will result from adoption of the proposed regulations. Applicants for VWPs would have to certify local government approval of a proposed activity in accordance with § 62.1-44.15:3 of the Code of Virginia before an application could be considered complete. The proposed incorporation of expiration dates in VWPs would result in certain permittees having to reapply periodically for a new VWP.

**Issues:** Issues under consideration include, but are not limited to, the requirements for a complete application, the incorporation of expiration dates in VWPs; the degree of protection to be provided for surface waters, and any perceived duplication among existing regulatory programs administered by other agencies.

Statutory Authority: § 62.1-44.15:5 of the Code of Virginia.

Written comments may be submitted until 4 p.m., February 17, 1992, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

**Contact:** Martin Ferguson, Office of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230, telephone (804) 527-5030.

## VIRGINIA WINEGROWERS ADVISORY BOARD

† **January 8, 1992 - 10 a.m.** – Open Meeting  
The Berkeley Hotel, Twelfth and Cary Streets, Richmond, Virginia.

A strategic planning session to assess its current goals and objectives and set new priorities for the coming years.

**Contact:** Annette C. Ringwood, Secretary, Virginia Winegrowers Advisory Board, 1100 Bank Street, Suite 1010, Richmond, VA 23219, telephone (804) 371-7685.

## CHRONOLOGICAL LIST

### BOARD OF YOUTH AND FAMILY SERVICES

**January 9, 1992 - 10 a.m. - Open Meeting**  
Fredericksburg, Virginia.

A general business meeting.

**Contact:** Paul Steiner, Policy Coordinator, Department of Youth and Family Services, P.O. Box 3AG, Richmond, VA 23208-1108, telephone (804) 371-0692.

### DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

**January 8, 1992 - 7 p.m. - Public Hearing**  
Fredericksburg, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Youth and Family Services intends to adopt regulations entitled: **VR 690-30-001. Standards for Secure Detention Homes.** The purpose of the proposed regulation is to establish operating standards for the care and custody of youth in secure detention homes.

Statutory Authority: §§ 16.1-311 and 66-10 of the Code of Virginia.

Written comments may be submitted until January 31, 1992.

**Contact:** Paul Steiner, Policy Coordinator, Department of Youth and Family Services, P.O. Box 3AG, Richmond, VA 23208-1108, telephone (804) 371-0692.

## LEGISLATIVE

### JOINT SUBCOMMITTEE STUDYING HUMAN IMMUNODEFICIENCY VIRUSES (AIDS)

**December 18, 1991 - 10 a.m. - Open Meeting**  
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

The subcommittee will hear presentations and deliberations on issues related to testing. (HJR 438)

**Contact:** Norma Szakal, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

### OPEN MEETINGS

#### December 16

Accountancy Board for  
Emergency Planning Committee, Local - County of Prince William, City of Manassas and City of Manassas Park  
Geology, Board for  
Medical Assistance Services, Board of  
Outdoors Foundation, Virginia

#### December 17

Health Services Cost Review Council, Virginia  
Housing Development Authority, Virginia  
Longwood College  
- Executive Committee  
Polygraph Examiners Advisory Board

#### December 18

† Air Pollution Control Board, State  
† Dentistry, Board of  
Human Immunodeficiency Viruses, Joint Subcommittee Studying  
† Lottery Department, State  
† Marine Resources Commission  
Optometry, Board of  
Transportation Board, Commonwealth  
Treasury Board  
Virginia Racing Commission

#### December 19

Compensation Board  
Professional Soil Scientists, Board for  
Psychology, Board of  
Transportation Board, Commonwealth  
Virginia Alcohol Safety Action Program, Commission on the

#### December 20

Residential Facilities for Children, Coordinating Committee for Interdepartmental Regulation of  
Virginia Alcohol Safety Action Program, Commission on the

#### January 2, 1992

Emergency Planning Committee, Local - Chesterfield County

#### January 6

Professional Soil Scientists, Board for

#### January 7

Hopewell Industrial Safety Council  
† Pharmacy, Board of  
- Regulatory Review Committee

#### January 8

† Conservation and Recreation, Department of  
- Goose Creek Scenic River Advisory Board

# Calendar of Events

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- † Corrections, Board of
- † Historic Preservation Foundation, Virginia
- † Motor Vehicles, Department of
  - Medical Advisory Board
- † Winegrowers Advisory Board, Virginia

## January 9

- † Corrections, Board of
  - Liaison Committee
- Nursing Home Administrators, Board of
- Voluntary Formulary Board, Virginia
- Youth and Family Services, Board of

## January 11

- Visually Handicapped, Department for the
  - Advisory Committee on Services

## January 14

- † Aging, Department for the
  - Governor's Advisory Board on Aging
- Local Government, Commission on
- Virginia Resources Authority

## January 15

- † Aging, Department for the
  - Governor's Advisory Board on Aging
- † Museum of Natural History, Virginia
  - Board of Trustees
- † Transportation Board, Commonwealth

## January 16

- † Agriculture and Consumer Services, Department of
  - Pesticide Control Board
- Audiology and Speech Pathology, Board of
- Emergency Planning Committee, Local - New Kent County
- † Transportation Board, Commonwealth

## January 17

- † Agriculture and Consumer Services, Department of
  - Pesticide Control Board
- Medicine, Board of
  - Advisory Board on Physical Therapy

## January 18

- † Dentistry, Board of

## January 21

- Library Board
- Nursing Home Administrators, Board of

## January 22

- † Dentistry, Board of
- Nursing Home Administrators, Board of
- † Pharmacy, Board of

## January 23

- Transportation Safety Board

## January 27

- † Health Services Cost Review Council, Virginia

## January 28

- † Marine Resources Commission

## January 29

- † Dentistry, Board of

## January 30

- Chesapeake Bay Local Assistance Board
- † Dentistry, Board of

## January 31

- † Dentistry, Board of

## February 4

- Hopewell Industrial Safety Council

## February 6

- Emergency Planning Committee, Local - Chesterfield County

## February 11

- Virginia Resources Authority

## February 12

- † Corrections, Board of

## February 13

- † Corrections, Board of
  - Liaison Committee

## February 20

- † Agriculture and Consumer Services, Department of
  - Virginia Apple Board

## February 24

- Commerce, Board of

## February 27

- Chesapeake Bay Local Assistance Board

## PUBLIC HEARINGS

## December 16

- Health, Department of

## December 18

- Air Pollution Control Board, State
- Health, Department of

## December 19

- Health, Department of

## January 6, 1992

- Education, Department of

## January 8

- Youth and Family Services, Department of

## Calendar of Events

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**January 14**

Labor and Industry, Department of  
† Water Control Board, State

**January 21**

Deaf and Hard of Hearing, Department for the

**January 24**

† Taxation, Department of

**January 27**

† Water Control Board, State

**January 28**

† Water Control Board, State

**January 29**

† Water Control Board, State

**February 3**

† Water Control Board, State

**February 12**

Corrections, Department of

**March 6**

Criminal Justice Services, Department of

# Calendar of Events

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